DHARMA SINGH v. KING EMPEROR.

SCHWABE, C.J.

The JUDGMENT of the Court was delivered by

SCHWABE, C.J.—This case raises the same point as Criminal Revision Case No. 691(1), the only difference being that it was tried summarily under Chapter XXII. In our judgment, there is no difference between summary trials of summons cases and the ordinary trials of summons cases. This petition must be dismissed. The sentence is light, but in the circumstances as he has already been released and only has few more days to serve we reduce the sentence to 11 days.

K.R.

## APPELLATE CIVIL—FULL BENCH.

*Before Sir Walter Salis Schwabe, Kt., K. C., Chief Justice, Mr. Justice Oldfield and Mr. Justice Ramesam.*

1923, April 6.

V. C. T. N. CHIDAMBARAM CHETTI (PLAINTIFF—RESPONDENT), APPELLANT,

*v.*

THEIVANAI AMMAL (LEGAL REPRESENTATIVE OF 3RD DEFENDANT—APPELLANT), *Respondent.**

*Decree—Execution—Legal representative of judgment-debtor—Application for execution against legal representative, ordered without notice—Property attached—Application by decree-holder for settlement of terms of sale proclamation—Notice—Service by affixture—Ex parte order settling terms of sale proclamation—Subsequent application by legal representative for release of property from attachment as not liable to execution—Bar of res judicata.*

The legal representative of a judgment-debtor was brought on record for the purpose of execution and immoveable property was attached but without notice to him, such notice not being required under Order XXI, rule 22, Civil Procedure Code. The decree-holder then filed an application for settlement of the terms of the sale proclamation; the notice thereon merely intimated the date of the hearing of the application, and was

(1) *Supra* 758.

* Appeal against Appellate order No. 106 of 1921.

served by affixture, the legal representative was declared ex parte and the terms of the sale proclamation were settled in his absence. The latter then applied to the Court for release of the property attached on the ground that it was not liable to attachment. The decree-holder pleaded the bar of *res judicata*.

*Held*, that mere non-attendance at the hearing of an application to settle the terms of a sale proclamation did not estop the legal representative on the principle of *res judicata* from disputing thereafter the liability of the property to attachment.

APPEAL against the decree of V. S. KRISHNA AYYAR, the Subordinate Judge of Dindigul, in Appeal Suit No. 8 of 1921, preferred against the order of S. P. SUBRAMANYA AYYAR, the District Munsif of Palni, in Execution Application No. 171 of 1920 in Execution Petition No. 9 of 1920 in Original Suit No. 840 of 1918.

The appellant obtained a decree for money against the orginal defendant, one Kathaperumal, who died after decree; and the brother of the judgment-debtor (Kandaswami) was brought on the record as his legal representative for purposes of execution. A prior application for execution had been filed for attachment and sale of the moveables belonging to the original defendant, but the petition was dismissed for default of prosecution. Within a year of those proceedings, a subsequent application for execution by attachment and sale of immoveable property was made, but no notice was given to the legal representative, as it was not required under the provisions of Order XXI, rule 22, Civil Procedure Code, and the property was attached by an order, dated 8th June 1920. The decree-holder then applied for the sale of the property, and a notice for settling the sale proclamation in Form E of the Code was issued; the notice stated that the decree-holder had applied for sale of the property, and that the judgment-debtor was thereby informed that the 14th day of August 1920 had been fixed for the purpose of settling the terms of the proclamation of sale. This notice

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was served by affixing it on the last known residence of the legal representative. The latter was declared *ex parte*, and the terms of the sale proclamation were settled by the Court in his absence. Subsequently the legal representative filed an execution application (E.A. No. 171 of 1920), for release of the property from attachment on the ground that the property was not liable to attachment and sale in execution of the decree. The District Munsif dismissed this petition. On appeal the Subordinate Judge reversed the order and remanded the petition for enquiry as to whether the property belonged to the judgment-debtor, holding that the notice of the petition for settlement of sale proclamation was not properly served on the legal representative. The decree-holder preferred this Civil Miscellaneous Second Appeal to the High Court against the latter order. The decree-holder contended, *inter alia*, that a separate application to set aside the *ex parte* order should have been filed and that the liability of the property to attachment in execution of the decree was *res judicata* by reason of the order on the application for settlement of the terms of the sale proclamation. The case came on for hearing originally before OLDFIELD and VENKATASUBBA RAO, JJ., who referred to the Full Bench the question as to the applicability of Order IX, rule 13, Civil Procedure Code, to proceedings in execution under the following order of Reference:—

Plaintiff, the present Appellant, obtained a decree against Kathaperumal Goundan, who afterwards died and was subsequently represented by Kandasami, his brother. Kandasami claimed the property attached by plaintiff as his own and not that of Kathaperumal in his hands and his claim was rejected by the District Munsif. He, however, appealed successfully and this second appeal is against the order allowing his claim. It is opposed by his legal representative, to be referred to as respondent.

