
(1947) 02 MAD CK 0010
In the Madras High Court

Panguluri Ankamma and Another

APPELLANT

Vs

Vootla Raghavamma and Others

RESPONDENT

Date of Decision : 21-02-1947

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (1947) 60 LW 535 : (1947) 2 MLJ 233

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—O.S. No. 394 of 1930 was a suit for dissolution of partnership and for accounts. On the 12th May, 1934, a preliminary decree

was passed, and a Commissioner appointed for examining the accounts ; after he had filed his report, the suit was posted to 10th October, 1940,

for hearing objections to the Commissioner's report and for passing the final decree. Two days prior to that date, however, the second defendant

had died and his death was reported by the plaintiff to the Court. When the suit came up for hearing on 10th October, 1940, the Court ordered

the plaintiff to bring the legal representatives of the second defendant on record and posted the suit to the 24th October, 1940, for that purpose.

As, however, according to the Commissioner's report nothing was due to the plaintiff, and a considerable sum was payable to the second

defendant, the plaintiff naturally did not comply with the order of the Court. So on the adjourned date the suit was dismissed for default. At that

time, the sons of the second defendant, who were the legal representatives, were still minors, the elder of them attaining majority only on the 16th

November, 1941. On the 15th November, 1944, the sons filed I.A. No. 1907 of 1944 against the order on which this petition has been preferred,

as well as other petitions to excuse delay and to bring the legal representatives on record, with which we are not now concerned. By this petition

the petitioners sought to have the order of the 24th October, 1940, set aside, claiming a right to do so under Order IX and other provisions of the

CPC including Section 151. The District Munsif of Bapatla came to the conclusion following AIR 1924 198 (Privy Council) and other decisions,

that the order passed by his predecessor on 24th October, 1940, was an order without jurisdiction ; but he held that the application of the

petitioners was barred by limitation. He therefore dismissed the application. The petitioners had alleged that the first petitioner came to know of the

adverse order passed on the 24th October, 1940, from one Venkataratnam, only ten or fifteen days before they filed their application. The Court

found that that was not true ; and as the application had not been made within the period allowed for review, dismissed the application.

2. The learned advocate for the petitioners has cited AIR 1924 198 (Privy Council) Baksh Singh v. Habib Shah (1913) 25 M.L.J. 148 : L.R. 40

IndAp 151 : ILR 35 A. 331 (P.C.) Perumal Pillai Vs. Perumal Chetty and Another, and other decisions to show that once a preliminary decree

has been passed, the Court has no jurisdiction to dismiss the suit for default, that the ordinary rules with regard to the abatement of a suit do not

apply at this stage, and that the Court has a duty independently of the conduct of the parties, to work out the details of the preliminary decree.

These decisions also point out that the only provision of law under which a Court can set aside its wrongful order dismissing a suit after passing a

preliminary decree is u/s 151 of the CPC ; and that a Court that has passed such a wrong order should remedy it by invoking its inherent powers

u/s 151 of the Code of Civil Procedure, whenever there are grounds for doing so. It is not denied in this Court that the order on the 24th October,

1940, was wrong and should be set aside if the petitioners had satisfied the Court that they had acted without undue laches.

3. It is contended that since more than four years were allowed to lapse before the petitioners took steps to set aside the wrongful order of the

24th October, 1940, the petition should not be allowed. It is always difficult to decide what is a reasonable time within which an application should

be made by an ex-minor to set aside a wrongful order. It would depend on when the minor came to know of the order in question and whether he

had access to persons who could give him advice. As Section 6 of the Limitation Act shows, the Legislature considers that as a general rule, three years from the date on which a minor attains majority is a reasonable time within which he may be expected to take action. The present application was filed within three years of the first petitioner's majority ; and the second petitioner is still a minor. It does not seem that the petitioners had any special means of knowing soon after the majority of the first petitioner that the order of the 24th October, 1940, had been passed adversely to their interests. Their mother may have known it or, on the other hand, she may not. It does not appear that the petitioners had any one to whom they could turn for advice, other than their mother, who had been brought on record as their guardian in some other proceedings, but we do not know to what extent she had an intimate knowledge of her husband's affairs. It is therefore difficult to say that the petitioners have been guilty of any gross laches. The order of the 24th October, 1940, should therefore be set aside on terms.

4. In view of the arguments on behalf of the petitioners in the lower Court and the reasonable attitude taken by the learned advocates for the respondents in this Court, I do not think that there should be any order as to costs in this petition here or in the Court below.

5. In considering on what terms the order of the 24th October, 1940, should be set aside, regard should be had to the circumstance that the dismissal of the suit on that date was due to the failure of the plaintiff himself to take the steps ordered by the Court. As, however, a considerable period has elapsed, and it may be far more difficult now for the plaintiff to gather the materials for the rehearing of O.S. No. 394 of 1930 than it would have been some years ago, I think it would be equitable if the petitioners were ordered to pay half the costs incurred by the plaintiff in the final decree proceedings in O.S. No. 394 of 1930, which We may take as Rs. 25, as a condition precedent to the setting aside of the order of the 24th October, 1940. For that purpose the petitioners will be given one month's time from this date. Mr. V. Subramanyam has agreed to pay the amount to the plaintiff's advocate in this Court.