

(1894) 01 MAD CK 0009
In the Madras High Court

Syed Hussain

APPELLANT

Vs

Madan Khan and Others

RESPONDENT

Date of Decision : 23-01-1894

Acts Referred:

Citation : (1894) ILR (Mad) 265

Hon'ble Judges : Muttusami Ayyar, J; Best, J

Bench : Division Bench

Judgement

1. The Judge's finding is that there was no completed sale. He gives his reasons for so finding, and it is not open to us in second appeal to consider

that question of fact. This appeal, so far as the plot A is concerned, must therefore fail.

2. It is contended further with regard to the plot C, in which the other respondents disclaim all interest, that sixth defendant not having appealed

from the District Munsif's decree, the District Judge could not disturb that decree so far as it affected this plot C. On the other hand the fifth

respondent's vakil refers to the cases in Seshadri v. Krishnan ILR 8 Mad. 192 and Nagamma v. Subba ILR 11 Mad. 197 and urges that when

the ground of decision is common, the Court is entitled u/s 544 of the Code of Civil Procedure to alter a decree in favour of a party who has not

appealed, even in respect of property in which those who have appealed disclaim all interest. We are not prepared to accept this contention.

Section 544 appears to us to presuppose a common ground of decision affecting property in which both those who have appealed and those who

have not appealed have an interest either direct or indirect. This was the ground on which the decisions proceed in the two cases cited. The

present case is on all fours with that in Appa Rau v. Ratnam ILR 13 Mad. 249 The principle is that laid down by Jackson, J., in Sriram Ghatak v.

Braga Mohan Ghosal 3 B.L.R. App. 41 that the section applies only to decrees incapable of division and relates to property in which all the

plaintiffs or all the defendants are interested.

3. We therefore set aside the lower Appellate Court's decree so far as the land G is concerned and affirm it with regard to the land A.

4. Appellant must pay the costs in this Court of the respondents other than the sixth defendant, who and appellant will bear their own costs.