One ground, on which she opposes the appeal, that she is not and Kandasami was not a party to the proceedings and that therefore no second appeal lies, can be dealt with shortly. Kandasami's own appeal to the lower Appellate Court involved the admission that he was or represented a party and the applicability of section 47, Civil Procedure Code, and his representative cannot allege the contrary.

The substantial question for decision then is whether Kandasami's claim is concluded by his failure to advance it in the proceedings taken by plaintiff to bring the property now claimed to sale. That he advanced it only in his claim petition, Execution Application No. 171 of 1920, on 12th August 1920, and not in the proceedings which resulted in the District Munsif's order of 8th June 1920, is not disputed. It is urged only that (1) the order of 8th June 1920 can in no circumstances be regarded as an adjudication, actual or constructive, against his right to the property, and (2) even if that order is such an adjudication, it was not passed after any valid notice to him and he can now show that it was not, in spite of his failure to take proceedings in respect of it under Order IX, rule 13.

On the question whether the order of 8th June 1920 was in effect an adjudication against Kandasami's claim and in favour of the liability of the property to sale in his hands we have not before us the petition, which initiated the proceedings. But there is no reason for doubting, what has throughout been assumed and not disputed, that it was for attachment and sale of the property; and the text of the order of 8th June 1920, 'Proclaim and sell on 14th August 1920. Upset price Rs. 1,000' shows what would ordinarily be the case, that the proceedings were to obtain an order for sale and to fix the terms of the sale proclamation and the date, on which the sale would be held; and, so far as plaintiff asked for an order for sale, the contention that the property was not liable under the decree, on which Kandasami based his subsequent claim, would have been open to him and would, if established, have resulted in the dismissal of the petition. His failure to adopt this ground of defence would accordingly, if section 11, explanation 4, is applicable, debar him from adopting it later. Against this it is first urged

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generally that neither section 11, explanation 4, nor the principle of constructive *res judicata* applies to execution proceedings. But, whether the explanation or any broader principle is applicable, this is unsustainable, at least, when, as was here the case, those proceedings are between parties to the suit or their representatives and result in an adjudication on a question in issue between them. This has been established since *Ram Kirpal Shukul* v. *Mussumat Rup Kuari*(1) and maintained in the very recent decision in *Raja of Ramnad* v. *Velusami Tevar*(2) and others, the latter case dealing directly with the consequence of failure, such as plaintiff before us relies on, to adopt a ground of defence. It is then necessary only to make sure that the ground in question was open to Kandasami; and respondent in fact urges that it was not, because he was a party to the proceedings, not in their wider scope above referred to, when the plaintiff's right to sell the property was in issue, but only for the settlement of the sale proclamation, and decisions at that stage are administrative and not judicial. This also, however, is unsustainable. It is true that, as this Court held in *Sivagami Achi* v. *Subrahmania Ayyar*(3) proceedings for the settlement of a sale proclamation under section 287 of the former Code, corresponding with the present Order XXI, rule 66, are of that character and therefore not appealable. But the reference there to such proceedings as excluded from the purview of the then section 244, now section 47, shows that they were not regarded as concluding the enquiry, if any is necessary, into the decree-holder's right to bring the property to sale. Such enquiry can be, and is held, if an issue entailing it is raised, in the disposal of the application for sale, the settlement of proclamation being a distinct stage therein, which in case of the making of a valid objection would never be reached; and the fact that orders passed in the course of that settlement are not appealable or binding in other proceedings cannot affect the character of those passed in the decision of the substantive question whether the sale shall be held at all. No doubt, and this is the tenor of the decision in *Subramania Ayyar* v. *Raja Rajeswara Dorai*(4)

