
(1923) 02 MAD CK 0012
In the Madras High Court

Govindu Kaviraj Purohito

APPELLANT

Vs

Gauranga Saw and Others

RESPONDENT

Date of Decision : 16-02-1923

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 153

Citation : 75 Ind. Cas. 739

Hon'ble Judges : Venkatasubba Row, J; Francis Oldfield, J

Bench : Division Bench

Judgement

1. These are applications to the Court. to amend the cause title in a second appeal and to excuse the delay in seeking that relief. It will, of course, be unnecessary to consider the second application, unless the first succeeds. The circumstances in which the amendment is asked for are that the respondent, whose name is entered in the appeal as presented died before the presentation. We are now asked to substitute for his name those of the legal representatives. In the objection to this that an appeal cannot be presented against a person who has ceased to exist Order 1, Rule 10 is relied on, but we do not see our way to apply it here, since it refers to suits instituted in the name of a wrong person, and we do not think that it is applicable to a case, such as the present. The power conferred by Section 153 is general, but again we do not think we ought to use it, while another course is open to the petitioner, that course being to file another appeal and to have the delay due to his mistake committed in good faith excuse.

2. Taking this view, we must dismiss these applications and also the second appeal on the ground that no such proceeding as an appeal against a

party, who is deceased, is authorised by the Code. There will be no costs in second appeal but the petitioner will pay the respondent's costs in the petitions.