

(1942) 07 MAD CK 0022
In the Madras High Court

Govinda Krishna Aiyar

APPELLANT

Vs

Sankaralinga Naicker, through his next friend and guardian
ad litem, Subbia Naicker

RESPONDENT

Date of Decision : 03-07-1942

Acts Referred:

Limitation Act, 1963 — Section 6

Citation : AIR 1943 Mad 55 : (1942) 55 LW 663 : (1942) 2 MLJ 558

Hon'ble Judges : Krishnaswami Ayyangar, J

Bench : Division Bench

Judgement

Krishnaswami Ayyangar, J.—The order of the learned Judge setting aside the sale and all proceedings in execution taken by the appellant

subsequent to the decree in O.S. No. 45 of 1926 is based upon his conclusions on two points. The first is that the guardian ad litem of defendants

,4 and 5 had not been duly served with notice of the Execution Petition No. 132 of 1932. What happened was, notice was taken out by the

appellant decree-holder and the return on the notice was that it was affixed because the guardian was not to be found and was evading service. On

this return being brought to the notice of the Court, the Court declared these defendants ex parte. Our attention has not been drawn to the terms of

this order; but we understand that this was what, happened at the time when the order declaring them, ex parte was passed. It is true that the view

was taken in A.V.P. Palaniappa Chettiar Vs. Thaivanai Achi and Others, . by a single learned Judge of this Court that there should be an express

declaration that service is sufficient if the Court is to proceed further in any given matter. The question however was again considered by a Bench

of this Court in Raja Inuganti Venkata Rayanim Varu Vs. Alluri China Bapanna,

represented by his natural father Alluri Sooranna, under a general power-of-attorney and Others, . and it was held that though it is desirable that all Courts should observe the mandatory provision of Order 5, Rule 19 and ""either declare that the summons has been duly served or order such further service as it thinks fit"", the absence of such an express declaration will not involve as a necessary consequence a finding that a summons has not been duly served. This decision, had apparently not been reported at the time and it is probable that the learned Judge in coming to the conclusion on this point was guided by the procedure indicated in the earlier decision.

2. The second point raised by the appellant before the learned Judge was that the present applications were barred by limitation. The learned

Judge in rejecting this contention has made the observation that there cannot be any question of limitation in this case as the petitioner (5th

defendant) is still a minor. It is unfortunate that the learned Judge did not refer to the language of Section 6 of the Limitation Act. If he had done so,

he would have found that the benefit of the section is made available to a minor only in respect of a suit or an application for execution of a decree.

It is only in these two cases, the minor is given the privilege of taking the proceedings mentioned in the section within the same period after the

disability has ceased as would otherwise have been available to him. It cannot for a moment be suggested that either of the applications before the

lower Court is within the language of Section 6. We must hold that the learned Judge is entirely wrong in holding as he did that applications of this

kind are governed by Section 6. The order of the learned Judge is therefore set aside, and E.As. Nos. 418 and 419 of 1938 on the file of the

lower Court are dismissed. The appellant is entitled to his costs in C.M.A. No. 481 of 1940 against the respondent.