

Chinta Rangayya and ors. Vs. Chinta Butchamma and ors.

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Court : Chennai

Decided On : Mar-15-1917

Reported in : AIR1918Mad699; 41Ind.Cas.281

Judge : Sadasiva Aiyar, J.

Appellant : Chinta Rangayya and ors.

Respondent : Chinta Butchamma and ors.

Judgement :

Sadasiva Aiyar, J.

1. The respondents in this petition, which has been filed under Section 115 of the Code of Civil Procedure for revising the order of the District Munsif of Gudivada, brought a suit in proper form for recovery of Rs. 700 and odd. The suit was filed in January 1914. In July 1915 the plaint was amended (that is, about 18 months after suit). Then in March 1916 (more than two years after the institution of the suit) the Munsif allowed the suit to be withdrawn with liberty to bring a fresh suit and the only ground for granting this extraordinary relief is that 'the plaintiff is of opinion that the present evidence' (let in on plaintiff's side) 'is not sufficient.'

2. That the order' is wholly improper goes without saying. It is argued by Mr. B. Narasimha Rae for the petitioners (defendants) that it was also passed without jurisdiction. He is, no doubt, supported by some Calcutta decisions. But this Court

in *Aiya Gounden v. Jayan Mandalathipathi Gopanna Mauradiyar* 26 Ind. Cas 57 : 27 M. L. J. 480 : 1 L. W. 726 : 16 M. I. T. 253 : (1914) M. W. N. 832. interfered in revision only on the ground that the District Munsif's discretion was not exercised judicially' in similar circumstances, that is (I take it), the District Munsif acted illegally and with material irregularity in the exercise of his jurisdiction.

3. Mr. Justice Srinivasa Aiyangar has deprecated the loose use of the word 'jurisdiction' (in connection with orders granting permission to withdraw) in his judgment in *Thuljaram Row v. Gopala Aiyar* 22 Ind. Cas. 280 : 19 Cri. L. J. 182 and I entirely concur in those observations.

4. I set aside the District Munsif's order (including, of course, the permission to bring a fresh suit) and direct the suit to be restored to the file of pending cases and proceeded with to its natural termination according to law. As the petitioners have delayed in bringing the matter in revision before this Court, I make no order as to costs.