

**(1917) 03 MAD CK 0031**  
**In the Madras High Court**

V. Krishnaiyah

APPELLANT

Vs

C. Gajendra Naidu and Others <BR>Sankunni Vs Ikkora  
Kutti

RESPONDENT

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**Date of Decision :** 20-03-1917

**Acts Referred:**

**Citation :** AIR 1918 Mad 513 : (1917) ILR (Mad) 1127

**Hon'ble Judges :** John Wallis, C.J;Oldfield, J

**Bench :** Division Bench

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## **Judgement**

1. This appeal raises an interesting point as to which Mr. Venkatasubba Rao has candidly put the authorities before us. The question is whether

Mr. Justice Bakewell was right in holding that an order of revivor of a decree on the Original Side made against the first defendant u/s 248 of the

old Code was inoperative as against the second defendant to whom no notice went. The term ""revivor"" in the third column of Article 183, as is well

known, refers to the common law practice which prevailed in the Supreme Courts in India under which, if a writ of execution was not sued out

within a year and a day, it was necessary to revive the decree by a process known as scire facias or more fully scire facias quare executionem non

habeas, that is to say by calling on the judgment-debtor to show cause why the plaintiff should not have execution against him. When the CPC

came to be enacted, the rule was embodied in what was Section 248 of the old Code and now Order XXI, Rule 22, under which when an

application for execution is made more than one year after the date of the decree, notice is to go to the persons against whom execution is prayed

requiring him to show cause on a date to be fixed why the decree should not be executed against him. This rule requires notice to go to the person

against whom execution is applied for, and sub Section 6 of the third column of Article 182 of the Limitation Act provides that when such notice has been issued, the date of issue of notice to the person against whom execution is applied for to show cause why the decree should not be executed against him is to form a fresh starting point. We think both on the reason of the thing and on the analogy of the provisions of the Code which apply the doctrine of revivor to India that as regards the revivor of Original Side decrees notice must go to the parties against whom it is sought to revive the decree. The whole doctrine, as is explained in the passage from Blackstons cited in Mr. Justice Bakewell's judgment, had its origin in the presumption of satisfaction which was held to arise when execution had not been applied for within a year after the date of the judgment. As regards Article 182, Explanation 1 in the third column, provides that where the decree or order has been passed severally against more persons than one, the application shall take effect against only such of the said persons or their representatives" as it may be made against. But where the decree has been passed jointly against more persons than one, the application, if made against any one or more of them, or against his or their representatives shall take effect against them all. This only applies to applications under Article 182 which in terms excludes applications such as the present provided for by Article 183.

2. The Explanation refers only to applications under Article 182 and has nothing to do with the revivor of Original Side decrees. For these reasons we think that the judgment of Mr. Justice Bakewell is right and that the appeal must be dismissed with costs of the first respondent.