
(1932) 08 MAD CK 0027
In the Madras High Court

Muhammad Abu Bakkar Maracair (deceased), Azimuddin,
legal representative and Others

APPELLANT

Vs

Ramakrishna Chettiar

RESPONDENT

Date of Decision : 22-08-1932

Acts Referred:

Citation : (1933) 37 LW 469 : (1933) 64 MLJ 401

Hon'ble Judges : Madhavan Nair, J

Bench : Division Bench

Judgement

Madhavan Nair, J.—The facts of the case are clearly stated in the appellate Judge's judgment and need not be re-stated. The question is

whether the third application for execution is barred by limitation. Prior to the third application the decree-holder had made another application, the

second one in sequence of time, dated 21st June, 1928. That was returned for correcting certain defects and was re-presented only along with the

third petition filed on 19th June, 1929. No final orders have been passed on the second application as yet. Time for considering whether the third

application is within the period of limitation is to be calculated according to Article 182(5) of the Limitation Act in its amended form from the date

of the final orders on the last application; that will be the second application in the present case. As no final orders on the second application have

been passed that application is still pending and at present no question for limitation arises. Vide judgment of Jackson, J., in C. R. P. No. 5 of

1930. The Lower Court will have to pass orders on the second application and then, if necessary, consider whether the third application is in time.

The opinion of the learned Judge that the third application is in time is in the circumstances premature.

2. The argument that the third application should not be considered to be a proper application because it was presented by Ramakrishna Chetty in

a different capacity from the capacity in which he presented the other application has no substance and must be overruled.

3. The two petitions are remanded to the District Munsif for disposal according to law in the light of the above observations. Each party will bear his own costs in this Court.

4. C.M.P. No. 1043 of 1931.-This will be dealt with by the District Munsif along with the other applications.

5. C.M.P. No. 1044 of 1931.-No order is necessary.