

Baswan Vs. A.R. Rangaswami

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Court : Chennai

Decided On : Aug-08-1924

Reported in : AIR1925Mad714

Appellant : Baswan

Respondent : A.R. Rangaswami

Judgement :

Jackson, J.

1. Appeal against the order of the District Judge of Coimbatore, in C.A. No. 67 of 1922 setting aside the order of the Subordinate Judge of Nilgiris, in E.P. No. 722 of 1921. The respondent got a decree on 6th July, 1912. He applied for execution on 5th July, 1915. Again on 3rd January, 1919, he applied for execution and was asked to explain how the application was not time-barred. He explained that he relied upon two payments, made on 10th May, 1916 and 15th August, 1918. Then the application was dismissed, because 'the delay in re-presentation was too great.' He had been given time till 30th March, 1921 and made his re-presentation on 30th March, 1921. So the order is difficult to explain. But that is how it stands. On 27th June, 1921, he made another application the validity of which was upheld by the lower Appellate Court and is now attacked. The ground of attack is that the application, of 3rd January, 1919, was not filed and amended in time, as ordered by the lower Court, and therefore, it is not a step in-aid of execution. It was filed

and amended in time, but nevertheless it was rejected. This does not prevent its being reckoned as a step in-aid of execution, a proposition which hardly needs legal authority, but may be supported by rulings in *Narayanaswami Naidu Garu v. Krovidi Gantayya* (1916) M.W.N. 865 and *Gopisetti Narayanaswami Naidu Garu v. Muthyala Venkataratnam* (1915) 2 L.W. 1207 and *Seshayya v. Venkata Subbiah* (1915) 2 L.W. 540. In argument, a fresh ground was developed, that the application of 3rd January, 1919 was not in accordance with law, because the payments, which saved it from being barred, were not made for interest as such. The lower Appellate Court has found that these payments were for interest as such and I am not prepared to say, that the presumption on which its finding is based is so entirely without foundation, as to warrant its being traversed in Second Appeal. But apart from that it is too late to impugn the application of 3rd January 1919, which on its face is an application, in accordance with law, on the ground that payments, which are found to be genuine, were not payments for interest as such.

2. The appeal fails and is dismissed with costs.

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