
(1925) 04 MAD CK 0084
In the Madras High Court

K.V. Subramania Aiyar and Others

APPELLANT

Vs

Shanmugam Chettiar and Others

RESPONDENT

Date of Decision : 06-04-1925

Acts Referred:

Evidence Act, 1872 — Section 78

Citation : AIR 1926 Mad 65 : (1925) 22 LW 538 : (1925) 49 MLJ 363

Hon'ble Judges : Phillips, J

Bench : Division Bench

Judgement

Phillips, J.—In this case the 1st respondent in Appeal Suit No. 238 of 1920 on the file of the District Court of Tanjore died during the pendency of the proceedings. An application was put in within three months for bringing on record his legal representative, but that application appears to have been dismissed on the ground that batta was not paid, and it now appears that the non-payment was entirely due to the negligence of the appellant's vakil's clerk. A subsequent application was put in three and a half months after the 1st respondent died asking for the restoration of the first petition and also for bringing on record a certain lady as the 1st respondent's legal representative. That petition was dismissed on the assumption that in so far as it prayed for the addition of the legal representative it was out of time and also on the ground that there was no sufficient reason for restoring the original petition.

2. The main question that is now raised in Second Appeal is whether the Judge was right in considering that the second application was out of time, namely whether the period prescribed for such an application is six months, or only 90 days. The application is one under Article 177 of the Schedule to the Limitation Act, and in the Limitation Act of 1908 the period prescribed is six months. In 1920 an amending Act was passed, and the question is whether that amending Act reduced the period of six months to 90 days, or left it at six months. The Calcutta and the Bombay High Courts are both of opinion that the period remains at six months notwithstanding this amending Act, whereas the Allahabad and

Lahore High Courts are of the contrary opinion. In the case reported in *Gobind Das v. Rup Kishore* ILR (1923) Lah. 367. the matter has been very carefully discussed and it was found that if the words of the amending Act (Act XXVI of 1920) were applied to the Act of 1908 as originally published in the Gazette of India, the period of limitation under Article 177 would remain at six months. It appears that the other copies of the Act printed by the Superintendent of Government Printing, Calcutta, are paged differently, and in them against Article 177 the word "Ditto" appears. The result of the amendment of Article 176 which reduces the period of limitation to 90 days would have the effect of making Article 177 read as having reduced the period similarly, namely to 90 days. The amending Act, therefore, has a different effect if applied to the original Gazette of India publication, or if applied to subsequent publications of Act IX of 1908. u/s 78 of the Evidence Act there can be no doubt that the publication in the Gazette of India is the proper method of proving the Act and if there is a conflict between the two publications, preference will certainly be given to that in the Gazette of India. The later publications do not purport to be published by the authority of the Government of India but are printed by the Superintendent, Government Printing, India.

3. There is also another argument used by the Allahabad High Court in *Alice Georgina Skinner Vs. Kunwar Mukarram Ali Khan*, and that is that Act XXVI of 1920 makes no specific reference to Article 177 and consequently it can only be deemed to amend that Article by implication, namely by altering the period under Article 176 and retaining the word "Ditto" against Article 177. This view has been adopted both by Calcutta and Bombay on the ground that it was the intention of the legislature to amend Article 177. Nothing appears to that effect in the preamble of the amending Act and there is no reference to Article 177 in the body of the Act. The word "Ditto" opposite to Article 177 in the Act of 1908 was equivalent to the words "six months" and when that word "Ditto" is allowed to stand without alteration after the amendment of 1920, it is difficult to understand why its meaning should have been changed. Consequently, even if the word "Ditto" were to remain as in the subsequently published copies of the Act, its original meaning would not be changed unless the legislature had declared its intention to alter it. On all these grounds I respectfully agree with the decisions of the Lahore and Allahabad High Courts. The Bombay case in *Hussenuddin Nuruddin v. Dulakshidas Keshavlal* AIR (1933) Bom. 299 contains only a very brief judgment based on the fact that the amending Act is applicable to the published Acts and not to the Act as printed in the Gazette of India and does not meet the arguments mentioned above. The Calcutta decision is that of a single Judge who by reason of the view he takes is constrained to reject altogether the Act as published originally in the Gazette of India as being "not an accurate and true version of the Act which the legislature enacted." When the Evidence Act distinctly lays down that this is the method of proving an Act of the Legislature, I regret that I cannot agree with the view of the learned Judge that an Act so proved is not an accurate and true version. He goes further to hold that

the Act can be proved by a means which is not contemplated in the Evidence Act and that such a proof is preferable to the proof laid down by the Statute. With all respect I cannot agree in this view. I therefore follow the decisions of the Lahore and Allahabad High Courts that the period of limitation under Article 177 remained at six months even after the amending Act (Act XXVI of 1920). That being so, the learned District Judge was wrong in treating the second petition of the appellant as being out of time. The prayer for the restoration of the first petition was unnecessary. The main prayer was to bring on record a legal representative, and the application being within time, the prayer ought to have been granted.

4. I must therefore set aside the decree of the Lower Appellate Court and remand the suit to that Court for the hearing of the appeal after bringing on record the 1st respondent's legal representative. Costs will abide the result.

5. Court fee on the Second Appeal will be refunded.