

[3 Mad. 92.]
APPELLATE CIVIL.

The 15th November, 1880.

PRESENT :

MR. JUSTICE KINDERSLEY AND MR. JUSTICE MUTTUSAMI AYYAR.

Thir Sing.....(Third Defendant) Appellant.

versus

Venkataramier and another.....(Plaintiffs) Respondents.*

Madras Boundary Act—Decision appealed from—Section 5, Limitation Act IX 1871.

The exceptions contained in Section 5 of Act IX of 1871 apply only to cases dealt with under the General Act of Limitation.

In the absence of a special provision applicable to special laws, the general rule that when limitation once begins to run, it continues to run, and its operation is not liable to be suspended either on Sundays, holidays, or during the recess of Courts, is applicable.

Under Section 25 of the Boundary Act (Madras Act XXVIII of 1860) the decision against which an appeal is allowed in the form of a regular suit is the original decision of the Settlement Officer, and not that of his superior passed on revision; and unless time is extended by the Governor in Council, the appeal must be brought within two calendar months from the date of the original decision.

THE facts and arguments in this case sufficiently appear in the **Judgment** of the Court (KINDERSLEY and MUTTUSAMI AYYAR, JJ).

Mr. *Shepherd* and *T. Rama Rau* for the Appellant.

[93] The Advocate-General (Hon. *P. O'Sullivan*) and *R. Balaji Rau* for the Respondents.

Muttusami Ayyar, J. (Kindersley, J., concurring):—This was a suit to set aside the decision of a Revenue Settlement Officer, passed on the 12th September 1876, under Section 25 of *Madras Act XXVIII of 1860*, and to recover, together with compensation of loss of produce, possession of the hill in dispute. The villages of *Nakkalapalli* and *Icanthankattapalli* are contiguous to one another, and the first-mentioned village is part of *Santarapalli* Mitta, owned by the plaintiffs, and the other village is included in the Mitta of *Icanthankattapalli*, which is the property of the defendants. When the property now in litigation was demarcated in 1873, the plaintiffs and the defendants claimed it, the one as part of the village of *Nakkalapalli*, and the other as included in the village of *Kottapalli*. It was admitted, however, on both sides that the southern boundary of *Nakkalapalli* was a place described in the ayakat account (L) as *Kottapalli Errabanda*, and the contest between the parties to this suit was whether the hill marked A in the Demarcation sketch (Exhibit XXX), or what is shown therein as *Manjakkal*, is the "Errabanda" mentioned in the ayakat account. In May 1873 one *Kesava Mudali*, Acting Inspector of the Demarcation Department, made a report on the subject, and on the 12th September 1876 the Deputy Superin-

* Second Appeal, No. 381 of 1879, from the decree of the Subordinate Judge of Salem, confirming the decree of the District Munsif of Dharmapuri, dated 22nd March 1879.

tendent of the Revenue Survey passed a decision in favour of the defendants under Section 25 of Act XXVIII of 1860. This decision was on appeal confirmed by the Superintendent of the Revenue Survey on the 23rd October 1876, and on the 13th November 1876, the 12th being Sunday, the plaintiffs brought this suit. Defendants pleaded *inter alia* that the suit was barred by the *General Act of Limitation* and by Section 25 of *Madras Act XXVIII of 1860*. Both the Courts below have found that the defendant's possession did not extend over a period of 12 years, and the suit is therefore not barred by the *General Act of Limitation* (IX of 1871).

Section 25 of *Madras Act XXVIII of 1860*, however, enacts that the decision of the Settlement Officer, subject to the revision of the authority to whom the said Officer is immediately subordinate, shall be considered as the determination of all claims and disputes until set aside by a formal decree of a Civil Court, and [94] that an appeal shall lie to the Civil Courts from such decision by regular suit, provided it be preferred within two calendar months from the passing of the same, and provided also that it shall be lawful to the Governor in Council, on just and reasonable cause for the same being shown, to extend the period for such appeal within such period as may seem proper.

