
(1939) 08 MAD CK 0014
In the Madras High Court

Thirugnanavalli Ammal

APPELLANT

Vs

P. Venugopala Pillai and Others

RESPONDENT

Date of Decision : 09-08-1939

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34(2)

Citation : AIR 1940 Mad 29 : (1939) 50 LW 719 : (1939) 2 MLJ 751

Judgement

1. This is an application by a decree-holder for the amendment of a decree passed by this Court on the 30th August, 1932, on the ground that

there has been an accidental omission. The petitioner obtained a decree in the Court of the District Judge of South Arcot for the payment of two

sums, Rs. 10,817 and Rs. 11,183, with interest at 9 per cent, per annum. On the first amount interest was to be calculated from the 16th March,

1925, and on the second amount from the 16th March, 1926, ""till this date"", that is, the date of the decree, the 21st December, 1928. There was

no reference to further interest in the judgment and the decree was drawn up in accordance with the judgment which was signed by the District

Judge who delivered it. On appeal this Court held that the petitioner was entitled to Rs. 10,276 and Rs. 10,623 with interest on these amounts at

six per cent, per annum from 16th March, 1925 and 16th March, 1926, respectively to the date of the decree. Again there was nothing said in the

judgment with regard to the payment of further interest after the date of the decree. The draft decree was submitted to the learned Advocates who

appeared in the case and they approved of the wording. It is clear, however, that they did not realize that further interest had not been awarded,

because in the subsequent execution proceedings the amounts claimed included further interest and no objection was taken. Recently the

judgment-debtors applied for the scaling down of the balance due under the decree in accordance with the provisions of the Madras Agriculturists'

Relief Act. In these proceedings it was discovered that the decree which had been passed was silent on the question of further interest. This led to

the present application being filed and the Court is asked to amend the decree by allowing further interest on the decretal amount from the date of

the decree to the date of payment or realization.

2. Section 152 empowers the Court to correct clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any

accidental slip or omission. As the decrees passed are in accordance with the respective judgments it is difficult to support the contention that there

has been an accidental omission, but even if the decree-holder ought to have had further interest granted to him and this was accidentally

overlooked the Court cannot in face of the provisions of Section 34(2) of the CPC rectify the omission. Section 34(1) provides that where and in

so far as a decree is for the payment of money the Court may award further interest, but Sub-section 2 expressly states that where a decree is

silent with respect to the payment of further interest from the date of the decree to the date of payment or other earlier date, the Court shall be

deemed to have refused such interest, and a separate suit therefor shall not lie. As in the decree which the petitioner wishes to have amended there

is no reference to further interest and the decree follows the judgment the Court must be deemed to have refused it. I do not suggest that if in the

judgment further interest had been specifically allowed Section 34(2) would prevent the Court acting u/s 152 and correcting the decree, but as the

decree is in accordance with the judgment the provisions of Section 34(2) govern the matter.

3. The application must be dismissed with costs.