

High Court in *Peary Mohun Chowdhry v. Romesh Chunder Nundy* (1). In the view of the case which we take, it is not necessary to consider whether article 12 or 11 of the second schedule to the Limitation Act governs the case.

The second appeal fails and is dismissed with costs.

RANGASAMI
CHETTI
v.
PERIASAMI
MUDALI.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

GNANASAMMANDA PANDARAM (PLAINTIFF), PETITIONER,

v.

PALANIYANDI PILLAI (DEFENDANT), RESPONDENT.*

1893.
Sept. 11.

Limitation Act—Act XV of 1877, s. 25—Date from which time runs.

A registered lease provided that the rent should be paid on 30th Masi Tharana. The month Masi in the year Tharana ended on the 29th day, which corresponded with 11th March 1885. A suit to recover the rent was filed on 12th March 1891:

Held, that the suit was not barred by limitation.

PETITION under Provincial Small Cause Courts Act, 1887, section 25, praying the High Court to revise the proceedings of T. M. Ranga Chari, District Munsif of Trichinopoly, in small cause suit No. 538 of 1891.

Suit for rent. The District Munsif dismissed the suit as barred by limitation. He said:—"The rent sued on was payable "within 30th Masi Tharana according to the rent deed. Now, "there was no such day as 30th Masi in the year Tharana, the "month having ended with 29th Masi. Therefore time began "to run from 29th Masi Tharana, equivalent to 11th March "1885. See on this point *Migotti v. Cobvill*(2), quoted in *Mitra's* "Limitation, 2nd Edition. The rent deed being registered, plain- "tiff had six years from 11th March 1885. Plaintiff should have "launched this suit on 11th March 1891, whereas the plaint was "put into Court only on the succeeding day, namely, 12th March "1891. The suit is then time-barred. On this ground the suit "is dismissed with costs."

(1) I.L.R., 15 Calo., 371.

* Civil Revision Petition No. 257 of 1892.

(2) L.R., 4 C.P.D., 233.

GNANASAM-
MANDA
PANDARAM
*
PALANIYANDI
PILLAI.

Plaintiff preferred this petition.

Krishnasawmi Ayyar for petitioner.

Parthasaradhi Ayyangar and *Srirangachariar* for respondent.

JUDGMENT.—The question is whether the claim is barred by limitation. If there had been thirty days in Masi of the year Tharana, the suit would not be barred; but in the year Tharana there happened to have been only twenty-nine days in Masi. Following the decision in *Almas Banev v. Mahomed Ruja*(1), we hold that the suit brought on the 12th March 1891 is not barred. The decision in *Migott v. Colvill*(2), referred to by the District Munsif, relates to computation of a sentence on a prisoner and is not in point.

We set aside the decree of the District Munsif and remand the suit for disposal on merits.

The costs hitherto will abide and follow the result.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

NARAYANASAMI NAIDU (DEFENDANT NO. 3), APPELLANT,

v.

NARAYANA RAU (PLAINTIFF), RESPONDENT.*

Mortgage—Extinguishment of incumbrances—Suit by puisne incumbrancer—Decree for sale—Contract Act—Act IX of 1872, s. 74—Penal sum.

In March 1881 A purchased certain land and, in the same month, mortgaged it to B. In June the land was attached in execution of a decree. In August A discharged the judgment-debt with money borrowed from C, and he hypothecated the land to him to secure repayment of the loan.

In 1882 B brought a suit on his mortgage and obtained a decree, in execution of which the land was brought to sale and purchased by him: C was not a party to this suit. In 1886 B sold the land to D under an instrument, which recited that out of the purchase-money Rs. 760 were retained by the purchaser for payment of prior encumbrances, and the finding was that the purchaser undertook to pay the debt owing to C. C now sued A and D to enforce his hypothecation:

Held, that C was entitled to a decree for sale.

(1) I.L.R., 6 Cal., 239.

(2) L.R., 4 C.P.D., 233.

*. Second Appeal No. 338 of 1892.