

Chathappan Vs. Pydel

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Court : Chennai

Decided On : Apr-06-1891

Reported in : (1892)ILR15Mad403

Judge : Muttusami Ayyar and ;Parker, JJ.

Appellant : Chathappan

Respondent : Pydel

Judgement :

1. The question whether the decree, as amended, is binding on the appellant, was decided in the affirmative as between them and the decree-holder in Pydel v. Chathappan I.L.R. 14 Mad. 150. The matter is, therefore, res judicata as it is the same decree which is now under execution, though the property attached is different. The decision, Parthasaradi v. Chinnakrishna I.L.R. 5 Mad. 304 does not apply. It has been further argued that the decree amended was not the final decree passed in Original Suit No. 162 of 1878, and the decree of the Appellate Court was the one which should have been amended. We are referred to several decided cases in support of this contention, and especially to the decision, Muhammad Sulaiman Khan v. Muhammad Yar Khan I.L.R. 11 All. 267, in which the decision in Sundara v. Subbanna I.L.R. 9 Mad. 354 was dissented from.

2. Were the question not res judicata for the purposes of the execution of the amended decree we should have been inclined to refer to the Full Bench the

question of the correctness of the ruling in *Sundara v. Subbanna* I.L.R. 9 Mad. 354.

3. We must dismiss the appeal, but under the circumstances we will make no order as to costs in this Court.

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