

(1929) 04 MAD CK 0060
In the Madras High Court

Gadu Balambhotlu

APPELLANT

Vs

Mandela Bapanamma and Others

RESPONDENT

Date of Decision : 19-04-1929

Acts Referred:

Citation : 119 Ind. Cas. 596

Hon'ble Judges : Venkatasubba Rao, J

Bench : Single Bench

Judgement

Venkatasubba Rao, J.—The point I have to decide is, whether the Execution. Petition No. 1086 of 1921 is in time or not. There were certain previous execution applications filed. The question is, whether they were in accordance with law within the meaning of Art 182 of the Limitation Act. The present petition was filed within three years of the last of the previous petitions, but it is contended for the respondent that those petitions are defective and cannot, therefore, be taken into account for the purpose of the Statute.

2. The facts are these: The plaintiff obtained decrees in two mortgage suits. They were against two different sets of defendants. Let us call them A and B in the first suit, C and D in the second. The suits related to different sets of properties. We are now concerned with what I may call the suit against A and B. The defect alleged in the previous petitions arose thus. When the plaintiff applied for execution of the decree in that suit, he gave the names of the defendants wrongly, i.e., to say, instead of giving their names as A and B, he gave them as C and D. That the mistake was bona fide cannot possibly be doubted. The learned Subordinate Judge thinks that the question of good faith has no bearing at all on the point to be decided. In this, he is entirely mistaken. With each of the execution petitions, the plaintiff filed a copy of the decree and it is not disputed that the copy so filed was of the right decree. The description of the pro-parties was also correctly given. The Court clerk, by comparing the execution petition with the copy of the decree filed, could have at once discovered the mistake. As it turned out, the mistake was not discovered. As the petitions were dismissed in

initial stages, even notices were not taken out against the defendants. Does this mistake prevent the previous applications from being in accordance with law? The decided cases show clearly that the appellant's contention must prevail. Where execution was applied for, the name of the deceased defendant being wrongly mentioned, that was held to be in accordance with law, *Samia Pillai v. Chockalinga Chettiar* 17 M. 76 : 4 M.L.J. 8. When the plaintiff applied for a relief not granted by the decree, it was held that the defect did not render the application invalid, *Rajam Aiyar v. Annatharatnam* 31 Ind. Cas 318 : (1916) M.W.N. 127 : 29 M.L.J. 669 : 18 M.L.T. 475, When execution was applied for against the original defendants although in the meantime the mortgaged property passed to 3rd parties, the Court held that the application was in accordance with law. *Parakkat Devaswom v. Venkatachalam Vadhyar* 92 Ind. Cas. 709 : 50 M.L.J. 153 : 23 L.W. 22 : AIR 1926 Mad. 321. I shall cite a passage from the judgment of Muthuswami Aiyer and Best, JJ. in *Samia Pillai v. Chockalinga Chettiar* 17 M. 76 : 4 M.L.J. 8 the first of the three cases mentioned above.

Where there has been in fact an application for execution made by the party entitled to make it, the mere fact of a mistake having been made in giving the particulars required by Section 235 of the CPC cannot, we think, have the effect of rendering the application a nullity.

3. With this proposition I entirely agree. The order of the lower Court is set aside and the appeal is allowed with costs.