

Madras High Court

Kanaparthi Srinivasa Rao And Ors. vs Kanaparthi Venkatanarasamma on 17 July, 1925

Equivalent citations: AIR 1926 Mad 119

Author: Jackson

JUDGMENT Jackson, J.

1. This is an appeal against the order of the Subordinate Judge of Masulipatam on C.M.P. No. 1249 of 1922.

2. In O.S. No. 45 of 1920, the plaintiffs-minors appeared by their next friend and he exonerated the 1st defendant. The minors now apply to have the matter re-opened. No one appears for first defendant.

3. The point for determination is whether the learned Judge's concluding remark as justified:

Even if it be held that my predecessor ought to have made some enquiry before allowing the next friend to give up 1st defendant, I think as a successor I cannot re-open the suit.

4. It must be held that his predecessor should have acted under Order 32, Rule 7 of the Civil Procedure Code and should have recorded the leave of the Court. Then can the present Judge re-open the suit which is thus found to have been improperly decided ?

5. The Court has a special responsibility to safeguard the interests of the minor plaintiffs. See Doraisami Pillai v.

Thungasami Pillai (1904) 27 Mad. 377 and the case quoted therein Karmali Rahimbhoy v. Rahimbhoy Habibbhoy (1889) 13 Bom. 137 and where those interests have been overlooked it ought, if possible to remedy the defect. The question then is reduced to one of procedure, whether the Court has the power to review the proceedings. In Peary Choudhury v. Sonoory Dass (1915) 19 C.W.N. 419 it is observed, quoting Basangowda v. Churchigirgowda (1910) 34 Bom. 408 that once the Court is asked to go back upon its own procedure, it is not a question whether there is any section in the Civil Procedure Code to warrant the action of the Court amending its proceedings. It is an inherent power of every Court to correct its own proceedings where it has been misled. One should be careful not to read too broad a sense into this dictum, but I think it is applicable to the peculiar circumstances of the present case.

6. Nothing seems to turn on the fact that the personnel of the Court has changed. A minor cannot be expected to exercise diligence, and as soon as he discovers the important matter that the Court failed in its duty in safeguarding his interest, he is entitled to move for a review. If he were moving under Order 47 the rule applicable would be Rule 1 and not Rule 2, but it is laid down in the case cited above. Peary Choudhury v. Sonoory Dass (1915) 19 C.W.N. 419 that Section 151 is more appropriate.

7. The petition is allowed and the suit should be reopened and heard so far as it related to 1st defendant.