

(1916) 07 MAD CK 0031
In the Madras High Court

Ramachandra Naidu

APPELLANT

Vs

Tirupathi Naidu and Others

RESPONDENT

Date of Decision : 18-07-1916

Acts Referred:

Citation : 35 Ind. Cas. 614

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

Bench : Division Bench

Judgement

1. In this case the petitioner sought to save limitation by treating as steps-in-aid of execution two execution petitions in which the decree-holder prayed for the arrest of the judgment-debtors in spite of the fact that the decree to be executed did not make the defendants personally liable. The lower Courts " have dealt with the case on the basis that execution petitions asking for a relief which the executing1 Court was not competent to grant, are not in accordance with law." The present is not a case of competence or incompetence. It has been held, in cases where the decree did not give the relief asked for, that an execution petition may yet give a fresh starting point for limitation, e.g., applications to sell properties not liable to be sold and applications against a deceased judgment-debtor. Vide Varadiah T. v. Rajakumara Venkata Perumal (1914) M.W.N. 157: 26 M.L.J. 83 and Samia Pillai v. Chockalinga Chettiar 17 M.k 76.

2. Any mistake or error in an execution petition will not necessarily render such an application a nullity.

3. But the District Munsif was of opinion that the decree-holder's action in the present case was not bona tide. We do not think that this conclusion can be drawn from the applications themselves.

4. The first execution petition, dated 7th June 1904, was for realising the decree amount by sending the defendants a notice. This was dismissed for absence of the parties. The 2ini execution petition, dated 1st February 1907, contained a similar prayer. It should have mentioned the method by which the money was to

be realised. It was accordingly dismissed. In the third execution petition, dated 14th April 1909, this defect was attempted to be remedied by praying for the arrest of the defendants. It was dismissed because they were not personally liable under the decree. In the fourth execution petition, filed 9th April 1912, the decree-holder asked for notice to the defendants and a warrant for their arrest. The Court, instead of dismissing this petition for the same reason as it dismissed the third petition directed notice to go to the defendants, and on the 2nd defendant being reported to have died, it ordered his legal representatives to be brought on record. It does not appear that the decree-holder was asked to explain the circumstances under which he sought a personal remedy against the defendants. Under certain circumstances a decree may be executed against a judgment-debtor personally even though the original decree only provided for payment of money out of property in his possession. Vide Section 52 of the Civil Procedure Code.

5. We set aside the orders of the Court below and remand the petition to the District Munsif's Court for disposal in accordance with law. Respondents will pay the appellant's costs in this Court and in the lower -Appellate Court. Costs in the executing Court will abide and follow the result.