(1) (1883) 11 I.A., 37.
(2) (1921) 40 M.L.J., 197 (P.C.).
(3) (1904) I.L.R., 27 Mad., 259 (F.B.).
(4) (1917) I.L.R., 40 Mad., 1016.

caution is necessary before orders of the latter class are treated as conclusive and the Court must be satisfied that the matter, in respect of which they are relied on, was in issue and that the party to be affected had clear notice that it would be so. But, although the notice alleged to have been given to Kandasami in the present case is not before us, it is not alleged and there is no reason for supposing that it was not in general terms and, even if it referred specifically only to the settlement of the proclamation, it would still have been notice that a sale had been asked for, to which, until the passing of the order "Proclaim and sell" of 8th June 1920, he could and should have made his objection.

There remains the contention that all this is immaterial, because that notice in fact was not served. The service relied on was by affixture: and the Lower Appellate Court has now found, differing from the Court of First Instance, that as a matter of fact it was insufficient. If it is open to us to act on that finding, one which we should ordinarily accept, the order of 8th June 1920 and Kandasami's failure to advance his claim before it will not stand in the way of his advancing it now. But we have to deal with plaintiff's contention that we cannot act on such a finding or disregard that order, because it has not been set aside in the only way authorized by law, proceedings under Order IX, rule 13. This contention is substantial and cannot be met by treating, as we are asked to do, the subsequent claim petition as an application under that provision. For it does not contain the appropriate prayer or averments or anything to show how it was presented within the prescribed period of limitation, the contrary being *prima facie* the case.

The question is then whether Order IX, rule 13, applies to and affords the only remedy open to a party, against whom an order has been made in his absence in execution proceedings. In accordance with *Subbiah Naicker* v. *Ramanathan Chettiar*(1), this should be answered in the affirmative; and in fact such answer would exclude the anomaly involved in allowing the validity of an order passed *ex parte* to be disputed, perhaps after long delay, whenever it is necessary to dispute it in

(1) (1914) I.L.R., 37 Mad., 462 at 475.

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subsequent proceedings, after the period allowed by Article 164, Schedule I, Limitation Act has elapsed. On the other hand it is said that Order IX, rule 13, does not in terms apply to proceedings other than suits and that there is authority irreconcilable with *Subbiah Naicker* v. *Ramanathan Chettiar*(1).

The first of these contentions was rejected in the case last mentioned on the ground that, although Order IX refers only to decrees not orders, such orders as that then and now in question are decrees with reference to the definition in section 2 of the Code; and it is now pointed out with some force that, although this may justify the application of Article 164 above referred to, it is no answer to the consideration that the whole order including Rule 13 is applicable in terms only to suits and therefore, it is to be inferred, to the description of decrees passed in them. And next reference has been made to the argument from the history of those provisions based by JENKINS, C.J., in *Hari Charan Ghose* v. *Manmatha Nath Sen*(2), on the decision of the Privy Council in *Thakur Pershad* v. *Fakirullah*(3), in which what (with great respect) is the real and better justification for the conclusion in *Subbiah Naicker* v. *Ramanathan Chettiar*(4), the present section 141 corresponding with the former section 647, is referred to. With all due deference, that argument is not convincing, because first it is based on a conjecture as to the intention of the legislature, which is inconsistent with the plain and unrestricted terms of section 141, is unnecessary in order to explain them and would nullify the action of the legislature in deliberately omitting, when the Code was re-enacted in 1908, the explanation inserted in 1892. Next the case before the learned Chief Justice was an ordinary claim by a third party, to which section 47 was inapplicable, the further remedy being by a suit, in which the previous order would not be conclusive. Last, *Thakur Prasad* v. *Fakirullah*(3), the foundation of the judgments, to adopt the only view reconcilable with *Ram Kirpal Shukul* v. *Mussumat Rup Kuari*(5), and *Raja of Ramnad* v. *Velusami Tevar*(6) decided

(1) (1914) I.L.R., 37 Mad., 462 at 475.
(2) (1914) I.L.R., 41 Calc., 1. (3) (1894 22 I.A., 44; I.L.R., 17 All., 106 (P.C.).
(4) (1914) I.L.R., 37 Mad., 462. (5) (1883) 11 I.A., 37.
(6) (1921) 40 M.L.J., 197 (P.C.).

only that the dismissal of an execution application not prosecuted by the decree-holder did not debar him from applying again, not that an order passed after notice to the judgment-debtor was not binding on him and did not require to be set aside, before the adjudication on any substantive question involved in it could be disregarded.

