

Lakshmanan Chetti Vs. Kuttayan Chetti

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Court : Chennai

Decided On : Jul-26-1901

Reported in : (1901)ILR24Mad669

Judge : Davies and ;Moore, JJ.

Appellant : Lakshmanan Chetti

Respondent : Kuttayan Chetti

Judgement :

1. We consider it is not open to the defendant now to raise the objection that the application No. 524 of the 2nd July 1897 was barred. He had notice of that application and did not raise any objection to it. The Munsif thereupon ordered execution by ordering a warrant for the arrest of the defendant which warrant was duly issued. That was an adjudication upon the application and it was, moreover, acted on, and no appeal has been made in regard to it. It must therefore be held that the question whether the application No. 524 was barred is res judicata. To put the case in the language of their Lordships of the Privy Council, the Subordinate Judge had jurisdiction upon the petition of the 8th October 1874 to determine whether the decree was barred on the 8th October 1871, and he made an order that an attachment should issue. He whether right or wrong, must be considered to have determined that it was not barred *Mungal Pershad Dichit v. Girija Kant Lahiri Chowdhury* L.R. 8. IndAp 123.

2. We accordingly reverse the order of the District Judge and direct execution to issue as prayed. The appellant's costs must be paid throughout by the respondent.

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