We agree with the learned Advocate-General that the section was intended to apply to persons who, before its enactment, had, or were believed to have, no right to take proceedings for the purposes mentioned in the section, and in their case the limitation requiring previous sanction for the suit was one that was necessary to prevent an abuse of the powers conferred.

We have not thought it necessary to refer to the decisions of the High Courts in other parts of India, as they proceed on a view which has not been accepted by the Full Bench decision of this Court (*Rangasami Naickan* v. *Varadappa Naickan*(1)). Our view is in accordance with the principle underlying the decision in *Strinivasa Ayyangar* v. *Strinivasa Swami*(2), and the unreported cases therein cited.

We, therefore, set aside the order of the Subordinate Judge and direct that the plaint be received by him and that the suit be then disposed of in accordance with law.

Costs will abide and follow the result.

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## APPELLATE CIVIL.

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

PERIATAMBI UDAYAN (DEFENDANT No. 1), PETITIONER,

1897. December 15.

*v.*

VELLAYA GOUNDAN AND ANOTHER (PLAINTIFFS), RESPONDENTS.*

*Civil Procedure Code—Act XIV of 1882, s. 258A—Adjustment out of Court—Subsequent execution by decree-holder—Suit to recover money paid on adjustment.*

It was agreed between a decree-holder and the judgment-debtors that the former should accept Rs. 200 which was paid in full satisfaction of the decree, and should certify the adjustment to the Court, and that an attachment already placed on the judgment-debtor's property should be raised. The decree-holder accepted the money, but did not carry out his part of the agreement, and more than two years later applied for execution which was ordered to issue, the judgment-debtors' objections being dismissed as out of time. The judgment-debtors now sued in a Small Cause Court to recover the money paid to satisfy the decree :

*Held*, that the plaintiffs were entitled to recover.

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(1) I.L.R., 17 Mad., 462. (2) I.L.R., 16 Mad., 31.

* Civil Revision Petition No. 126 of 1897.

PERIATAMBI UDAYAN v. VELLAYA GOUNDAN.

PETITION under Provincial Small Cause Courts Act IX of 1887, section 25, praying the High Court to revise the proceedings of K. Ramachandra Ayyar, Acting Subordinate Judge of Salem.

The plaintiffs sued to recover from the defendants the sum of Rs. 200 claimed to be due on the following circumstances:—

In Original Suit No. 401 of 1890 on the file of the District Munsif's Court, Salem, the present defendant No. 1 obtained a decree against the present plaintiffs Nos. 1 and 2 and defendants Nos. 3 and 4. In execution, movable property belonging to the judgment-debtors were attached on the 26th of October 1893. Negotiation then began between the decree-holder and the judgment-debtors, and the former agreed to receive Rs. 200 in full discharge of the decree, provided payment was made in one month. Accordingly in November the present plaintiffs paid Rs. 200 through the monigar, who was defendant No. 2 in the suit and now stated to be in collusion with the decree-holder, to the decree-holder who gave a receipt to defendant No. 2 and promised to have satisfaction of the decree entered up in Court, and to have the attachment raised. The decree-holder in violation of the agreement applied for execution in July 1896. The plaintiffs in various petitions raised objections to the execution, but they were dismissed as being out of time. They accordingly sued as above to recover the money. The Subordinate Judge passed a decree for the plaintiffs.

Defendant No. 1 preferred this petition.

*Seshagiri Ayyar* for petitioner.

*Sadagopachariar* for respondents.

JUDGMENT.—The finding is that the money was paid in full discharge of the judgment-debt, the first defendant undertaking to enter up satisfaction. No satisfaction was entered up and no application to compel the first defendant to fulfil his undertaking was made by plaintiff within sixty days of the payment. It was, therefore, not competent to the executing Court to determine whether the payment had been made or not. The only course open to the plaintiff was that which he followed, viz., to bring a suit for the amount. The fact that no application was made by the plaintiff within sixty days distinguishes the present case from *Guruvayya* v. *Vudayappa*(1). As the Courts there held that it was open to the plaintiff to seek relief in execution, it must be taken

(1) I.L.R., 18 Mad., 26.

that the application was made within sixty days, though the report does not expressly state this. In the case of *Rama Ayyan* v. *Sreenivasa Pattar*(1), the person relying on the adjustment was not entitled to make any application under section 258, Civil Procedure Code, within sixty days from the date of the adjustment, as against the person who denied the payment, inasmuch as the latter was not then an assignee. That decision cannot be taken to justify an enquiry into an alleged adjustment after the expiry of sixty days from the time when a party relying on the adjustment had become entitled to apply for the adjustment to be recorded. We must, therefore, dismiss the petition with costs.

PERIATAMBI UDAYAN v. VELLAYA GOUNDAN.

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## APPELLATE CIVIL.

*Before Mr. Justice Davies and Mr. Justice Boddam.*

ACHUTAN NAYAR (DEFENDANT No. 30), APPELLANT,

1897. February 22.

*v.*

NARASIMHAM PATTER (PLAINTIFF No. 2), RESPONDENT.*

*Malabar Compensation for Tenants' Improvements Act (Madras)—Act I of* 1887 *—Timber trees.*

In a suit to redeem a kanom of land on which timber has grown, the jenmi is not entitled to be credited with half the value of the timber.

SECOND APPEAL against the decree of A. Venkataramana Poi, Subordinate Judge of South Malabar, in Appeal Suit No. 93 of 1894, confirming the decree of V. Rama Sastri, District Munsif of Temelprom, in Original Suit No. 27 of 1891.

Suit to redeem a kanom. The main question related to the amount of compensation payable by the plaintiff in respect of timber trees. The District Munsif said as to this point:—"The "last item of improvements to be considered forms the trees. "The fruit-bearing trees are few, but there are many teak and "other trees of valuable timber. The question how far the "tenants are to be considered as the makers of this class of "improvement is not free from difficulty. The demise of 1017

(1) I.L.R., 19 Mad., 230.

* Second Appeal No. 1603 of 1895.