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Criminal Procedure Code. The 'adultery' there contemplated is, I think, adultery in the popular sense of the term, viz. :—a breach of the matrimonial tie by either party.

I would not, however, be understood to imply that a Magistrate ought, as a matter of course, to decree maintenance for a wife who refuses to live with her husband, solely because he has been guilty of an isolated act or acts of adultery or even because he keeps a concubine. The words "living in adultery" imply a course of action more or less continuous. Moreover, a discretion is vested in the Magistrate. He 'may,' not he 'shall,' make an order, &c. He has, then, a discretion to consider and be guided by the social ideas and feelings of the community to which the parties belong. Concubinage is, within certain limits, recognized both by Hindu and Muhammadan Law, and is not in all circumstances reprobated by the public opinion of those communities. It follows that the keeping of a concubine is not necessarily and in all circumstances, to be regarded by the Magistrate as a sufficient reason for a woman refusing to live with her husband, though it is equally clear that a Magistrate may in certain circumstances regard it as a sufficient reason, and award separate maintenance to the wife. The Magistrate must be guided by all the facts and circumstances of each case and with due regard to the social ideas and customs of the community to which the parties belong. With these remarks, I would answer the reference in the affirmative.

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## APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and  
Mr. Justice Shephard.*

KUMARA AKKAPPA NAYANIM BAHADUR (DEPENDANT),

APPELLANT,

v.

SITHALA NAIDU (PLAINTIFF), RESPONDENT.\*

*Limitation Act—Act XV of 1877, ss. 6, 12—Rent Recovery Act—Act VIII of 1865 (Madras), ss. 18, 69—Deduction of time occupied in obtaining copy of judgment appealed against.*

A tenant whose property had been distrained for arrears of rent sued under Rent Recovery Act, s. 18, by way of appeal against the distraint. The Revenue

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\* Second Appeal No. 1104 of 1896.

Court decided in his favour. The landlord preferred an appeal under section 69 more than 30 days after the date when the decision was pronounced. He claimed that the time occupied in procuring a copy of the judgment appealed against should be deducted in the computation of the 30 days' period of limitation :

*Held*, that the appellant was not entitled to have the deduction made, and that the appeal was barred by limitation.

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SECOND APPEAL against the decree of E. J. Sewell, Acting District Judge of North Arcot, in Appeal Suit No. 320 of 1895, affirming the decree of R. F. Grimley, Head Assistant Collector of North Arcot, in Summary Suit No. 672 of 1894.

The plaintiff was a tenant of the Raja of Kalahasti, who had distrained movable property of the plaintiff for arrears of rent due by him. This was a summary suit brought by him before the Head Assistant Collector by way of appeal against the distraint. On the 10th April 1895 the Head Assistant Collector pronounced judgment in favour of the plaintiff. The defendant appealed to the District Judge under section 69 of the Act, the appeal being filed on the 14th May. In bar of the 30 days' rule of limitation the appellant claimed that the time occupied in obtaining a copy of the judgment appealed against should be deducted. The District Judge held that the appellant was not entitled to have this deduction made and dismissed the suit as being barred by limitation.

Defendant preferred the second appeal.

Mr. *Stephen Andy* and *Sundara Ayyar* for appellant.

*Mahadeva Ayyar* for respondent.

COLLINS, C.J.—The appeal to the Lower Appellate Court was filed under section 69 of Act VIII of 1865, and it was objected that the appeal was out of time, having been presented more than 30 days after the date of the Collector's judgment. It was contended by the appellant that the time taken in obtaining copies of the judgment must be deducted and if that was done the appeal would be within time. The question to be decided is—does section 12 of the Limitation Act apply to an appeal filed under section 69 of Act VIII of 1865, the Rent Recovery Act. Section 69 enacts that a regular appeal shall lie to the Zillah Judge from all judgments passed by a Collector under this Act, provided that the appeal be presented within 30 days from the date of the Collector's judgment. It may be here noticed that the section does not require the appellant when filing the appeal to file therewith a copy of the decree or judgment appealed against.

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Section 12 of the Limitation Act is to the effect that, in computing the period of limitation prescribed for an appeal, the time requisite for obtaining a copy of the decree and judgment shall be excluded. This provision can only be held to apply, where it is necessary to file with such appeal a copy of the decree or judgment. It appears to me, however, that the point has been decided. *Syed Mohidin Hussen Saheb in re*(1), *Krishnasami Muppanor v. Sankara Row Peshvir*(2) and *Sri Raja Gopala Krishna v. Ramireddi*(3) are authorities in favour of the argument that section 12 of the Limitation Act does not control the time fixed for appealing by section 69 of Act VIII of 1865. See also *Veeramma v. Abbiah*(4).

Another argument might also be used that the Rent Recovery Act is an Act complete in itself and therefore section 12 of the Limitation Act does not apply (*Nagendro Nath Mullick v. Mathura Mohun Parhi*(5) and *Veeramma v. Abbiah*(4)). This appeal must be dismissed with costs.

