
(1942) 09 MAD CK 0017
In the Madras High Court

Thatiparthi Krishna Reddi and Others APPELLANT
Vs
Ambarkhana Jayarama Rao and Others RESPONDENT

Date of Decision : 25-09-1942

Acts Referred:

Limitation Act, 1908 — Section 7

Citation : (1942) 55 LW 835 : (1942) 2 MLJ 736

Hon'ble Judges : Krishnaswami Ayyangar, J

Bench : Division Bench

Judgement

Krishnaswami Ayyangar, J.—The only point that arises for consideration in the appeal is whether the learned Judge in the Court below was

right in dismissing the execution petition E.P. No. 7 of 1939 as barred by limitation. The suit was on a mortgage in which the preliminary decree

was passed on 11th December, 1928. There was an appeal preferred to this Court from that decree in A.S. No. 212 of 1929, but the appeal was

dismissed and the decree of the Court below was confirmed on 11th November, 1932. In the meanwhile, a final decree had been passed on 19th

August, 1932, by the lower Court. Even before that date, however, the original plaintiff Venkatasubba Reddi died and in his place his sons were

brought on the record as legal representatives. His sons were four in number of whom the elder two were majors and the younger two were

minors and the decree was in favour of all of them, the minors being represented by the eldest son as next friend. The first execution petition was

filed on 12th August, 1935, but it was returned for remedying some defects which were never properly remedied and was therefore rejected. It is

not suggested that this order is capable of saying limitation. The decree-holders, the sons of Venkatasubba Reddi, then filed the present execution

petition, E.P. No. 7 of 1939 on 20th November, 1938. The petition having been filed more than three years after the date of the judgment of the

High Court on 11th November, 1932, is prima facie barred by limitation. The contention of the decree-holders in the Court below was that

execution of the decree was not barred, inasmuch as two of the decree-holders were minors and their next friend was not competent to give a

discharge within the meaning of Section 7 of the Indian Limitation Act. This contention was not upheld and the Subordinate Judge accordingly

dismissed the execution petition. The decree-holders have therefore preferred this appeal.

2. The learned Judge has not in his judgment considered the bearing of Order 32, rule 6 of the CPC on the point of limitation raised before him nor

does it appear that his attention was called to the decided cases which have interpreted this rule. In *Al. Vr. Ct. Lakshmanan Chetti and Others Vs.*

V.R. Rm. V.L. Subbiah Chetti (dead) and Others, a Division Bench of this Court (Coutts-Trotter, C.J. and Ramesam, J.) had occasion to

consider the effect of Order 32, rule 6 in the light of the decision of the Privy Council in *Ganesh Rao v. Tuljaram Rao* (1913) 25 M.L.J. 150 : L.R.

40 IndAp 132 : ILR 36 Mad. 295 (P.C.). There a Hindu father and his three minor sons represented by him as the next friend, had obtained a

joint decree on 16th October, 1913. The father having died two months after the decree, his eldest son applied for the execution of the decree by

a petition filed on 3rd December, 1917, which was within three years of his majority, but more than three years after the date of the decree. If the

father was in a position to give a legal and valid discharge of the decree without leave of the Court obtained under Order 32, rule 6, the decree

would have been barred by limitation. The Court was therefore called upon to consider the effect of Section 7 of the Indian Limitation Act in

relation to decrees obtained on behalf of minors and falling under the purview of Order 32, rule 6. The Court decided that the father though the

natural guardian, was not competent to give a discharge in respect of the decree as it had been obtained by him on behalf of his sons and as their

next friend or guardian. In coming to this conclusion the learned Judges merely applied the rule of law laid down by the Privy Council in the case of

Ganesh Rao v. Tuljaram Rao (1913) 25 M.L.J. 150 : L.R. 40 IndAp 132 : ILR 36 Mad. 295 (P.C.). Though the father might be the natural

guardian, his power to act on behalf of minors represented by himself in a suit, was held to be controlled by the provisions of law contained in

Order 32, rule 6, as he cannot do any act in his capacity as father or managing member, which he was debarred from doing as next friend or

guardian without leave of the Court. It is conceded by Mr. Suryanarayana who appears for the respondents that this decision is directly against him

and if right the appellants were entitled to succeed. But he contends that it has been overruled, in effect though not expressly, by the Full Bench

decision of this Court in *Katneni Venkatakrishnayya and Another Vs. Garapatti China Venkayya and Others*, . The Full Bench was not called

upon to deal with the principle underlying Order 32, rule 6 at all. What happened in the case then before the Court was this. A decree had been

obtained in favour of two minors represented by their mother and that decree was subsequently transferred to a third party by the mother acting as

the guardian of the property of the minors. The question was Whether the transfer was valid and the transferee was entitled to be brought upon the

record in the place of the decree-holders and be allowed to execute the decree. The Full Bench held he was. The judgment of the Court

proceeded upon a construction of Order 32, rule 7 relating to the power of the next friend or a guardian to enter into an agreement or compromise

on behalf of a minor with reference to the suit in which he acts as next friend or guardian. The learned Chief Justice pointed out that the transfer of

a decree by a mother of the minors was something entirely outside the suit and her powers as natural guardian were accordingly not in any way

limited by the rule. But that is not the position here. The question is whether the next friend has the right to give a discharge with respect to the

decree itself with reference to the parties to the suit. In *Ramalingam Chetti v. Radhakrishna Chetti* (1935) 70 M.L.J. 700, which is also relied upon

for the respondents, the facts were totally different. The question was whether the father or manager in a joint Hindu family is entitled to receive the

amount of a decree and to give a discharge so as to bind a minor member of the family who is a party to the suit without obtaining the leave of the

Court where such father or managing member was not the next friend. The position would of course be different if the question had been whether

the guardian himself could give a discharge even though he possessed the additional capacity of the father or manager of the family. We are of

opinion that this case is governed by Al. Vr. Ct. Lakshmanan Chetti and Others Vs. V.R. Rm. V.L. Subbiah Chetti (dead) and Others, , which has

not been in our opinion shaken in any way by the Full Bench decision in Katneni Venkatakrishnayya and Another Vs. Garapatti China Venkayya

and Others, .

3. That being so, the appeal must be allowed and the case sent back. The Subordinate Judge will restore the execution petition and proceed to

dispose of it according to law. The appellants are entitled to the costs of this appeal.