This failing, reliance is placed on the course of authority against the application of Order IX, rule 13, and the correctness of the decision of this Court already referred to. But, although it is true that *Subbiah Naicker* v. *Ramanathan Chettiar*(1) was dissented from on this point in *Bhubaneswar Prasad Singh* v. *Tilakdhari Lall*(2), and is irreconcilable with other cases cited therein and with *Babui Ritu Kuer* v. *Alakhdeo Narain Singh*(3), that would not be material, if the conclusions reached after full consideration in our own Court were clear. It is true that the only one of those other cases which was decided in Madras, *Balasubramania Chetti* v. *Swarnammal*(4), would seem either irreconcilable with *Raja of Ramnad* v. *Velusami Tevar*(5) and others above referred to are distinguishable on the ground that no previous adjudication in the particular matter in issue was in question. But the difficulty arises from the *dictum* in it that section 141 is intended to apply to proceedings in Civil Courts, such as probate, etc., and not to execution, anticipating the reasoning of JENKINS, C.J., above referred to in *Hari Charan Ghose* v. *Manmatha Nath Sen*(6), and negativing the foundation, on which it has been suggested that the conclusion in *Subbiah Naicker* v. *Ramanathan Chettiar*(1) might more properly have been based. *Balasubramania Chetti* v. *Swarnammal*(4), although reported after, was decided before, but is not referred to in, *Subbiah Naicker* v. *Ramanathan Chettiar*(1), and it is doubtful whether the two decisions can be reconciled.

The question, whether they can be and, if not, which is correct is one for a Full Bench; and there is nothing to add except that the matter has since been considered in Madras, so far as we have been shown, in two cases only, to both of which

(1) (1914) I.L.R., 37 Mad., 462 at 475.
(2) (1919) 4 Pat. L.J., 135.
(3) (1919) 4 Pat. L.J., 330.
(4) (1915) I.L.R., 38 Mad., 199.
(5) (1921) 40 M.L.J., 197 (P.C.).
(6) (1914) I.L.R., 41 Calc., 1.

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SADASIVA AYYAR, J., was a party; his decision in *Periakaruppan Chetty* v. *Chidambara Tumbiran*(1), and *Kali Shetthi* v. *Shama Rao*(2), being the one consistent and the other inconsistent with his previous conclusion in *Subbiah Naicker* v. *Ramanathan Chettiar*(3). In the second of these two cases, however, there was no reference to that or any recent authority.

The matter standing thus, we refer for the decision of a Full Bench the question:—

Whether Order IX is applicable to proceedings in execution between parties to the decree or their representatives?

ON THIS REFERENCE:—

*K. S. Ganapathy Ayyar* for appellant.—The decree-holder is the appellant. The legal representative of the judgment-debtor was brought on the record of execution proceedings and attachment of some moveables belonging to the original defendant was ordered; but no further steps were taken, as batta was not paid. Next an application was filed against the same legal representative for attachment and sale of immoveables. No notice was given as none was required under Order XXI, rule 22, Civil Procedure Code. No fresh notice was necessary; and the order of attachment as well as attachment was made without notice. Next the decree-holder filed an application for settlement of the terms of the sale proclamation. Notice of this application was issued and served by affixture to the house of the legal representative. Though it is true that there was no notice prior to the order for attachment of immoveables, there was notice duly served on the application for settlement of terms of sale proclamation. The order on the latter is binding as *res judicata* as to the liability of the property for attachment and sale in execution. The rule of constructive *res judicata* is applicable to execution proceedings. See *Subbiah Naicker* v. *Ramana-*

(1) (1916) 33 I.C., 443. (2) (1917) 21 M.L.J., 297.
(3) (1914) I.L.R., 37 Mad., 462 at 475.

*than Chettiar*(1), *Mungul Pershad Dighit* v. *Grija Khant Lahiri*(2). See form 28 in Appendix E, Civil Procedure Code, for form of notice for settlement of sale proclamation. There is no necessity to provide in the notice issued as to what would happen if the defendant was absent. See *Subbiah Naicker* v. *Ramanathan Chettiar*(1), *Periakaruppan Chetty* v. *Chidambara Tambiran*(3). The form of proclamation (Form 29, Appendix E) contains the words "Property of the judgment-debtor above named"—which shows—that the property attached is sold as his property liable in execution. Further the *ex parte* order ought to have been set aside under Order IX, rule 13; See *Subbiah Naicker* v. *Ramanathan Chettiar*(1).

