

(1924) 10 MAD CK 0050
In the Madras High Court

Adusumilli Gopalakrishnayya and Another	APPELLANT
Vs	
Adivi Lakshmana Rao	RESPONDENT

Date of Decision : 13-10-1924

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 153

Citation : (1926) ILR (Mad) 18 : (1926) 23 LW 418 : (1925) 49 MLJ 590

Hon'ble Judges : Ramesam, J

Bench : Division Bench

Judgement

Ramesam, J.—If an appeal is presented/against a person who was dead at the date of presentation, the Court may, u/s 153, Civil Procedure

Code, permit the cause-title to be amended or may return the appeal memorandum for amendment and representation. We think that the Bench

which decided Govindu Kaviraj Purohito Vs. Gauranga Saw and Others and Vogadhu Subudhi Ratno (dead), . went too far in dismissing the

second appeal as incompetent, and in declining to exercise its power of correcting, errors u/s 153, Civil Procedure Code. If the appeal

memorandum is not allowed to be amended the party may apply for a refund of the spoilt stamp and may present a fresh appeal. In any case, the

Court will, if the appeal is out of time against the legal representative, have to excuse the delay in presentation before it can proceed to hear the

appeal.

2. Although the appeal may be incompetent owing to the wrong person being named as respondent, the Court which deals with it is acting in a

proceeding in a suit and as such has full power u/s 153 to direct an amendment of the appeal memorandum.

3. As observed by Ramesam and Wallace, JJ. in C.M.P. No. 2807 of 1923 the question resolves itself into one of Court-fees only, and if the party has only made an unintentional error in inserting the name of the wrong respondent in his appeal memorandum, there is no reason to make him pay Court-fees twice over, and it is simpler for the Court to direct an amendment of the cause-title.
4. The case will go back to the Admission Court with an expression of our opinion that the Court has power to amend the cause-title but that it is a matter for its discretion whether it should excuse the delay in presentation.
5. Costs of this reference will be costs in the second appeal.