
(1917) 03 MAD CK 0025
In the Madras High Court

V. Krishnayyah

APPELLANT

Vs

C. Gajendra Naidu and Others

RESPONDENT

Date of Decision : 20-03-1917

Acts Referred:

Limitation Act, 1963 — Article 182

Citation : (1917) ILR (Mad) 1127 : (1917) 6 LW 290 : (1917) 33 MLJ 533

Judgement

1. This appeal raises an interesting point as to which Mr. Venkatasubba Row 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 2ndnd defendant to whom no notice went. The word "revivor" in the third column of Article 183 as is well

known, refers to the common law practice which prevailed in 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 habeat

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, E. 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 day to be fixed why the decree should not be executed against him. This rule requires notice to go against the person against

whom execution is applied for, and the 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 the 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 revival to India that as regards the revival 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 Blackstone 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, Expl. 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 however only applies to applications under Article 182 which, however in terms

excludes applications such as the present provided for by Article 183. The explanation refers only to applications under Article 182 and has

nothing to do with the revival of Original Side decrees.

2. 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 1st

respondent.