

(1941) 12 MAD CK 0020

Madras High Court

Case No: None

M.C.A.R.C.S.
Chockalinga Thevar
Firm

APPELLANT

Vs

K.A. Sankarappa
Naicker and Another

RESPONDENT

Date of Decision: Dec. 9, 1941

Citation: AIR 1942 Mad 421 : (1942) ILR (Mad) 677 : (1942) 55 LW 128 : (1942) 1 MLJ 281

Hon'ble Judges: Alfred Henry Lionel Leach, C.J

Bench: Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.

The appellants are a firm of merchants dealing in raw cotton at Tirumangalam and Virudhunagar. They filed the suit out of which this appeal arises in the Court of the Subordinate Judge of Madura to recover from the respondents the sum of Rs. 24,264-12-10, which they claimed to be the balance of the price of goods sold and delivered to the respondents. Their case was that the respondents had in partnership entered into the contracts with the appellants. The respondents denied that they were partners and averred that the appellants and their other creditors had agreed to a composition of twelve annas in the rupee, which precluded the appellants from recovering more. The Subordinate Judge held that the respondents had entered into the contract in partnership, but he found for them on the question relating to the composition. Consequently he granted the appellants a decree for Rs. 16,248-14-8, being three-fourths of Rs. 21,685-3-7 which he held to be the balance of the purchase consideration. The appellants have appealed against the finding that there was a completed agreement for a composition. The respondents have filed a memorandum of cross-objections with regard to the finding of the Subordinate Judge that they entered into the contracts in partnership.

2. When the appeal was called learned Counsel for the respondents reported that they were no longer instructed. The reason for the withdrawal of their instructions is not far to

seek. The question whether there was a completed agreement for a composition was raised and decided in another suit in the same Court (O.S. No. 23 of 1929). That suit was filed by the second respondent in the present appeal. It was tried by a different Subordinate Judge, who held that the proposed agreement for a composition was not completed and this decision has not been challenged on appeal. The parties to the present appeal were all parties to O.S. No. 23 of 1929. In these circumstances the learned Advocate-General for the appellants contends that the decision in O.S. No. 23 of 1929 brings into operation in this appeal the doctrine of res judicata. We consider that the contention is well founded.

3. In *Balkishan v. Kishan Lal* I.L.R.(1888) All. 148 (F.B.) a Pull Bench of the Allahabad High Court held that the rule of res judicata applies equally to appeals and miscellaneous proceedings as it does to original suits and that where after the commencement of the trial of an issue a final judgment on the same issue is pronounced by a competent Court of jurisdiction in another case it operates as res judicata. There are two single Judge decisions of this Court to the same effect, *Rangachariar v. Rangaswami Aiyangar* (1935) 70 M.L.J. 223: ILR Mad. 777 and *Krishnan Nair v. Kambi* (1937) M.W.N. 299. In the former of these two cases *Varadachariar, J.* held that there was nothing in the observations of the Full Bench in *Panchanada Velan v. Vaithinatha Sastrial* (1905) 16 M.L.J. 63 : ILR Mad. 333 (F.B.) to exclude from the operation of the rule of res judicata judgments coming into existence during the pendency of proceedings by way of appeal or revision if such judgments are allowed to become final. In the second of the two cases *Venkataramana Rao, J.*, quoted with approval *Balkishan v. Kishan Lal* I.L.R.(1888) All. 148 (F.B.) and *Rangachariar v. Rangaswami Aiyangar* (1935) 70 M.L.J. 223: ILR 59 Mad. 777.

4. We agree that there is nothing in the judgment in *Velan v. Vaithinatha Sastrial* (1905) 16 M.L.J. 63 : ILR Mad 333 (F.B.) which prevents the Court holding that the doctrine of res judicata does apply in such a case, as is now before the Court. In *Panchanada Velan v. Vaithinatha Sastrial* (1905) 16 M.L.J. 63 : ILR Mad 333 (F.B.) there were cross suits between the same parties on the same facts. The suits were tried together and were dealt with in one judgment, although separate decrees were drawn up. An appeal was filed, but only against one of the decrees. The question was whether the fact that no appeal had been filed in the other suit brought into operation Section 13, CPC of 1882, which corresponds to Section 11 of the present Code. The Full Bench held that the doctrine of res judicata had no application when the object of the appeal, in substance if not in form, was to get rid of the decision which was pleaded in bar.

5. In the present case the respondents have allowed the later decision to govern the position between themselves and the appellants and the later decision being final it must be applied here. The first explanation to Section 11 of the Code states that the expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

6. The appellants are entitled to have the decree under appeal amended without any further investigation of the facts. They accept the finding that the balance outstanding is Rs. 21,685-3-7 and consequently there will be a decree for this amount with interest at six per cent, from the 14th November, 1938, to this date and thereafter interest on the decretal amount at the Court rate. The appellants' claim in the lower Court was valued at Rs. 24,264-12-10, but as they did not succeed to the full extent they will receive and pay proportionate costs there. In this Court they are entitled to costs on the difference between Rs. 21,685-3-7, the amount now decreed and Rs. 16,248-14-8, the amount decreed in the trial Court.

7. The memorandum of objections will be dismissed with costs. Appeal allowed and memorandum of cross objections dismissed.