

(1906) 10 MAD CK 0006
In the Madras High Court

Venkappachari

APPELLANT

Vs

Munjunatha Kamti and Others

RESPONDENT

Date of Decision : 22-10-1906

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 12, 30

Citation : (1906) 16 MLJ 526

Hon'ble Judges : Miller, J

Bench : Division Bench

Judgement

Miller, J.—In July 1900 a suit was instituted for the winding up of the affairs of a "Subhodaya fund" or mutual aid association, and the

appellant who was a subscriber to the fund, became a party to that suit by virtue of a permission given by the Court u/s 30 of the C.P.C. to the

plaintiffs on the record to sue on behalf of all the subscribers.

2. While that suit was pending in the Subordinate Judge's Court, the appellant instituted a suit against the same defendants in the District Munsif's

Court, which suit the District Munsif found to be for the same relief which was prayed in the suit before the Subordinate Judge and so to be barred

by Section 12 of the Code of Civil Procedure. He stayed proceedings and did not dismiss the suit. Subsequently the suit as stayed was moved into

the Subordinate Judge's Court and dismissed by him along with the earlier suit on a preliminary point. The plaintiff appealed, to the District Judge

who has dismissed the appeal on the ground that it could not lie because the Subordinate Judge had no jurisdiction to try the suit which was barred

by Section 12 of the Civil Procedure Code. He apparently treated the proceedings in the Subordinate Judge's Court as a nullity so far as they

related to the suit in question.

3. I think he was wrong. As was pointed out by Mahamood J. in Bal Kishan v. Kishan Lal I.L.R(188) A. 154 Section 12 of the CPC is in some

respects similar in principle to Section 13. Both are aimed against superfluous suits. The prohibitory words in both, too, are practically the same -

"No Court shall try," "the Court shall not try" and I am unable to accept the appellant's contention that the bar enacted in Section 12 is merely by

way of a stay of proceedings pending the decision of the earlier suit. To do so would be to read into the section words which are not there. The

second suit is as superfluous and is as objectionable as a suit to reopen a res judicata. The procedure under both sections then ought to be the

same and the District Munsif ought to have dismissed the suit before him as barred by Section 12, just as he would doubtless have done had he

found that it was barred by the more familiar provision of Section 13.

4. He did not do so, but kept the suit pending and then it was moved into the Subordinate Judge's Court and dismissed by him. The District Judge

had jurisdiction to hear the appeal against that decision and should have done so.

5. But the District Judge agreed with the District Munsif that the suit was barred by Section 12 and I have not been shown that they were wrong.

6. The District Judge should therefore have dismissed the appeal and he has done so though on a wrong ground.

7. In these circumstances as the right result has been arrived at though by the wrong road, I should not interfere in revision, The District Judge has

pointed out the petitioner a way to get his appeal against the Subordinate Judge's decision heard, but the petitioner has not chosen so far to avail

himself of that suggestion.

8. I dismiss the petition with costs.