

## APPELLATE CIVIL.

Before Sir Arnold White, Chief Justice, and Mr. Justice  
Subrahmanya Ayyar.

SAMINATHA AYYAR (DEFENDANT), APPELLANT,

1903.  
April 3, 7.

v.

VENKATASUBBA AYYAR (PLAINTIFF), RESPONDENT.\*

*Limitation Act—XV of 1877, s. 12—Presentation of appeal—“Time requisite for obtaining copy of judgment.”*

Judgment was delivered in a case on the afternoon of the last Court day before the commencement of the Christmas vacation, when it was too late to apply for a copy of the judgment. Application for a copy was made on the day upon which the Court re-opened and an appeal was filed on a subsequent day which would have been in time if the period during which the Court was closed were allowed to be deducted. On its being contended that, inasmuch as no application for a copy had been made before the Court closed, the appellant was not entitled to have the period during which the Court was closed deducted:

*Held*, that the appellant was entitled to deduct the period during which the Court was closed. Such period, in the circumstances of the case, must be taken to be part of the “time requisite for obtaining a copy of the judgment.”

APPLICATION to excuse delay in presenting appeal. The suit was for a declaration that an assignment which had been executed by plaintiff to defendant was void, and to recover a hypothecation bond assigned by it. The District Munsif made the declaration and ordered the bond to be delivered up to plaintiff. His judgment was dated 22nd December 1900. Defendant applied for copies of the judgment and decree on 7th January 1901. It appeared (as stated in the judgment of the High Court) that the 22nd December was the last Court day before the Christmas vacation; that the judgment had been delivered at 4 p.m., when, according to the practice of the Court, papers were not received. The Court re-opened on 7th January 1901, the day upon which the defendant applied for copies. He presented an appeal to the District Court on a day which would have been in time if he was entitled to deduct the period during which the Court had been closed.

\* Second Appeal No. 1637 of 1901, presented against the orders of H. G. Joseph, District Judge of Trichinopoly, in S.R. Nos. 277 and 50 of 1901, presented against the decrees of S. Ramaswamy Ayyangar, District Munsif of Kulitalai, in Original Suit Nos. 242 of 1900 and 1212 of 1899 respectively.



There is nothing in the section itself to suggest that these words ought to be so construed. It is not impossible to conceive of cases where time may properly be deducted, though the commencement of the period from which time is deducted precedes the actual application for a copy of the judgment. On the facts of the present case we think it may be said that this is one of those cases. For this reason we think the appellant is entitled to deduct the period from 23rd December to 6th January, both days inclusive as such period, in the circumstances of the case, must be taken to be part of the "time requisite for obtaining a copy of the judgment."

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We must, therefore, set aside the order of the District Judge and direct him to receive the appeal and proceed with it according to law. The costs of this appeal will abide the event.

IN SECOND APPEAL NO. 1215 OF 1901.—This case follows Second Appeal No. 1637 of 1901, and for the like reasons as are recorded in our judgment therein, we set aside the order of the District Judge and direct him to receive the appeal and proceed with it according to law. The costs of this appeal will abide the event.

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## APPELLATE CIVIL.

*Before Mr. Justice Benson and Mr. Justice Bhashyam Ayyangar.*

CHINNA NARAYUDU (FIRST DEFENDANT), APPELLANT,

v.

HARISCHENDANA DEO (PLAINTIFF), RESPONDENT.\*

1908.  
January 21.†

*Landlord and tenant—Notice to quit—Suit instituted without prior notice—Assertion of permanent occupancy rights not a denial of relationship of landlord and tenant.*

The assertion by a tenant of permanent occupancy rights and his denying the landlord's title to give a lease of the land to a third party is not a denial of the relationship of landlord and tenant which would render notice unnecessary.

SUIT IN EJECTMENT. A ground of defence was that plaintiff had not served proper notice on the defendant and that in consequence

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\* Second Appeal No. 980 of 1901, presented against the decree of F. Wolfe-Murray, District Judge of Ganjam at Berhampore, in Appeal Suit No. 77 of 1900, presented against the decree of D. Raghavendra Rao, District Munsif of Sompeta, in Original Suit No. 173 of 1899.