

Doraisamy Aiyar Vs. Annasamy Aiyar and ors.

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Court : Chennai

Decided On : Mar-30-1900

Reported in : (1900)10MLJ307

Appellant : Doraisamy Aiyar

Respondent : Annasamy Aiyar and ors.

Judgement :

ORDER

1. An objection is now taken in appeal that the Judge should have taken down the evidence in the manner prescribed by Section 182 of the Code of Civil Procedure. This, it is admitted, was not done. The Judge has recorded nothing more than notes. We observe, for example, that he gives the name of the petitioner's 8 witnesses and states that his evidence is as to certain matters the same as that given by the preceding witnesses but does not record his deposition. We must hold that this procedure was irregular, Proceedings connected with orders passed in execution from which an appeal lies must be held to be cases in which an appeal lies within the meaning of Section 182 of the Code of Civil Procedure, and such being the case evidence should be recorded as there required. It is urged on behalf of the respondents that granting that the procedure of the District Judge was irregular, it cannot be held that such irregularity affected the merits of the case and that we should therefore not interfere on the ground of such irregularity (S. 578 of the Code of Civil Procedure). We cannot accept this view. In the affidavit filed by the vakil who appeared in the Lower Court, it is alleged that many statements made by . witnesses which he considered to be important have not been recorded. Where no attempt has been made by the Judge to record the evidence in full, it is impossible for us to hold that this allegation is unfounded. We accordingly must send back the case and direct the Judge to record the evidence tendered before him in the manner required by Section 182 of the Code of Civil Procedure. We observe that the Judge refused to examine a witness, Sivaramier, on the ground that he had been present in Court instructing a Vakil while other witnesses were being examined. This fact might well detract from the weight to be attached to this man's evidence, but was certainly not a valid reason for refusing altogether to examine him. The Judge should examine this man, record the evidence as now directed, and submit a revised finding within 3 months from the date of receipt of this order. Seven days will be allowed for filing objections after the finding has been posted up in this Court.