

On appeal, the District Judge affirmed the decision of the District Munsif on the ground (not taken by the defendant) that the plaintiffs had no right to maintain the suit even if the will was genuine.

SESHAMMA
v.
CHENNAPPA

The plaintiffs preferred this second appeal.

Sundara Ayyar for appellants.

Srirangachariar for respondent.

JUDGMENT.—We are not satisfied that this is a case in which the plaintiffs would be entitled to probate as executors by implication. The duties which the plaintiffs are directed to perform are not specifically the duties of an executor. It is not the administration of the estate which they are told to carry out. But rather it is as guardians of the child whose adoption is contemplated that they are intended to act. We think, it is quite clear, that there was no intention to vest any property in them. They were only directed to protect the property during the minority. For these reasons, we think that the suit is wrongly brought in the name of the plaintiffs as executors. But as the objection was not taken in the Court of First Instance, and was apparently taken by the Judge himself, we think the suit ought not to have been dismissed without giving the plaintiffs an opportunity to amend. We shall now allow the amendment which, we think, the Judge ought to have allowed and which, if it had been allowed, would have saved the suit from any danger of limitation. The amendment will take the form of substituting the minor son as plaintiff with one of the present plaintiffs as next friends.

The decree of the Judge must be reversed and the appeal remanded for disposal on the merits. Costs will be provided for in the revised decree.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Benson.

BOYAMMA (PLAINTIFF), APPELLANT,

v.

BALAJEE RAU (DEFENDANT No. 9), RESPONDENT.*

Limitation Act—Act XV of 1877, s. 4—Gazetted holiday—Computation of time.

In calculating the time allowed by law for the presentation of an appeal to a

1897.
September
27.

* Appeal against Appellate Order No. 8 of 1897.

BOYAMMA
v.
BALAJEE
RAU.

District Court, an appellant is entitled to deduct the last day being a gazetted holiday, although the District Judge held his Court on that day.

APPEAL against the order of E. J. Sewell, Acting District Judge of North Arcot, in Miscellaneous Appeal No. 11 of 1895, dismissing, as being barred by limitation, an appeal preferred against the order of T. Sami Ayyar, District Munsif of Chittoor, on execution petition No. 129 of 1895.

Ponnusami Ayyangar and *Subramania Ayyar* for appellant.

Respondent was not represented.

JUDGMENT.—We do not think that the fact that the District Judge held Court on a gazetted holiday is sufficient to disentitle the appellant to regard the day as *dies non* in calculating the time allowed by law for presenting an appeal.

We, therefore, set aside the order of the District Judge refusing to admit the appeal and direct him to now admit it and dispose of it according to law.

Costs will abide and follow the result.

APPELLATE CRIMINAL—FULL BENCH.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, Mr. Justice Shephard, Mr. Justice Subramania Ayyar and Mr. Justice Benson.

IN CRIMINAL REVISION CASE No. 472 OF 1896.

GANTAPALLI APPALAMMA

v.

GANTAPALLI YELLAYYA.*

IN CRIMINAL REVISION CASE No. 505 OF 1896.

PERIANAYAGAM

v.

KRISHNA CHETTI.*

Criminal Procedure Code—Act X of 1892, s. 488—Maintenance—Adultery.

Adultery on the part of the husband, not being such adultery as would be punishable under Indian Penal Code, may nevertheless constitute sufficient cause for the wife separating from her husband and enable her to claim maintenance under Criminal Procedure Code, section 488.

* Criminal Revision Cases Nos. 472 and 505 of 1896.