

Rama and anr. Vs. Varada

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Court : Chennai

Decided On : May-02-1892

Reported in : (1893)ILR16Mad142

Judge : Muttusami Ayyar and ;Best, JJ.

Appellant : Rama and anr.

Respondent : Varada

Judgement :

1. It is argued that the application for execution is barred by reason of the application of 1889 having been returned for amendment with reference to Clause (f) of Section 235 of the Code, and the amendment not having been made within the time allowed for the purpose. The defect in the previous application consisted in omitting to state the earlier of two previous applications and its result. It is admitted that this omission was in no way calculated to prejudice the judgment-debtor or to mislead the Court; such being the case, though the application was formally defective with reference to the provisions of Section 235, it substantially complied with them.

2. We are, therefore, unable to hold that it was not an application made in accordance with law within the meaning of Article 179 of schedule II of the Limitation Act. This view is in accordance with the decision in Ramanadan v. Periatambi I.L.R. 6 Mad. 250.

3. Our attention has been drawn to the decision of a Full bench of the Calcutta High Court in Asgar Ali v. Troilokya Nath Ghose I.L.R. 17 Cal. 631 but in that case the defect was not merely formal. The property sought to be attached was not fully described nor was a list of such property produced.

4. We dismiss this appeal with costs.

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