

**Mayan Vs. Chathappan**

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**SooperKanoon Citation :** [sooperkanoon.com/781783](http://sooperkanoon.com/781783)

**Court :** Chennai

**Decided On :** Apr-30-1891

**Reported in :** (1891)ILR14Mad473

**Judge :** Muttusami Ayyar and ;Wilkinson, JJ.

**Appellant :** Mayan

**Respondent :** Chathappan

**Judgement :**

1. The main question argued in this second appeal is whether the plaintiff is entitled to maintain the suit against the second defendant, the surety. It is contended on the one side that the bond executed under Section 5, Act XXVII of 1860, was executed in favour of the District Court of North Malabar and that plaintiff cannot sue the surety unless the Court assign that bond to him. On the other hand, it is argued that the second defendant undertook a liability to any person whom a competent Court declared to be the rightful heir of Kunkan Menon and that he was therefore under an obligation to pay the plaintiff. The decision must depend upon the construction which we put upon Section 5. That section authorizes the Court to take security from the person to whom a certificate is granted (1) for rendering an account of debts collected, and (2) for the indemnity of persons who may be found to be entitled to moneys received by the certificate holder and whose right to recover the same against the certificate holder is not affected by the Act. On referring to the bond, we observe that it purports to be

executed to the District Court of North Malabar and that the appellant undertook in default of payment by Paidel Nayar of any amount ordered by the Court up to and not exceeding Rs. 17,000 to pay the said sum in cash. As further security, he mortgaged certain properties specified in the bond. The natural construction to be put upon the section is that the surety enters into a contract with the District Judge for the time being to guarantee the rendering of an account and to indemnify to the extent of the sum mentioned therein. Although the bond was intended for the benefit of persons like the plaintiff there was no privity of contract between him and the executant and in the absence of any special provision in the act we must hold that the plaintiff was not entitled to maintain this suit without first obtaining an assignment of the bond from the District Court. No case has been cited on either side, but the language of Section 5 and the terms of the bond are inconsistent with the contention of the respondent that the obligation was a statutory obligation which the plaintiff was entitled to enforce without reference to the District Court.

2. Under these circumstances, we reverse the decrees of the lower Courts so far as the second defendant (appellant) is concerned and dismiss the suit as against him with costs throughout.

3. For the same reasons S.A. No. 1105 is decreed, and the decrees below are reversed and the suit dismissed with costs throughout.

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