

(1918) 07 MAD CK 0024
In the Madras High Court

V. Sreenivasa Chariar and Others

APPELLANT

Vs

P. Kumara Thathachariar and Others

RESPONDENT

Date of Decision : 18-07-1918

Acts Referred:

Citation : 51 Ind. Cas. 540 : (1918) 8 LW 470

Hon'ble Judges : Spencer, J;Krishnan, J

Bench : Division Bench

Judgement

Spencer, J.—I am of opinion that the learned District Judge was mistaken in applying the decisions in Rajah of Venkatagiri v. Chinta Reddi

15 Ind. Cas. 378 ; 11 M.L.T. 209 to the facts of this case.

2. In Rajah of Venkatagiri v. Chinta Reddi (1912) M.W.N. 393 this Court had before it an agreement, as to which there was no written record, of

the exact representations of the parties, to postpone the settlement of a dispute, and to take a Small Cause suit out of the control of the Small

Cause Court having jurisdiction to decide it, and to make the decision of the Small Cause suit depend upon the decision of the District Munsif in an

original suit whose decision would in the ordinary course be subject to appeal. The effect of recognising such an agreement would have been to

abrogate the unsuccessful party's right of appeal against the District Munsif's decision and to oust the jurisdiction of the Small Cause Court in a

manner not contemplated by law Accordingly the learned Judges declined to give effect to such an "unauthorised" agreement.

3. We have also been referred to the case of Rukhanbai v. Adamji 10 Bom. L.R. 366 decided by a single Judge. There, Beaman, J., was dealing

with a case of an agreement to refer the matter in dispute in an administration

suit to the decision of an Assistant Commissioner. He held that there had been no regular submission to arbitration and no acceptance by the parties of the so-called arbitrator's award. He finally made an order referring the matter back to the very same arbitrator. The facts of that case are dissimilar from those of this case. Now in the present case we have an agreement in writing signed by the Vakils of the contesting parties to abide by the final decision of another appealable suit in a connected case. I fail to see any valid reason why this agreement plus the final decision of the High Court in Original Suit No. 295 of 1886 does not conclude the claims of the parties in this suit and operate as an adjustment of the suit.

4. The decision of the District Judge must, therefore, be set aside and the decree of the District Munsif restored with costs here and in the District Court.

Krishnan, J.

5. I agree with my learned brother. In this case there was an agreement between the parties to abide by the decision of the High Court in another suit in which the same questions as were involved in this suit seem to have been raised. The arrangement was made by statements of the Vakils in Court and was recorded by the Court, and in accordance with it the Court adjourned the hearing of the case till the disposal of the appeal in the High Court. The High Court has now given its decision. The respondents before us, against whose view that decision apparently went, contend that they are not bound by the previous arrangement and want this suit to be tried on the merits. In the first Court, they urged that their Vakil was not authorised to enter into such an agreement but that was found against. They now rely on *Rajah of Venkatagiri v. Chinta Reddi* 15 Ind. Cas. 378 ; (1912) M.W.N. 393 and contend that the agreement in question is not a valid agreement and is no bar to their claim to have their suit beard on the merits.

6. It seems to me that though the agreement was a conditional one at the time when it was entered into, it became completed as soon as the High Court's decree was passed and it amounted to a valid adjustment of the suit under Order XXIII, Rule 3 of the Code of Civil Procedure. In the case relied on, the terms of the agreement are not found, The learned Judges seem to have looked at it as tantamount to an agreement to postpone

the settlement of the case. They say, ""the agreement did not settle the dispute but postponed the settlement and purported to authorise the Court to

settle it in a certain manner."" The agreement in the present case was one putting an end to the dispute in the suit as soon as the High Court's decree

was passed. Parties not having resiled from their agreement before that decision was given, I fail to see how it can now be said that the suit has not

been adjusted wholly by a lawful agreement, the Court having only to pass a decree in accordance with the agreement. Whatever their position

may have been before the High Court's decision, it seems to me that Order XXIII, Rule 3, clearly applies now. If the case of *Rajah of Venkatagiri*

v. Chinta Reddi 15 Ind. Cas. 378 intended to lay down that all agreements in suit to abide by the decision in some other suit are ipso facto invalid, I

am with all respect unable to follow it and if it is not distinguishable, I should have felt bound to refer the question to the Full Bench. But as stated

above, the nature of the agreement set up in it is not clear.

7. The decisions relating to reference to arbitration are not in point, as various other considerations arise in them.

8. It has also been argued before us that the respondents must be held estopped from contending that they are not bound by the arrangement in

question and the cases of *Bahir Das Chakravarti v. Nobin Chunder Pal* 6 C.W.N. 121 and *Protap Chunder Dass v. Arathoon* 10 C.L.R. 443 ; 4

Ind. Dec. 291 were relied on. This question was not considered in *Rajah of Venkatagiri v. Chinta Reddi* 15 Ind. Cas. 378 There is considerable

force in this contention but it is not necessary to decide it in the present case, as in my view a completed adjustment has resulted.

9. I agree to the order proposed by my learned brother.