*T. S. Ramaswami Ayyar* for the respondent.—Orders for settlement of sale proclamation are not judicial orders. See *Sivagami Achi* v. *Subrahmania Ayyar*(4). In any event, the order on the application for settlement of sale proclamation is not *res judicata*, as the petition did not raise the question of liability of the property for attachment but only concerned itself with the details of the terms of sale proclamation. It assumed the liability for sale under a previous order for which there was admittedly no notice.

## JUDGMENT.



SCHWABE, C.J.—The present appellant is the decree-holder. The respondent is the legal personal representative of a brother of the judgment-debtor who had been brought upon the record for the purpose of execution. An application had been made for attachment of the moveable property of the original defendant, the judgment-

(1) (1914) I.L.R., 37 Mad., 462 at 475. (2) (1882) I.L.R., 8 Calc., 51 (P.C.).
(3) (1916) 33 I.C., 443. (4) (1904) I.L.R., 27 Mad., 259 (F.B.).

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debtor. Those proceedings had come to nothing by reason of the fact that the present appellant failed to find the necessary expenses. Within a year of those proceedings, application was made for attachment of the immoveable property. By reason of the operation of Order XXI, rule 22, no notice of those proceedings was required to be given to the representative of the judgment-debtor and no notice was given. An application was then made for the sale of the property and in due course a notice for settling the sale proclamation, in form No. 21 of appendix E of the Code of Civil Procedure, was issued. That notice stated that the decree-holder had applied for a sale of the property and continued, "You are hereby informed that the 14th day of August 1920 has been fixed for the purpose of settling the terms of the proclamation of sale." That notice was served by affixing it to some place alleged to be the residence of the respondent. The respondent, who alleges that he never received the notice, did not attend on the date fixed for settling the terms of the proclamation. He was declared *ex parte* and the terms of the proclamation were settled in his absence. He then applied to the District Munsif for the release of the property on the ground that it was not liable to be attached. The District Munsif dismissed that application, and on appeal to the Subordinate Judge, the Subordinate Judge remanded it to the District Munsif to enquire into the facts as to whether or not the property was the property of the judgment-debtor, holding that the notice of the proceedings in which he had been declared *ex parte* was not properly served upon him. That raises an interesting point as to whether or not it was open on these proceedings to the District Munsif or the Subordinate Judge to discuss the question whether or not notice had been properly served or whether it was necessary for

the respondent to take some different form of proceedings to challenge that notice, but, in the view we take of another point in this case, it is unnecessary for us to express any opinion on that point.

The appellant contended that the question of the ownership of this property was *res judicata* and that it had been decided, or must be taken to have been decided, on the hearing of the application for settling the terms of the proclamation of sale. Under section 11 of the Civil Procedure Code "no Court is to try any issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit." Several cases have decided that a matter must be taken to have been substantially in issue in a former suit or proceeding if the point was open and could have been raised in the former proceedings. In this case the Respondent had no notice at all that the matter of the ownership of the property would or could come up for decision on the hearing of the application for settlement of the terms of the proclamation of sale. He did not even get a draft of the proposed terms. All that he was told was that a certain date had been fixed for settling those terms, and it would be a very remarkable thing if, on receipt of such notice, it were to follow that, if he did not attend on that occasion, he must be taken to have attended and raised the question whether or not the property was the property of the judgment-debtor. Our attention has been called to no authority in support of that contention and it seems to me to be quite wrong, because that was not the time for discussing the question of the ownership of that property, although it is possible that the Court would on an application then made have listened to some argument on the point; nor did the terms of the notice that he got suggest that it was. Our attention has been called to the case of *Subbiah Naicker* v. *Ramanathan*

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*Chettiar*(1). But I think, on this point, the whole of that decision turns on these words; "Now the order of August 1909 was no doubt an *ex parte* order but it was passed after notice was issued to the 2nd defendant to show cause why such an order should not be passed and after the Court had satisfied itself on the affidavit and the return of the process-server that the notice had been duly served." If in this case the respondent had been asked to show cause why the property should not be sold the reasoning of that decision would apply, but in this case by the formal notice that he got he was not asked to show cause as to anything and he had no intimation at all that the matter would be open to him to raise or that it would be discussed. Under those circumstances I cannot see that it is possible to hold that his non-appearance on that occasion amounts to a decision against him that the property was the property of the judgment-debtor.

