

Subba Sastri and ors. Vs. Balachandra Sastri and anr.

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Court : Chennai

Decided On : Nov-13-1894

Reported in : (1895)ILR18Mad421

Judge : Arthur J.H. Collins, C.J. and ;Parker, J.

Appellant : Subba Sastri and ors.

Respondent : Balachandra Sastri and anr.

Judgement :

1. We are of opinion that the order of remand passed by the District Judge in Appeal No. 72 of 1892 was illegal. The suit had not been decided by the District Munsif upon any preliminary point; on the contrary he had decided all the six issues framed; and if he had based his judgment upon evidence improperly taken, it was open to the District Judge to exclude that evidence or to call for or take further evidence.

2. It is open to the appellants to take this objection now, although they might have appealed against the order of remand Section 591, Code of Civil Procedure; see also Savitri v. Ramji I.L.R. 14 Bom. 232

3. The order having been ultra vires, the subsequent proceedings are also ultra vires and must be treated as non-existent--Ramesh Singh v. Sheodin Singh I.L.R. 12 All. 510

4. We must set aside the decree of the Subordinate Judge and the second decree of the District Munsif and remand the Original Appeal No. 72 of 1892 to the file of the District Court of Tanjore to be disposed of according to law.

5. The costs hitherto incurred will abide the event.

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