

therefore, falls under proviso 3 to section 13 of Act I of 1889, which lays down that a Village Munsif cannot entertain a suit for rent of land, unless such rent is due upon a written contract signed by the defendant. In civil revision petition No. 48 of 1894, BEST, J., held the proviso to be inapplicable to a claim for house-rent. But we are unable to agree with the learned Judge, as we see nothing in the language of the proviso or in the reason for the enactment thereof to make us suppose that the term 'land' is used in a restricted sense excluding land built upon from the operation of the proviso. In the absence of any ground for putting such a limited construction on the term in question, it should, we think, be understood in its ordinary sense, which of course includes land not covered by buildings as well as that so covered. It follows that the Village Munsif had no jurisdiction to entertain the suit, and the conclusion of the District Munsif is right.

NARAYAN-  
ANNA  
v.  
KAMAKSHI-  
ANNA.

## APPELLATE CIVIL.

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

PATTABHIRAMAYYA NAIDU AND OTHERS (DEFENDANTS NOS. 1,  
2, 6, 20, 22, 23, 24, 27, 31, AND 33), APPELLANTS,

1896.  
September  
16.

v.

RAMAYYA NAIDU AND ANOTHER (PLAINTIFFS), RESPONDENTS.\*

*Limitation Act XV of 1877, sched. II, arts. 61, 99, 120—Decree for rent against tenants jointly—Execution against one defendant—Suit by him for contribution.*

The holder of a zamindari village obtained a decree jointly against sixty-eight persons, including the present plaintiff and defendants, for Rs. 4,100 being rent accrued due on lands in the village and in execution he brought to sale property of the plaintiff and on 28th October 1889 he received, out of the sale-proceeds, Rs. 2,650. The share payable by the plaintiff was Rs. 183-10-10 only, and he instituted the present suit against the defendants on 28th October 1892 to recover the amounts which they were liable to contribute:

*Held*, that Limitation Act, sched. II, art. 99, did not govern the case and that whether article 61 or article 120 was applicable, the suit was not barred by limitation.

SECOND APPEAL against the decree of J. P. Fiddian, District Judge of Ganjam, in appeal suit No. 48 of 1894, confirming the decree of

\* Second Appeal No. 731 of 1895.

PATTABHI-  
RAMAYYA  
NAIDU  
v.  
RAMAYYA  
NAIDU.

C. Bapayya Pantulu, District Munsif of Sompét, in original suit No. 625 of 1892.

This was a suit to recover by way of contribution Rupees 1,288-13-4 from the defendants 1-35 according to the shares specified in the list presented with the plaint.

The plaint, presented on 28th October 1892, set out that, on 24th September 1879, that the late Jayanti Kamesen Pantulu rented the village of Nandigam from Gajapaty Radhika Patta Mahadevi, Zamindari of Tekkali, for three years, faslis 1288 to 1290, and transferred the same to one Attada Kurmi Naidu for Rs. 7,000; that the latter brought a suit in the Ganjam District Court in original suit No. 2 of 1883 against sixty-eight persons including the plaintiffs for Rs. 4,100, rent due for fasli 1289, and obtained a joint decree against all of them; that in execution of this decree, the said Kurmi Naidu put the plaintiffs' lands to sale and received Rs. 2,650 on 28th October 1889 from the sale-proceeds of the lands; that out of this sum the plaintiffs' share of rent, according to the Veelu Jabita (list of rents) of the village, comes to Rs. 183-10-10, and the defendants and other persons not in this suit were bound to contribute to the plaintiffs the remaining sum of Rs. 2,466-5-2, out of which the defendants ought to pay the suit amount.

Both the Lower Courts found that the amounts claimed from each defendant were due, and gave a decree for the plaintiff as prayed overruling the plea of limitation.

Defendants 1, 2, 6, 20, 22, 23, 24, 27, 31 and 33 appealed.

*Bhashyam Ayyangar* for appellants.

*Sadagòpachariar* for respondents.

JUDGMENT.—The only plea urged before us is that the suit is barred under articles 61 and 99, schedule 2 of the Indian Limitation Act, on the ground that the suit was not brought until more than three years had elapsed from the realization of the money from plaintiffs by sale of their property by the Court.

We think that the words of article 99 show that it cannot apply to a case like this where not the *whole*, but only a *part*, of the money due under a joint decree was realized from plaintiffs.

We think, too, that it may be doubted whether article 61 is applicable to the present case where there was no payment by plaintiffs, but where their property was seized and sold by the Court and the proceeds paid by the Court to the decree-holder. If,

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.

PATTABHI-  
RAMAYYA  
NAI U  
2.  
RAMAYYA  
NAIDU.

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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.