

In Re: S. Ramachandra Aiyar

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Court : Chennai

Decided On : Dec-05-1940

Reported in : (1941)2MLJ187

Appellant : In Re: S. Ramachandra Aiyar

Judgement :

Alfred Henry Lionel Leach, C.J.

1. This is an application by the respondent in the appeal to be allowed to file a memorandum of cross-objections in forma pauperis. The respondent was the plaintiff in the Court below and succeeded in part. The defendants have appealed and the respondent wishes to challenge that portion of the judgment which refused him his full claim. Order 44, Rule 1 of the Code of Civil Procedure does not allow an appeal in forma pauperis unless the Court, upon a perusal of the application and of the judgment and decree appealed from, sees reason to think that the decree is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust. There is no special provision in the Code relating to the filing of cross-objections in forma pauperis, but when a respondent files cross-objections he is in fact filing a cross-appeal and the same principle must be applied.

2. The learned advocate for the respondent has quoted to us the decision of the Rangoon High Court in Secretary of State v. Maurice A.I.R. 1937 Rang. 81, in which it was said:

We think it our duty to look carefully at the circumstances and see the judgment having been impugned by one party, whether the other party would not also be in a position to attack it from another angle.

3. The question whether the Court had reason to believe that the judgment was contrary to law or usage or unjust or erroneous apparently did not matter. We have no hesitation in refusing to follow this decision. In our opinion it neglects an express provision of the Code of Civil Procedure which has application. If it is a question of meeting an attack on a judgment a respondent is not confined to the grounds given by the Judge for his decision.

4. The petition must be rejected as he has not shown that he is within the rule but we will give the respondent time until the 9th December, in which to pay the court-fee.

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