

(1916) 07 MAD CK 0023
In the Madras High Court

Kamatchi Ammal

APPELLANT

Vs

Pichu Iyer and Others

RESPONDENT

Date of Decision : 19-07-1916

Acts Referred:

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

Citation : (1916) ILR (Mad) 876 : (1916) 4 LW 103

Hon'ble Judges : Spencer, J;Krishnan, J

Bench : Division Bench

Judgement

1. The defects in the 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 seated, the application 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 16 M.K 142 and in Narayanaswami Naidu Garu v. Kovidi Gantayya 32 Ind. Cas. 691 and in Gopisetti. Narayanaswami Naidu Oaru v. Muthyala Venkataratnam 32 Ind. Cas. 816 we think that an execution petition returned for amendment but not re-presented may yet give a fresh starting point for limitation.

3. We do not consider that Order XXI, Rule 17, of the CPC of 1903 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. The rule is an enabling one, which allows certain defective 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

respondents. Costs in the executing Court will be provided for, in the final order.