
(1923) 11 MAD CK 0023
In the Madras High Court

V.R.M. Ramaswami Chettiar

APPELLANT

Vs

Adappa Chettiar

RESPONDENT

Date of Decision : 16-11-1923

Acts Referred:

Citation : AIR 1925 Mad 347

Hon'ble Judges : Spencer, J

Bench : Division Bench

Judgement

Spencer, J.—The suit was one for dissolution of partnership. A preliminary decree had been passed and all that remained to be done was to

take accounts and pass a final decree. At this stage the defendant died on the 30th September, 1920. One of his sons applied on the 6th January,

1921 that he and his brother might be brought on the record. He would have been in time if the Limitation; Act in force at the commencement of

the action, had not been amended by the alteration of the period prescribed under Article 177, Limitation Act, from six months to ninety days. The

Court was closed for Christmas holidays, and a few days after it re-opened, the petitioner made this application. In a suit of this nature the

distinction between plaintiffs and defendants is not so marked as in suits where only the defendant must pay if the plaintiff obtains a decree.

2. It was essential that all parties concerned should be on the record and the Court could have, under Order 1, Rule 10 of the Code of Civil

Procedure, added any person whose presence was necessary for finally determining the matters in issue Vide Lakshmichand Rewachand v.

Kachubhai Gulabchand (1911) 35 Bom. 303. The petitioner was two days late in his application.

3. He might reasonably have expected that the plaintiff or the Court would have taken steps to bring the representatives of the deceased defendant

on the record. There was also the circumstance that the limitation period had been reduced, a fact of which it is not shown that he was aware.

4. Under all these circumstances, I cannot regard the action of the lower Court in dismissing both the application and the subsequent petition to set

aside abatement as taken with a due exercise of discretion and in the interests of justice.

9. I set aside the order in question and direct the District Munsiff to add the legal representatives of the deceased defendant and proceed with the

suit.

10. The respondent will pay the petitioner's costs in this Court and bear his own.