

(1917) 09 MAD CK 0003
In the Madras High Court

Sri Vidhya Theertha Swamigal, M. Ragvendra Row	APPELLANT
Vs	
Venkatarama Iyer	RESPONDENT

Date of Decision : 19-09-1917

Acts Referred:

Limitation Act, 1963 — Section 14

Citation : AIR 1918 Mad 23 : 45 Ind. Cas. 460

Hon'ble Judges : Oldfield, J;Abdur Rahim, J

Bench : Division Bench

Judgement

Abdur Rahim, J.—The question for decision in this appeal is one of limitation in connection with a petition for execution. The decree-holder

made an application for execution, No. 1571 of 1909, on the 13th September 1909, the object of the application being to get a transfer of the

decree from the Tinnevely Court to the Ambasamudram Munsif's Court. The application was dismissed on two grounds by the District Munsif,

firstly, that it was not shown that there was no property of the judgment-debtor within the local limits of the Tinnevely Court and secondly, that the

application was barred by limitation. Then on appeal the Subordinate Judge reversed that order. But the High Court in second appeal restored the

order of the District Munsif. This was on the 13th February 1913. The present application was put in on the 14th October 1913 and limitation is

said to be saved by deducting the time between the filing of the application on the 13th September 1909 and the date of the High Court's order,

13th February 1913. The District Judge, who has held in favour of the decree-holder, applied Section 14 of the Limitation Act to this case. But it

seems to us that that section has no application because it could not be said that the application was proceeded with in a Court without jurisdiction,

that is to say, that the application was infractions because it was proceeded with in a Court without jurisdiction or on a similar ground. The

Tinnevelly Court had jurisdiction to deal with the application for transfer, though it could make the order only if certain facts were proved. It could

not be said, therefore, that the decree-holder was pursuing his remedy through a bona fide mistake in the wrong Court. Further the relief that is

now sought, that is, attachment of properties in the Tinnevelly Court is not the same relief which was asked for in the application of the 13th

September 1909, because all that was asked for in it was transfer of the decree for execution to another Court.

2. Then the learned Vakil for the respondent has asked us to uphold the order of the District Judge on the basis of the ruling reported as

Nrityamoni Dassi v. Lakkan Chunder Sen 33 Ind. Cas. 452: 18 Bom. L.R. 418, following the ruling in Lakhan Chunder Sen v. Madhusudan Sen

7 C.L.J. 69: 12 C.W.N. 326. There what was apparently held was that nice the party against whom limitation was pleaded was in fact litigating the

same question in another Court, the named of the party was suspended during the time that that litigation occupied. This apparently was the

principle, so far as I understand it, upon which that case proceeded. I am unable to hold that it applies to the present proceedings. The one

complete answer to the argument of the learned Vakil for the respondent is that the remedy which is now sought could have been asked for if he

had only put forward proper facts before the Court even while the application of the 13th September 1909 was pending litigation. It was open to

him to find out the facts and make an effective application for attachment of the properties. The appeal must be allowed and the execution petition

of 14th October 1913 is dismissed with costs here and in the Court below.

3. Oldfield, J.--I agree and only wish to add that I cannot read the decision in Nrityamoni Dassi v. Lakhan Chunder Sen 20 C.W.N. 522 : (1916)

1 M.W.N. 332 : 18 Bom. L.R. 418 : 20 M.L.T. 10as in any way affecting the scope of Section 14 of the Limitation Act. There is no doubt that

the appellant must succeed.