

Rangachariar and ors. Vs. Rangaswami Aiyangar and ors.

Rangachariar and ors. Vs. Rangaswami Aiyangar and ors.

SooperKanoon Citation : sooperkanoon.com/789439

Court : Chennai

Decided On : Oct-18-1935

Reported in : (1936)70MLJ223

Appellant : Rangachariar and ors.

Respondent : Rangaswami Aiyangar and ors.

Judgement :

Varadachariar, J.

1. The only question of law arising in the case is the plea of Res judicata raised on the strength of the compromise decree in O.S. No. 534 of 1930 on the file of the District Munsiff's Court of Tiruvattipuram. That was a representative suit and the decree therein establishes the title of the Nanja Ayactit dams to the Vighal in the suit tank. The District Munsiff dismissed the present suit on a finding under Issues 1 and 4 against the title. On behalf of the Petitioners it has been contended that as the decree in O.S. No. 534 of 1930 has become final, it constitutes the question of title, Res judicata, even for the purpose of this Civil Revision Petition, though that decree was given only after the decision of this suit in the trial Court. The balance of authority is in favour of upholding the plea of Res judicata See Mariam Nissa Bibi v. Joynab Bibi I.L.R.(1906) 33 Cal. 1101 . Though the Full Bench decision in Panchanada Velan v. Vaithinatha Sasirial I.L.R.(1905) 29 Mad. 333 : 1905 16 M.L.J. 63 (F.B.) approves of the case in Abdul Majid v. Jew Narain Mahto

I.L.R.(1888) 16 Cal. 233 the reasoning, relates only to judgments in suits tried together and there is nothing in the observations of the Full Bench 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. The findings of the First Court on the 1st issue and the 4th issue are accordingly set aside and that Court is directed to record a finding on those issues in accordance with the-decree in O.S. No. 534 of 1930 referred to above. The decree of the lower Court is set aside and the case sent back for disposal after dealing with issues 2 and 5. In the circumstances, I make no order as to the costs of this Civil Revision Petition.

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