

(1926) 09 MAD CK 0041
In the Madras High Court

Alapati Syamaladoss and Others

APPELLANT

Vs

Doradla Subbayya and Others

RESPONDENT

Date of Decision : 21-09-1926

Acts Referred:

Citation : AIR 1927 Mad 347 : (1927) 52 MLJ 137

Hon'ble Judges : Jackson, J

Bench : Division Bench

Judgement

Jackson, J.—Appeal against the order of the Subordinate Judge of Bapatla in A. S. No. 62 of 1923. The appellants are defendants and judgment-debtors in O. S. No. 922 of 1907, District Munsif's Court, Ongole. The respondents filed E. P. No. 789 of 1920 on 4th October 1920, praying that certain property attached before judgment might be sold. Some doubt was expressed whether there had been an attachment before judgment, and it seems that the District Munsif suggested that other property of the defendants should be attached and sold. Accordingly respondents filed E. A. No. 163 on 20th March 1923, praying that the, property said to be under attachment might be attached, and also other property already scheduled in a compromise between the parties.

2. The District Munsif held E. A. No. 163 of 1923 to be a petition to amend E. P. No. 189 of 1920; otherwise it would be time-barred u/s 48, Civil P. C. The judgment-debtors appealed, and the learned Subordinate Judge has held that the application may be amended following Varadiah , v. Raja Kumara Venkata Perumal [1913] 26 M. L. J. 83 This amounts to holding that if a decreeholder files an execution application against certain property before the expiry of the term of limitation, after the expiry he can proceed against other property by treating each subsequent application as an amendment of the application already filed. It is not as though there were technical defects in the original application, which are allowed to be cured after time has run. A decree-holder cannot file a complete execution application before the expiry of twelve years; and then after the expiry of the period apply for execution against other items of property,

treating that application as one for amendment of the previous application. The settled rule of practice is that laid down by Lord Esher, M. R., in *Weldon v. Neal* [1887] 19 R. B. D. 394 as pointed out in *Kumara Venkata Perumal Rajah Bahadur Varu, Rajah of Karvetnagar, by guardian Mr. W.A. Varadachariar Vs. Velayuda Reddi and Others and Saravapalli Subramania Aiyar, Varadiah v. Raja Kumara Venkata Perumal* [1913] 26 M. L. J. 83 which contravenes that rule, must be regarded as governed by the peculiar circumstances of that case.

3. Sadasiva Aiyar, J., was one of the Judges in *Kumara Venkata Perumal Rajah Bahadur Varu, Rajah of Karvetnagar, by guardian Mr. W.A. Varadachariar Vs. Velayuda Reddi and Others and Saravapalli Subramania Aiyar*, and only supported *Varadiah v. Raja Kumara Venkata Perumal* [1913] 26 M. L. J. 83 on the ground that he personally was not inclined to consider the defendants' right to raise technical pleas. *Vemuri Pitchayya v. Raja Yarlagadda Ankineedu A. I. R. 1924 Mad. 367* concerns the amendment of a defective application, and does not apply to the facts of this case, even if it be taken as overruling the Calcutta Full Bench decision in *Asgar Ali v. Troilokya Nath Ghose* [1890] 17 Cal. 631 which seems to be in close conformity to the settled rule.

4. It is a mistake to hold that a peculiar equity lies in overriding limitation. A decree-holder does not obtain a decree which but for the merely technical and possibly unjust provision of limitation, he would be at liberty to execute at any time he pleased. He obtains a decree which he must execute before the expiration of twelve years, and the law which limits the period is neither more nor less just than the law which authorizes the decree. A Judge takes a peculiar view of his office who thinks it incumbent on him when administering a statute to pick out certain clauses which it is his duty to enforce, and certain clauses which it is his duty to evade.

5. It was finally argued for respondents that in this case time had not actually run because the execution was stayed by injunction. But apparently there was no actual injunction and only an agreement to desist which would not attract the provision of Section 15, Limitation Act.

6. The petition is allowed with costs throughout; and the order of the lower Courts permitting amendment is cancelled.