It seems to me that according to the true construction of Section 25, the decision against which an appeal is allowed in the form of a regular suit is the original decision of the Settlement Officer, and not that of his superior passed on revision, and that the plaintiffs must fail unless their suit was brought within two months from the date of that decision, or the appeal time was extended by the Governor in Council. The Lower Courts are therefore wrong in holding that the plaintiffs were entitled to two months from the date of the decision of the Superintendent of the Revenue Survey, or 23rd October 1876. This being so, the next question for decision is whether the plaintiffs are entitled to exclude the 12th November in computing the period of two months from the 12th September, the date on which the Settlement Officer passed a decision under Section 25, Act XXVIII of 1860. If the Sunday might be excluded, the suit would be brought in time, and, if not, it would be brought a day too late.

The Court of First Instance held that the Sunday ought to be excluded, and relied on Section 5, Act IX of 1871. But it is to be observed that Section 5 applies to cases dealt with under the *General Act of Limitation*, and that, in the absence of a special provision applicable to special laws, the general rule that when limitation once begins to run, it continues to run, and its operation is not liable to be suspended either on Sundays, or holidays, or during the recess of Courts, is applicable. It was open to the plaintiffs to have obtained an extension of the statutory period from Government, but they have not done so.

For these reasons I think that the Judgments of the Lower Courts should be reversed, and that the suit should be dismissed with costs on the ground that it is barred by section 25, *Madras Act XXVIII of 1860*.

NOTES.

[INTERPRETATION OF STATUTES—

“ Exceptions provided under a general Act are not applicable to special Acts which provide special limitations for themselves.”

(A) REGISTRATION ACT—

1. When a suit by a minor to enforce registration was filed after the 30 days prescribed under sec. 77, Sec. 7 of the Limitation Act will not apply :— (1893) 18 Mad. 99 F. B.

NOTE.—*Quere*, if this ruling obtains in cases under the cognate Act XIX of 1863

2. When limitation expired on the day on which Court was closed and the suit under the Registration Act, Sec. 77 was filed the next day, *held* Sec. 5 of the Limitation Act cannot be made applicable to the Registration Act :—(1896) 20 Mad. 249.
3. Time occupied by a review petition against the order refusing to register a document was not excluded for purposes of limitation under Sec. 77 of the Registration Act and Sec. 14 of the Limitation Act was held inapplicable to the case :—(1903) 30 Cal. 532. *See also* (1889) 17 Cal. 263 ; (1891) 18 Cal. 368.
4. Time for obtaining copies of judgment for purposes of filing a suit to compel registration was not excluded as provided under the Limitation Act :—(1902) 24 All. 402.

(B) RENT RECOVERY ACT—

1. Suit to set aside distraint under Sec. 15 of the Rent Recovery Act was filed on the 31st day, the previous day being a Sunday. *Held* that the Limitation Act was not applicable to the case but that the suit was not barred under the well recognized general rule, *viz.*, “where parties are prevented from doing a thing in Court on a particular day, not by any act of their own, but by the act of the Court itself, they are entitled to do it at the first subsequent opportunity :”—(1898) 22 Mad. 179.
- (2) Time for obtaining copies not excused for purposes of the Rent Recovery Act (Sec. 18):— (1897) 20 Mad. 476.

(C) MADRAS FOREST ACT—

In (1887) 10 Mad. 210, Sec. 5 of the Limitation Act was held inapplicable for purposes of this Act.

(D) MADRAS BOUNDARIES ACT—

See (1888) 12 Mad. 1, where the same principle is recognized.

BOMBAY VIEW—

This principle was not recognized in (1884) 8 Bom. 529. But it was doubted in (1905) 30 Bom. 275 by Chandavarkar, J. sitting as a single judge.】

[95] APPELLATE CIVIL.

The 1st December, 1880.

PRESENT :

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND MR. JUSTICE KINDERSLEY.

Mujavar Ibrambibi.....(Plaintiff) Appellant.

versus

Mujavar Hussain Sheriff and another.....(Defendants) Respondents.*

Muhammadian religious endowment—Management of, by woman.

A woman is not competent to perform the duties of Mujavar of a durga which are not of a secular nature.

THIS was a suit brought by a Muhammadian lady to establish her right to share with her brothers, the defendants, in the produce of certain lands, and to recover Rupees 573 for arrears of mesne profits for 1877 and 1878. The lands had

* R. A. 34 of 1880 from the decree of J. Wallace, Acting District Judge of Ganjam, dated 28th January 1880.