

(1923) 08 MAD CK 0046
In the Madras High Court

Vemuri Pitchayya

APPELLANT

Vs

Ankineedu Bahadur Zemindar Garu

RESPONDENT

Date of Decision : 17-08-1923

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 13, Order 21 Rule 17

Citation : AIR 1924 Mad 367 : 76 Ind. Cas. 750 : (1923) 18 LW 739

Hon'ble Judges : Spencer, J;Devadoss, J

Bench : Division Bench

Judgement

Spencer, J.—As the suit is one of a Small Cause nature and the claim is valued at Rs. 388 and odd, no second appeal lies even in the matter

of execution [vide Mavula Ammal v. Mavula Maracoir 30 M. 212 : 17 M.L.J. 376].

2. We are asked to treat the appeal as a revision petition and to revise the order which directs execution to proceed against the appellant's

Immovable properties on the ground that when the execution application was presented, no schedule of Immovable property belonging to the

judgment-debtor was attached to it as prescribed by Order XXI, Rule 13, and that by the time this omission was supplied, 12 years had expired

from the date, of, the decree and execution had become barred u/s 48, Civil Procedure Code.

3. Order XXI, Rule 17, Civil Procedure Code, declares that, on receiving an application for execution, the Court shall ascertain whether the

requirements of Rule 13 among others have been complied with and if they have not been complied with may either reject the application or fix a,

time for the defect to be Remedied. Clause 2 states that in an application is so amended it shall be deemed to be an application in accordance with

law and to have been presented on the date when it was first presented.

4. The Calcutta High Court, in a full Bench decision, *Asgar. Ali v. Troilokya Nath Ghose* 17 C. 631 : 8 Ind. Dec. 960, dissenting from the opinion

previously expressed by Petheram, C.J., in *J.C. Macgregor v. Tarini Churn Sircar* 14 C. 124 : 7 Ind. Dec. 82, took a very strict view of section

245 in the Code of 1882 corresponding to Order XXI, Rule 17; and although, in the present Code the word "amended" has been altered into

defect remedied" and Clause (2) has been added, the Calcutta High Court continues to require a strict compliance with the formalities [See

Salimulla Bahadur v. Sainaddj, Sarkar 22 Ind. Cas. 337 : 18 CRI.L.J. 538] 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, as it might well do if the words were "on

or after receiving." u/s 148 the Court would even have power to extend the time allowed for remedying the defect.

5. In *Varadiah v. Rajakurnara Venkata Perumal* 21 Ind. Cas. 782 : (1914) M.W.N. 137 : 14 M.D.T. 550 : 1914 20 M.L.J. 83 a Bench of this

Court, in a decision to which I was a party, allowed a petitioner to amend his application even at the time of appealing, when without such

amendment it would have been barred by the 12 years rule.

6. This was in harmony with the less rigid view taken by this Court in *Sattappa Chetti v. Jogi Soorappa* 17 M. 67 : 6 Ind. Dec. 46, where it was

held that Section 1145 did not take away the power of the Court to amend the application for execution at any time before disposal.

7. I am of opinion, for these reasons, that there is no reason to exercise our power of revision in the present instance and I would dismiss the Civil

Miscellaneous Second Appeal with costs.

Devadoss, J.

8. I agree.