
(1936) 04 MAD CK 0044
In the Madras High Court

Ayyappa Naidu

APPELLANT

Vs

Marimuthu Moopanar and Another

RESPONDENT

Date of Decision : 09-04-1936

Acts Referred:

Limitation Act, 1908 — Section 3

Citation : 165 Ind. Cas. 57 : (1936) 44 LW 249

Hon'ble Judges : Pandrang Row, J;King, J

Bench : Division Bench

Judgement

Pandrang Rao, J.—This is an appeal from the judgment of Burn, J. dated October 19, 1934, dismissing S.A. No. 696 of 1934 on the ground that it was barred by limitation in view of Section 3 of the Indian Limitation Act. The facts of the case are very simple. The decree appealed from was one passed on February 2, 1934, and the time for appeal expired during the vacation of the High Court and the day on which the High Court re-opened after the recess, viz. July 16, 1934, was the last day on which the appeal could be presented in time. The memorandum of appeal was no doubt actually handed into the office on this date, July 16, 1934, but only a court-fee of eight annas was paid with it, though it was very clear from the nature of the appeal and from what was stated in the memorandum itself that the proper court-fee payable was Rs. 15. The deficit court-fee was paid by the appellant of his own accord on September 10, 1934. The learned Judge has held that in these circumstances the appeal must be deemed to have been presented only on September 10, 1934, when the court-fee had been paid in full and therefore the appeal was barred by limitation. The view is, in our opinion, clearly right, and nothing has been said at the hearing of this appeal in order to show that it is wrong and no authority has been quoted in support of such a view. In these circumstances we think it unnecessary to say more than that the finding of the learned Judge that the appeal is barred by limitation is right. We do not think it necessary in this case to deal with the question whether in the case of a memorandum of appeal presented with insufficient court-fee, the Appellate Court is bound to give time for payment of

the additional court-fee or whether the, Court has power to reject the appeal without giving such time. These questions do not arise in the present appeal. The memorandum of appeal has not been rejected but the appeal itself has been dismissed on the ground of limitation. That finding being right, it is unnecessary to consider any other question. The appeal, therefore, fails and is dismissed with costs.