
(1923) 04 MAD CK 0010
In the Madras High Court

D. Lakshmi Narasu Raju

APPELLANT

Vs

Y. Ganganna and Others

RESPONDENT

Date of Decision : 11-04-1923

Acts Referred:

Limitation Act, 1963 — Article 182

Citation : AIR 1924 Mad 186

Judgement

1. The question in this appeal is whether the appellant's application for execution presented on 5-9-1919 is in time. It is not disputed here that it can be in time, only if something happened on 15-9-15, which can be regarded as a step-in-aid of execution within the meaning of Article 182.

Schedule 1. Limitation Act, 15-9-15 was the day, on which the previous execution application of the appellant, No. 55/15, came on for hearing

after notice to the Judgment-debtors. All, we know of what happened on that day is that the Judgment-debtors were absent and the attachment

was ordered. So far there is nothing, which can be regarded as a step in-aid. We, however, are asked to presume that the attachment was ordered

in consequence of some oral application having on that day been made by the petitioner. We need not consider whether we are entitled or bound

to make that presumption. We observe only that there; is nothing whatever on the record to support it. It is sufficient for us to say that, if such

presumption must be made, there is still in the case before us the objection taken in Masilamani Mudaliar v. Sethuswamy Iyer [1917] 11 Mad. 251

regarding it as a step-in-aid, that it can only have been an entirely superfluous repetition of an application, which had already been made in writing

and which was pending orders of the Court. We have been asked to dissent from Masilamani Mudaliar v. Sethuswami Iyer [1917] 11 Mad. 251

with reference to Abdul Khadar Rowther v. Krishnan Malval Nair [1914] 38 Mad. 695 or in any case to refer the correctness of the former

decision on account of the alleged conflict between the two. We are unable to see that there is any conflict between the two; and we see no reason

for doubting the correctness of Masilamani Mudaliar v. Sethuswamy Aiyar [1917] 11 Mad. 251 We add only to the consideration referred to

therein that at the stage in question in the disposal of the execution application with reference to Order 21 Rule 23 that there was nothing for the

petitioner to do. The course of the proceedings as prescribed in that rule was that the person, to whom, notice had been issued had to show cause

to the satisfaction of the Courts that the decree could not be executed, and that, in case of his absence or of his failing to show such cause, it was

the duty of the Court as a matter of course to order the execution applied for.

2. Taking this view we agree with the lower appellate Court and dismiss the appeal against the appellate Court with costs.