SHEPARD, J.—The question to be decided is whether the provisions of section 12 of the Limitation Act are applicable to an appeal filed under the provisions of section 69 of Act VIII of 1865. The suit, in this case, was a summary suit filed, under section 18 of the latter Act, by the tenant who sought to have certain property released from distraint. The District Judge held that the appeal petition having been presented more than 30 days after the date of the judgment, could not be entertained, because under section 69 of the same Act any appeal from the judgment passed by the Collector, under the Act, must be presented within 30 days from the date of the Collector's judgment. As far as the decisions in this Court are concerned, there can be no doubt that the District Judge is right. In two cases the question now raised was decided with reference to the Limitation Act of 1871 (*Syed Mohidin Hussen Saheb in re*(1), *Krishnasami Muppanor v. Sankara Row Peshvir*(2)). In the latter of these cases it was decided that an appelland proceeding under the Rent Act was not entitled to any enlargement of the period of 30 days laid down by section 69. These cases have been followed in a recent case *Sri Raja Gopala Krishna v. Ramireddi*(3). It is now contended that

(1) 8 M.H.C.R., 44.

(2) The Madras Law Reporter, 271.

(3) S.A. No. 1250 of 1895, unreported.

(4) I.L.R., 18 Mad., 99.

(5) I.L.R., 18 Cal., 368.

the law laid down in the earlier cases has since the passing of the Limitation Act of 1877, ceased to be in force and reference is particularly made to the alteration of the language of section 6 of the present Act as compared with the section 6 of the Act of 1871. In *Syed Mohidin Hussen Sahib in re*(1) it is pointed out that there is no provision in the Rent Act similar to that in the Civil Procedure Code requiring the appellant to produce, with the petition of appeal, a copy of the decree appealed against. This being so, I think, it follows that section 12 of the Limitation Act can have no application. This was the view taken in the Full Bench case in Allahabad, *Fusal Mahanmad v. Plul Kuar*(2), where an appeal under clause 10 of the Letters Patent was in question.

Another ground on which the judgment of the District Judge may be supported is that Act VIII of 1865 is an enactment dealing with a special subject and intended, so far as the provisions of the Act go, to be a complete body of law. The Act is entitled an Act to consolidate and improve the laws which define the process to be taken for the recovery of rent. Under it, suits may be brought by either landlord or tenant to decide disputes regarding arrears of rent and other questions arising between them; for such summary suits, section 51 provides that they must be brought within 30 days from the date of the cause of action. Section 40 provides for the case of a summary suit by a tenant against whom the landlord has threatened sale for arrears of rent. Such suit is to be brought within one month from the date of service of notice on the defaulter. Section 69 already cited contains a general provision for the case of an appeal to the Zillah Judge from the judgment passed by the Collector under the Act. Section 78 provides for the case of an action to recover money paid or damages with respect to anything done under the authority of the Act and requires that any such action in the Civil Court must be brought within six months from the time when the cause of action arose. It appears to me that the observations made in the case of *Unnoda Persaud Mookerjee v. Kristo Coomar Moitra*(3) apply to this enactment. There the Judicial Committee was dealing with the Limitation Act (Act XIV of 1859) in connection with the Bengal Rent Act X of 1859. The Judicial Committee considered that the appeal under the latter Act was governed by the provisions of that Act and not

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(1) 8 M.H.C.R., 44.

(2) I.L.R., 2 All., 192.

(3) 15 B.L.R., 60.

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by those of the general law. They regarded Act X of 1859 as forming a special and complete act of procedure with regard to the trial of questions relating to rent and the occupancy of land in the mofussil and by which all the proceedings before the Collector were regulated and governed. In conformity with this decision the Full Bench of the Calcutta High Court has held that the provisions of section 14 of the Limitation Act cannot be taken advantage of by a plaintiff proceeding against his tenant under Act X of 1859 (*Nagendro Nath Mullick v. Mathura Mohun Parhi*(1)). Section 14 like section 12 appears in Part III of the Act under the heading "Computation of Period of Limitation" and as far as the present question is concerned no distinction can be drawn between the language of the two sections.

With regard to the argument founded on section 6 of the Act of 1877, I adhere to the opinion expressed by me in *Veeramma v. Abbiah*(2). Here we are in effect asked to read instead of the words "from the date of the Collector's judgment" in section 69 the words "from the date when the copy of that judgment should be obtained." I cannot see how it can be said that the period of 30 days prescribed by the special law enacted in Act VIII of 1865 would not be effected by reading into section 69, the provisions of section 12 of the Limitation Act. It does not appear to me correct to say that the Legislature has reverted to the language of Act XIV of 1859. For it is one thing to say as is said in section 3 of that Act that the shorter period of limitation specially prescribed for any class of suits shall be applied notwithstanding that Act. It is another thing to say as is said in the Act of 1877 that the period of limitation specially prescribed by an existing enactment shall not be affected or altered by any provision of the Act of 1877. For these reasons, I think, the second appeal ought to be dismissed with costs.

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(1) I.L.R., 18 Calc., 368.

(2) I.L.R., 18 Mad., 99.