

(1917) 11 MAD CK 0059
In the Madras High Court

Govindasami Pillai

APPELLANT

Vs

The Municipal Council

RESPONDENT

Date of Decision : 27-11-1917

Acts Referred:

Citation : (1918) ILR (Mad) 620 : 42 Ind. Cas. 519 : (1918) 34 MLJ 399

Judgement

1. We are of opinion that the District Munsif was not justified in determining a question of limitation as to which there has been considerable difference of judicial opinion upon an application to sue in forma pauperis. Order 33, Rule 5(d) applies only to cases where the allegations of the petitioner do not show a cause of action, and we think that this should appear clearly upon the face of the petition.

2. We have been referred to cases where it was held that the court can go into the question of limitation to see if the petitioner has a subsisting cause of action. The cases do not decide that an elaborate enquiry into doubtful and complicated questions of law should be raised at the stage contemplated by Order 33, Rule 5. The pauper has no right of appeal if the decision on the question of law is wrong. We do not think it necessary to decide the question of limitation at this stage. This should form the subject-matter of an issue.

3. In the present case, moreover, the question of limitation may depend upon the construction of the contract between the parties, and it is possible that other evidence may be admissible as to the rights of the parties to the deposit made by the applicant, and we think that such matters should not be considered by the court at this stage.

4. The appeal is allowed, the order of the District Munsif is set aside and the petition is remanded for disposal according to law. The costs in the Civil Revision petition No. 887 of 1916 and this Letters Patent Appeal will abide the result of the suit.