

(1905) 11 MAD CK 0006
In the Madras High Court

Triikkaikkat Madathil Raman alias Mullapalli Thirumumpu by
his Muktiar Raman alias Kallur Thirumumpu

APPELLANT

Vs

Thiruthiyil Paramal Krishnan Nair and Others

RESPONDENT

Date of Decision : 10-11-1905

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 13, 43

Citation : (1906) ILR (Mad) 153 : (1906) 16 MLJ 48

Judgement

1. The contract on which the plaintiff sued in the present suit is distinct from that on which he sued in O.S. No. 91 of 1895. In the suit of 1895 the plaintiff included the whole of the claim which he was entitled to make in respect of the alleged cause of action on which he sued (Section 43). His claim in the present suit on the mortgage of 1854 is not a matter which might and ought to have been made a ground of attack in his previous suit on the alleged mortgage of 1860 (Section 13, explanation II).
2. There is a very strong body of authority to support this view. The law was exhaustively considered in Ramaswamayyar v. Vythinathayyar ILR (1902) 26 M. 760. We agree with the decision in that case and with the decision in the latter case of Veerana Pillai v. Muthukumara Asari ILR (1898) 22 M. 259 which followed Ramaswamayyar v. Vythinathayyar ILR (1902) 26 M. 760.
3. Having regard to the current of authority we do not think the judgment in the case reported in Rangasami Pillai v. Krishna Pillai ILR (1898) 22 M. 259 can be treated as binding.
4. We are of opinion that the present suit is not barred u/s 13 or Section 43 of the Civil Procedure Code.