

(1916) 07 MAD CK 0029
In the Madras High Court

Kamakshi Ammal

APPELLANT

Vs

Pitchu Aiyar and Others

RESPONDENT

Date of Decision : 19-07-1916

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 17

Citation : (1916) 31 MLJ 561

Judgement

1. The defects in this application dated 27th July, 1911 are regarded by the Subordinate Judge as serious but in our opinion they were not calculated nor intended to mislead the court, for if the dates of the applications in 1907 and 1908 had been correctly stated, the applications would still be found to be within 3 years of the preceding and succeeding applications and therefore the defects would not be material.

2. Following the decisions in Rama v. Varada (1904) 14 M.L.J. 245 Narayanaswami Naidu v. Gantayya ILR (1902) M. 322 and Gopisetti Narayanaswami v. Muthala Venkataratnam (1914) 83 L.J. Ch. 28 we think that an execution petition returned for amendment but not represented may yet give a fresh starting point for limitation.

3. We do not consider that O. XXI, Rule 17 in the CPC of 1908 was intended to affect the construction put upon the words " applying in accordance with law" in the Limitation Act by this Court and by other High Courts in dealing with defects in form occurring in execution applications subsequently amended to be deemed applications in accordance with law with effect from the date of their first presentation.

4. We reverse the orders of the Lower Courts and remand the petition for disposal according to law. Costs here and in the lower Appellate Court will be borne by the respondents. Coats in the executing Court will be provided for in the final order.