Our attention has also been called to the decision of the Full Bench of this Court in *Sivagami Achi* v. *Subrahmania Ayyar*(2) that what takes place on the hearing of the application to settle the terms of the proclamation of sale is more of an administrative character than judicial, and that therefore no appeal lies against the decision of a Court on that occasion as to what that proclamation is to contain. That being the decision of the Full Bench, unless it is possible to say that part of what takes place on that occasion is judicial and part administrative, it would be a strong ground for contending that the matter cannot be *res judicata* by reason of the non-attendance at a sitting of the Court, such sitting being held for administrative and not judicial purposes.

I desire to say that our decision in this case must be taken to be confined to the particular facts of this case,

(1) (1914) I.L.R., 37 Mad., 462 at 475. (2) (1904) I.L.R., 27 Mad., 259 (F.B.).

that is to say, that where you have nothing more than the non-attendance at the hearing of an application to settle the terms of a sale proclamation, the respondent cannot be taken to be estopped by reason of that non-attendance on the principle of *res judicata* from thereafter denying the liability of the property to execution.

SCHWABE, C.J.

On these grounds I think the Subordinate Judge was right in remanding this case to the District Munsif. The result will be that this case must go back to the Referring Bench with that direction.

OLDFIELD, J.—I agree. As one of the Referring Judges, I add that, speaking for myself, I am now clear that in stating the effect of the obligation imposed by the notice to Kandasami, we had not sufficient regard to the fact that it was given in proceedings which originated without notice to him of the attachment.

OLDFIELD, J.

RAMESAM, J.—I agree: but I wish to add a few words. The leading decision on the application of the principle of *res judicata* to execution proceedings is the decision of the Privy Council in *Mungul Pershad Dighit* v. *Grija Khant Lahiri*(1). It was held in that case that, if after notice, a decision was passed on an execution petition, it would not be open to parties to object to that decision when a subsequent application is presented. In applying that case a Bench of this Court in *Subramania Ayyar* v. *Raja Rajeswara Dorai*(2) at p. 1026 say, "One principle seems to be clear, and that is, that the party who is sought to be affected by the bar of *res judicata* should have notice of the point which is likely to be decided against him and should have an opportunity of putting forward his contentions against such a decision. In the present case no notice went to the respondents to show cause why they should not be brought on the record as the legal representatives of the deceased judgment-debtor for the

RAMESAM, J.

(1) (1882) I.L.R., 8 Calc., 51 (P.C.). (2) (1917) I.L.R., 40 Mad., 1016.

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purpose of execution. They had no notice that any particular property was going to be attached. We must therefore overrule this plea." I entirely agree with the principle underlying these remarks. Another example of the application of this principle is the decision in *Sheik Budan* v. *Ramachandra Bujangaya*(1). Notice to the judgment-debtor to be present at the settlement of the terms of the proclamation cannot be regarded as raising the question of the liability of the property to be attached and therefore it cannot be said that the judgment-debtor was invited to object to that attachment. That being so, the order that followed cannot be regarded as an implied adjudication that the property was correctly attached. I agree with the order proposed.

K.R.

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## APPELLATE CIVIL—FULL BENCH.

*Before Sir Walter Salis Schwabe, Kt., K.C., Chief Justice, Mr. Justice Oldfield and Mr. Justice Ramesam.*

1923, April 10.

RAJAGOPALA NAIDU, FIRST PLAINTIFF (PETITIONER),

*v.*

RAMASUBRAMANIA AYYAR AND ANOTHER (DEFENDANTS) RESPONDENTS.*

*Court Fees Act (VII of 1870), sec. 7 (V) (e)—Temple—Suit for possession of—Value of temple for purpose of Court Fees Act—Temple, whether a house—Market-value, meaning of—Temple, whether has a market-value—Valuation, based on value of materials used for the building, whether proper.*

A temple, which is devoted absolutely and in perpetuity to religious purposes, even if it is to be regarded as a house, has no market-value within the terms of section 7, clause V (*e*) of the

(1) (1887) I.L.R., 11 Bom., 537.

* Civil Revision Petition No. 288 of 1922.