

Revur Subba Row Vs. Papi Reddy

Revur Subba Row Vs. Papi Reddy

SooperKanoon Citation : sooperkanoon.com/775295

Court : Chennai

Decided On : Apr-15-1898

Reported in : (1898)8MLJ149

Appellant : Revur Subba Row

Respondent : Papi Reddy

Judgement :

1. Both the Courts below have lost sight of the fact alleged by the plaintiff in his plaint and not denied or made the subject of an issue by the defendants and which we must, therefore, take to have been admitted, viz., that the debt was contracted by the 1st defendant as managing member for a purpose binding on the family. In this view the principle underlying the decision in Srinivasa v. Sivakolundu I.L.R. 12 M. 849 has no application; nor is the suit excluded from the Small Cause Jurisdiction by Clause 19 of Schedule II of the Small Cause Courts Act, since that clause applies only to suits for a declaratory decree properly so called, and not to a suit in which the declaration is merely introductory, as in this case, to the real relief sought for, Khursedji v. Pestonji, I.L.R. 12 B. 578. We are of opinion that the suit is one of a small cause nature, and being for a sum less than Rs. 500, no second appeal lies.

2. We therefore, dismiss this second appeal with costs.

3. We are, however, asked by the 1st defendant in C.R.P., 2 of 1897, to interfere under Section 622, C.P.C., on the ground that the suit being one of a small cause nature ought not to have been tried by the District Munsif on the Original Side, but by the District Judge on the Small Cause Side. As to this we observe that neither party took the action which ho might have taken under Section 646-B. of the Civil Procedure Code to have it authoritatively decided before trial which was the Court with jurisdiction to try the suit. Both the Courts below gave a decision against the present appellants on the merits as well as on the technical question of jurisdiction. The only effect of our now interfering under Section 622, would be to require the District Judge as a Small Cause Court to try again the matter which ho has already tried as an appellate Court. To do this would, we think, under all circumstances be a perverse and mischievous exorcise of the discretion vested in us under Section 622.

4. We, therefore, decline to interfere and we dismiss the petition with costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com