

MADRAS HIGH COURT REPORTS.

Appellate Jurisdiction (a)

Referred Case No. 45 of 1867.

KARUPPAN CHETTI *against* VERIYAL and 2 others.

In a suit upon a bond, the plaintiff having sued the defendants, not on the ground of their personal responsibility, but as the legal representatives of the obligor, who was supposed to be dead :—

Held, that the suit is not maintainable before the lapse of the time which raises the legal presumption of the death of the obligor, unless there is proof of special circumstances which warrant the inference of his death within a shorter period.

Section 14, Act XIV of 1859, applies to the case in which the plaintiff is unable, after due diligence, to procure due service upon the defendant of the summons to appear and answer the claim, and consequently to prosecute the suit to a decision, and will prevent a suit against the defendant's representatives from being barred.

CASE referred by P. Cabálya Pillai, the Acting District Munsif of Strivilliputtúr in Suit No. 385 of 1867. 1868.
January 3.
R. C. No. 45.
of 1867.
The suit was brought for the recovery of Rupees 29-7-0 due on a bond executed in March 1861, by one Velliakone who had been absent abroad for some years past and had not been heard of. Plaintiff sought to recover from the wife and undivided brothers of the obligor. The Munsif referred the question whether the action was maintainable, the obligor not having been absent abroad, without tidings, for the period prescribed by Hindu Law as raising a presumption of death.

No Counsel were instructed.

The Court delivered the following

JUDGMENT :—We understand that the plaintiff does not set up the personal liability of the 2nd and 3rd defendants on the bond, but brings his suit against them and the widow on their liability as legal representatives of the obligor, who is supposed to be dead. That being so, our

(a) Present : Scotland, C. J. and Collett, J.

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opinion on the first question is that the suit is not maintainable before the lapse of the time which raises the legal presumption of the death of the obligor, unless there is proof of special circumstances which warrant the inference of his death within a shorter period. The reasonableness of the evidence to warrant this inference in the present case is for the consideration and decision of the Munsif. If no such evidence is forthcoming and it is desired to avoid the bar under the Act of Limitation, the proper course is to institute a suit against the obligor, giving his last known place of abode, and if, after due diligence, the plaintiff is unable to procure due service of the summons to appear and answer the claim and consequently to prosecute the suit to a decision, Section 14 of the Act of Limitation would, it seems to us, apply and prevent a suit against his representatives being barred. With reference to the observation in para. 6 of the case it is only necessary to say that, in a suit against representatives as such, there cannot be a decree against them for anything beyond the amount of the assets of the deceased debtor.

Appellate Jurisdiction (a)

Regular Appeal No. 105 of 1867.

Y. K. K. A. M. R. C. JEYANGARU- } *Appellants.*
 LAVARU and another..... } (*Plaintiffs.*)

SRI HATI R. M. M. DURMA DOSSJI. { *Respondent.*
 (*Defendant.*)

Act XX of 1863 does not apply to a suit brought by the Dharmakarta of a temple and one of its worshippers to compel the defendant, as heir of the late manager, to make good, out of the property inherited by him, the deficiency in the Devasthanum funds caused by breach of trust and misappropriation by the late manager.

The leave of the Civil Court for the institution of such a suit is not necessary and the suit is maintainable.

The right of instituting such suits is not a privilege accorded by Act XX of 1863, but a pre-existing right.

1868.
February 12.
R. A. No. 105
of 1867.

THIS was a Regular Appeal from the decision of O. B. Irvine, the Acting Civil Judge of Chittúr, in Original Suit No. 18 of 1867.

(a) Present : Scotland, C. J. and Ellis, J.