
(1925) 09 MAD CK 0074
In the Madras High Court

Tharamal Parkam Kalpathoor Thulichha Puthiatuth Sankaran Nair APPELLANT

Vs

Uruppoyil Ambu and Others RESPONDENT

Date of Decision : 08-09-1925

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 13

Citation : 92 Ind. Cas. 109 : (1925) 49 MLJ 699

Hon'ble Judges : Jackson, J

Bench : Single Bench

Judgement

Jackson, J.—Petitioner seeks to revise the order of the District Munsif of Payoli in R.E.P. No. 182 of 1922 in S.C.S. No. 229 of 1910.

2. Petitioner obtained a decree on 7th March, 1910. On 28th February, 1922, he applied for attachment promising to furnish a list of immovables. The application was adjourned from time to time till July 1922, for the appointment of a guardian and then again from time to time till 15th March, 1923, when it was finally dismissed, because the list of immovables was only produced on 5th April, 1922, after the expiry of 12 years from 7th March, 1910.

3. I cannot hold that the order is illegal. The Court has an option under Order XXI, Rule 17, either to reject the application or to allow the defect to be remedied within a time to be fixed by it. Possibly the Munsif might even on 15th March, 1923, have ordered the list of Immovable properties to be produced on 5th April, 1922, which would have dated the petition as from 28th February 1922, and would thus have saved the bar of limitation. But he cannot be said to have refused jurisdiction by declining to pass this remedial order. He is, equally acting within his discretion when he finds that no time was fixed for remedying the defect, and, therefore, the application must date from the time when it fully conformed to Order XXI, Rule 13, which would be April 5. The ruling reported in Vemuri Pitchayya v. Ankineedu Bahadur Zemindar Garu 76 Ind. Cas. 750 33 M.L.T. 125 : 18 L.W. 739 turns on a converse, case. There the District Munsif had

exercised his discretion by fixing a time for the production of the descriptive shedule after the expiry of 12 years and this Court declined to interfere. But, of course, it was not held that the Munsif was bound to exercise his discretion in that manner. If he had liked to adopt, the alternative he could have dismissed the application. Spencer, J., observes: "I am, with due respect, inclined to think that the words "on receiving an application for the execution of a decree" in Rule 17 were not intended to make a party suffer, for the failure of the Court establishment, which checks plaints and execution petitions on their presentation to at once notice all defects in any application that may be received and that these words do not preclude a Court from making an order allowing a defect to be remedied at a later stage." This can hardly be taken as putting the whole responsibility upon the Court. An applicant who files an application not in compliance with Order XXI, Rule 13, does so at his own risk, and he cannot demand, as of right, that it shall be regularized by the Court establishment. In the present case, too, there is no question of suffering for the failure of the establishment, because the petitioner knew all along that his application was defective, and remedied that defect on his own initiative.

4. This judgment has proceeded on the assumption warranted by *Vemuri Pitchayya v. Ankineedu Bahadur Zemindar Garu* 18 L.W. 739 : 33 M.L.T. 125 that a Court retains its discretion to order the defect to be remedied after the application has been admitted and registered but-before it has been finally disposed of in one of the ways mentioned in Order XXI, Rule 17(1).

5. As regards *Asgar Ali v. Troiloka Nath Ghose* 17 C. 631 : 8 Ind. Dec. 960 (F.B.) which the lower Court cites, it may be observed that the point specifically referred to the Full Bench has now been settled by Clause 2 of Order XXI, Rule 17, which is an addition to the old Section 245. If an application is defective by not containing a description of the property, it is none-the-less an application provided that the Court has permitted the defect to be remedied. It also happened to be ruled in the same case that such permission could only be given before admission and registration (pp. 635-636). Whether "on receiving" in Order XXI, Rule 17(1) requires such strict interpretation is the question discussed in *Vemuri Pitchayya v. Ankineedu Bahadur Zemindar Garu* 33 M.L.T. 125 : AIR (1924)(M.) 367. Of course it would make the petitioner's case considerably weaker, if it were held, following *Asgar Ali v. Troilokya Nath Ghose* 8 Ind. Dec. 960 (F.B.), that the Munsif had no jurisdiction in 1923 to order the defect to be remedied, but even allowing in the light of *Vemuri Pitchayya v. Ankineedu Bahadur Zemindar Garu* 76 Ind. Cas. 750 : 45 M.L.J. 651 that he had jurisdiction I do not find that he "exercised it improperly.

6. The petition is dismissed with costs.