

(1893) 10 MAD CK 0015
In the Madras High Court

Samia Pillai

APPELLANT

Vs

Chockalinga Chettiar and Another

RESPONDENT

Date of Decision : 18-10-1893

Acts Referred:

Citation : (1894) ILR (Mad) 76 : (1894) 4 MLJ 8

Judgement

1. The question for decision in this case is whether the last application for execution made on the 6th February 1891 was in accordance with law

within the meaning of Article 179 of Schedule II of the Limitation Act so as to amount to a step in aid of execution sufficient to prevent the present

application being time barred.

2. That the application was presented by the party entitled to execute the decree and in order to obtain execution is not denied, but it is contended

that as 1st defendant who was dead at the time was named as the party against whom execution was sought, the , application must be treated as a

nullity, and consequently the present application held to be time barred.

3. The Subordinate Judge observes that the mention of the deceased first defendant's name in column 9 of the application was, probably, a

mistake, made by the Vakil's gumastah. It was no doubt a bona fide mistake. Where there has been in fact an application for execution made by

the party entitled to make it, the mere fact of a mistake having been made in giving the particulars required by Section 235 of the Code of Civil

Procedure, cannot, we think, have the effect of rendering the application a nullity. This is also the view adopted in Ramanadan v. Periatambi I. L.

R. 6 M 250 and Fnzloor Ruhman v. Altaf Hossein I. L. R. 10 C 541 In this view the application of 6th February 1891 is sufficient to save

limitation both against 1st defendant's legal representatives and also against his joint judgment-debtors.

4. We dismiss this appeal with costs.