

(1914) 02 MAD CK 0016
In the Madras High Court

Subramanian Patter Kariakar's son Sivaram Patter Kariakar	APPELLANT
Vs	
Edathil Madhathil V. Krishna Aiyar (died) and Another	RESPONDENT

Date of Decision : 10-02-1914

Acts Referred:

Registration Act, 1908 — Section 77

Citation : (1914) 26 MLJ 307

Judgement

1. We think this appeal must be allowed. We are bound by the Full Bench decision in Veeramma v. Abbiah ILR (1893) 18 M. 99 and the decision in Appa Ran Savayi Asiva Ran v. Krishna Murthi ILR (1896) M. 249 which followed it, to deal with the case on the footing that the provisions of the Limitation Act are inapplicable to the suit provided for by Section 77 of the Registration Act.

2. But apart from that Act it would be reasonable on general principles to hold that, when the plaintiff cannot, owing to the Court being closed, present his plaint on a particular day, on which it ought to be presented, he should not be allowed to suffer if he presents it at the earliest possible opportunity thereafter. That principle has been recognised by the legislature in Section 10 of the General Clauses Act of 1897 and in this Court in

Aravamudu Aiyangar v. Samiyappa Nadan ILR (1897) M. 385. Sambasiva Chari v. Bamasami Beddi ILR (1898) M. 179. Haji Ismail Sait v.

Trustees of the Harbour Madras ILR (1900) M. 389, Arbuthnot and Co. In solvent Debtors Vs. A. Sabapathy Mudaliar, .

3. Our attention has been drawn to Section 26 of Act III of 1877 as indicating that the legislature intended to exclude the application of this

principle; by that section the same principle is expressly applied to the case where the Registration office is not open on the day on which a

document ought to be presented for registration, and so, it is contended, is impliedly excluded in all other cases. We are unable to take this view.

4. It may be correct in many cases but here in the absence of any apparent reason why the person coming to present a document should have the

right to await the opening of the office, while a plaintiff coming to the closed court with his plaint should not have the corresponding right, it seems

the more reasonable view that the legislature did not intentionally exclude in the latter case the operation of this generally recognized principle which

it recognized in the former case.

5. In Appa Rau Sanayi Aswa Rau v. Krishna Murthi (1896) ILR 20 M. 249 and Veeramma v. Abbiah ILR (1893) M. 99 the effect of this

principle was not in question as apart from its enunciation in Section 5 of the Limitation Act, and we may follow the other cases, to which we have

referred, and hold that it is applicable to a suit u/s 77 of the Registration Act.

6. The suit was therefore not barred by limitation.

7. On the remaining question we think the Sub-Registrar did refuse registration. The executant, after being twice summoned failed to appear and

on the authorities the Sub-Registrar should have made an order refusing registration on the footing of denial of execution, The plaintiff in Exhibit I

pointed out the executant's failure to appear and asked that the Sub-Registrar should register the instrument or return it to him (the plaintiff).

8. We read this prayer as the Subordinate Judge reads it that is, as a prayer to register, or if that cannot be done, then to return the document.

9. The Sub-Registrar returned the document and endorsed it as "'returned in accordance with the request of the party presenting it.'" He also in a

subsequent notice to the plaintiff described it as a document of which registration was refused (Exhibit E). In these circumstances we think the Sub-

Registrar's order returning the document was really an order consequential on a refusal to register it, though he did not make the written order with

reasons for refusal as required by the law. The request of the plaintiff was to return the document if it could not be registered and by the order of

the Sub-Registrar it was returned as requested.

10. We think there was in fact a refusal to register and that the endorsement was intended to be consequent on the refusal and so may be taken to

be an order refusing to register.

11. The decree of the Subordinate Judge must in these circumstances be reversed and the suit remanded for disposal according to law.

12. Costs will abide the result.