

however, that article does apply, then we are disposed to adopt the view of the learned Judges in *Fuckorudeen Mahomed Ahsan v. Mohina Chunder Chowdhery* (1) and to hold that time begins to run from the date of the payment to the decree-holder, not from the date of the realization of the money by the Court. If article 61 does not apply, then the case falls under the general article No. 120, and the plaintiffs have six years within which to bring their suit. In any view, therefore, the suit is in time.

We confirm the decree of the Lower Appellate Court and dismiss this second appeal with costs.

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## APPELLATE CIVIL.

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

KANAKAMMAL AND OTHERS (DEFENDANTS), APPELLANTS,

v.

RANGACHARIAR AND ANOTHER (PLAINTIFFS), RESPONDENTS.\*

1896.  
September  
18.

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*Civil Procedure Code, s. 562—Remand—Preliminary point.*

Where a District Munsif, without entering into the merits of a case, dismissed a suit on the ground that the plaintiffs had no cause of action, and on appeal the Appellate Court reversed his decree and remanded the case:

*Held*, that the suit had been disposed of upon a preliminary point within the meaning of section 562, Civil Procedure Code, and that the remand was right.

APPEAL against the order of P. Narayanasami Ayyar, Subordinate Judge at Negapatam, in appeal suit No. 18 of 1895, reversing the decree of N. Sambasiva Ayyar, District Munsif of Trivadi, in original suit No. 38 of 1894.

The facts of the case were as follows:—

“Suit to declare that the alienation made by first defendant to second defendant and the alienations by second defendant to the other defendants Nos. 3 to 5 of the plaint lands are not valid as against plaintiffs who are entitled to succeed to them on first defendant’s death.

“The property in dispute belonged to one Allundu Krishna-machariar. He left a daughter named Kanakammal. Her

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(1) I.L.R., 4 Cal., 529.

\* Appeal against order No. 174 of 1895.

KANAKAMMAL  
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“husband Srinivasachariar left two sons Srinivasaraghavachariar and Venkatachariar. The former had two sons Rangachariar and Raghavachariar. The former is the first plaintiff in this suit and the latter having died, his son is the second plaintiff. The said Kanakammal is the first defendant. Venkatachariar the second defendant and defendants Nos. 3 to 5 are the alienees under second defendant. The plaintiffs' case is that the property in dispute was made a gift of by Allundu Krishnamachariar in 1858 Srinivasaraghavachariar, his grandson by his daughter, that patta was transferred to his name that he enjoyed the property up to 14th February 1875, when he executed a will devising it in favour of his mother, the first defendant, for her maintenance that she continued to enjoy the property up to 17th August 1888, when she executed a deed of settlement making a gift of it in favour of second defendant who since alienated the property to defendants Nos. 3 to 5.

“The defendants deny the said gift of 1858 and state that the property devolved on first defendant by right of inheritance from her father, that plaintiffs have no right to the property and that the second defendant is first defendant's reversioner.

“The District Munsif dismissed the suit on the preliminary point that plaintiffs have no cause of action to bring this suit and they appeal.”

On appeal the Subordinate Judge reversed the decree of the Munsif and remanded the suit to be disposed of on the merits.

Exhibit I was as follows:—

“Settlement-deed, dated 17th August 1888, executed by me, Kanakammal, wife of Chakravarthi Sreenivasachariar, caste Brahmin, religion Vishnavite, housewife, residing at Periatheru (Big street), Kumbakonam, in favour of my son Chakravarthi Venkatachariar, caste Brahmin, religion Vishnavite, occupation Miras.

“As you are alone entitled to get, after me, the lands particularized hereunder which belonged to my father Krishnamachariar and which after his death, without male issue, passed into my hands and have been in my enjoyment, and (further) out of the affection which I bear towards you and the service you render to me, I have this day given over to you the nunjah, punjah, &c., lands mentioned hereunder and of the value of Rs. 2,500, together with all samudayams, poramboke, &c., appertaining thereto as per custom of the village; hence you shall yourself enjoy the said

“lands with all rights and with powers of disposition over them, such as gift, sale, &c. I have this day delivered possession of the said lands to you.”

KANAKAMMAL  
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Defendants appealed.

*Krishnasami Ayyar* for appellants.

*Seshagiri Ayyar* for respondents.

JUDGMENT.—We think that the District Munsif did decide the suit on a preliminary point within the meaning of section 562, Civil Procedure Code (*Ramachandra Joishi v. Hazi Kassim*(1)). The order of remand was therefore legal.

As to the merits of the remand order, it is urged that exhibit I is merely a transfer of the life interest of the first defendant so as to accelerate the succession of the next heir. We observe that there is no statement in exhibit I, that a life interest merely is transferred, and the concluding words in which she speaks of the donee possessing henceforth full powers of sale, &c., indicate that the woman purported to transfer such absolute interest. We observe further that the donee at once proceeded to exercise the rights of an absolute owner and transferred the property to the defendants Nos. 3 to 5. In those circumstances, we think that the view taken by the Subordinate Judge is correct, and that plaintiffs had a cause of action.

We therefore dismiss this appeal with costs.

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## APPELLATE CRIMINAL—FULL BENCH.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, Mr. Justice Subramania Ayyar, and Mr. Justice Davies.*

### REFERENCE UNDER STAMP ACT, SECTION 46.\*

1895.  
September 5.

*Stamp Act*—Act I of 1879, s. 46, Sched. I, Art. 21—*Conveyance*.

The amount payable on a conveyance under Stamp Act, Sched. I, Art. 21, is properly calculated on the consideration set forth therein; and not on the intrinsic value of the property conveyed.

THIS was a case stated for the opinion of the High Court by the Board of Revenue under section 46 of the Indian Stamp Act, 1879, on the 16th August 1895.

(1) I.L.R., 16 Mad., 207.

\* Referred Case No. 16 of 1895.