

AMMU  
v.  
RAMAKISHNA  
SÁSTRÍ.

to be the property of Government and granted it to the appellant as a ryot of the Government, and thereafter the appellant was not estopped from contending that the interest of her former landlord had expired.

The appeal must then be allowed and the decree of the Lower Appellate Court, so far as it reversed the decree of the Munsif, reversed and the suit dismissed with costs as against the appellant.

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## APPELLATE CIVIL.

*Before Mr. Justice Innes and Mr. Justice Muttusámi Áyyar.*

1879.  
May 7.

LAKSHMI (FIRST PLAINTIFF), PAUPER APPELLANT, v. ANANTA SHANBAGA (DEFENDANT), RESPONDENT.\*

In the Limitation Act it was intended to draw a clear-distinction between what are styled 'applications' and what are styled 'appeals.'

The language of the Limitation Act precludes any other construction than that while a pauper may apply for a review of judgment with the same indulgence as to delay in making the application as a person who is not a pauper, yet, in making his application for leave to appeal, similar indulgence is not extended to him.

THIS was an application for leave to appeal as a pauper.

*A. Rámachandráyyár* for the Pauper Appellant.

*C. Rámachandra Ráú Sáib* for the Respondent.

The facts and arguments are set forth in the following

JUDGMENT :—In this case the preliminary objection was taken that the application for leave to appeal as a pauper was barred at the time the order was made to admit the pauper appeal, and that the Court has no jurisdiction to entertain the appeal.

The decree was passed on the 21st December 1877 and the application for leave to appeal as a pauper was not made till 25th July 1878. Article 170 of the 3rd Division of the 2nd Schedule allows only 30 days from the date of the decree. Section 12 allows the day on which the judgment was pronounced and the time requisite for obtaining a copy of the decree to be excluded from the period between the date of the decree and the date on which

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\* Appeal No. 71 of 1878 against the decree of K. Krishna Menon, Subordinate Judge of South Canara, dated 21st December 1877.

the application was made; but, after excluding this period, there was still a delay of 66 days over and above the 30 days allowed.

Section 5 of the Limitation Act authorizes the admission of an appeal or application for review after the prescribed period, if sufficient cause be shown for the intermediate delay, but the section does not in express terms admit of the same indulgence being shown in the case of a pauper application so presented.

It is contended, however, on the language of the explanation to Section 4 that the word 'appeal' in Section 5 includes the application for leave to appeal as a pauper, because it is said in that explanation that "a suit is instituted in ordinary cases when the plaint is presented to the proper officer; in the case of a pauper when his application for leave to sue as a pauper is filed, and what applies to original pauper suits as to their starting-point must be intended to apply equally to appeals." But, if this were so, Article 170 would be objectless. Because the 'appeal' would then be presented when the 'application' was filed and the time allowed for appealing would be 90 days under Article 156, applicable to 'appeals.'

Having regard also to the language of the Act throughout, it would appear that it was intended to draw a clear distinction between what are styled 'applications' and what are styled 'appeals.' Separate portions of the schedules are allotted to appeals and applications respectively.

In Section 4 of the Act, suits, appeals and applications are mentioned separately in terms which are certainly unfavorable to the supposition that it can have been intended to confound applications with appeals in the very next section.

Then again in Section 12, an appeal, an application for leave to appeal as a pauper, and an application for a review of judgment are separately named, and the language used does not leave room for the hypothesis suggested that, in Section 5, it was intended to class an application for leave to appeal as a pauper under the head of appeals.

Although, therefore, it may appear strange that the same indulgence should not be shown to a pauper applying for leave to appeal as to an ordinary appellant, and that, while a pauper may apply for a review of judgment with the same indulgence as

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to delay in making the application as a person who is not a pauper, yet, in making his application for leave to appeal, similar indulgence is not extended to him, the language of the Act precludes, we think, any other construction of it upon this question than that contended for, and under Section 4 of the Limitation Act it is necessary to dismiss the appeal.

We must dismiss it with costs.

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## APPELLATE CIVIL.

*Before Mr. Justice Innes (Officiating Chief Justice) and Mr. Justice Muttusami Ayyar.*

1879.  
August 1.

VENKATÁCHALAM CHETTI (PLAINTIFF), APPELLANT, v. ANDI-APPAN AMBALAM AND 27 OTHERS (DEFENDANTS), RESPONDENTS.\*

*Land in possession of a tenant—Criminal trespass—Right of the landlord to sue.*

Many of the tenures in India are in the nature of a partnership, in which he to whom the land belongs participates with the cultivators in the crop. Therefore the law of England, that a landlord who has parted with his possession to a tenant cannot sue in trespass for damage to the property, unless the wrongful act complained of imports a damage to the reversionary interests, does not apply to landlords in India.

THIS was an appeal against the decree of K. Krishnasami Ráu, Subordinate Judge of Madura, in Original Suit No. 6 of 1877.

The plaintiff alleged that the land in dispute belonged to the Mahajanams of the village of Kalanivasal; that he acquired possession thereof in 1874 under an agreement and a mortgage instrument executed by the latter; that his tenants cultivated it for him; and that the defendants, in January 1876, trespassed on his property and wrongfully carried away the produce raised by his tenants in Fasli 1285 (1875-76). The plaintiff claimed Rs. 5,150-6-6 for damages for loss of produce. The defendants denied the plaintiff's right and that of the Mahajanams to possession of the property, and pleaded their right of occupancy. The plaintiff's tenants, who cultivated the land in Fasli 1285 (1875-76),

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\* Appeal No. 97 of 1878 against the decree of K. Krishnasami Ráu, Subordinate Judge of Madura, dated 5th August 1878.