
(1894) 09 MAD CK 0010
In the Madras High Court

V.S.S.K. Narayana Aiyar

APPELLANT

Vs

Simha Astanasi and Others

RESPONDENT

Date of Decision : 17-09-1894

Acts Referred:

Citation : (1894) 4 MLJ 254

Judgement

1. We are clearly of opinion that the subordinate Judge was in error in holding that it was necessary for plaintiff to ask for consequential relief by

canceling the decree in original suit No. 19 of 1892.

2. It is not necessary for plaintiff who is not bound by that decree to seek to set it aside. His only interest is in showing that the attachment obtained

under that decree in the Cochin Court has no priority over the attachment before judgment which he obtained in his own suit against the same

defendants--See Pachamuthu v. Chinnappan, I. L. R. 10 M 213 and Unni v. Kunchi Anma, I. L. R. 14 M 26

3. All that is necessary for plaintiff to obtain is a declaratory decree showing that the decree obtained by 4th defendant against defendants 1 to 3 is

collusive and will not affect the attachment he has made.

4. If he obtains that decree, it is for him to produce it in the Anji Kammal Zillah Court on his application for execution and claim priority over the

attachment made by 4th defendant. No consequential relief can be asked for in the form of an order addressed to a foreign court or an injunction

to 4th defendant not to execute a decree in foreign territory. Should plaintiff show the native Cochin court that 4th defendant's decree was

obtained by fraud, that court would doubtless refuse to give 4th defendant priority--See Haji Musa Haji Ahmed v. Purmanand Nursey I. L. R. 15

B 216 The decree of the Subordinate Judge's Court must be reversed and the suit remanded to be heard on the merits.

5. Appellant is entitled to the costs of this appeal and the costs in the court below will abide and follow the result.