

WHITE, C.J., The Second Appeals Nos. 1093 and 1097 are dismissed with costs.

AND  
KRISHNA-  
SWAMI  
AYYAR, J.

Second Appeals Nos. 1094, 1095 and 1096 are dismissed without costs.

FISCHER  
v.  
NAGAPPA  
MUDALIY.

## APPELLATE CIVIL.

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

SUBBRAVETI RAMIAH (PLAINTIFF), APPELLANT,

v.

GUNDALA RAMANNA AND OTHERS (DEFENDANTS), RESPONDENTS.\*

*Limitation Act, sch. XV of 1887, sch. II, arts. 139, 144—Suit against representatives of deceased tenant governed by art. 139 and not 144.*

A suit against the representatives of a tenant after the determination of the tenancy to recover the property leased is governed by article 139 and not by article 144 of schedule II of the Limitation Act.

Such a suit would be barred against the representatives if it would be barred against the tenant if alive.

*Vadapalli Nerasimham v. Dronamraju Seetharama Murthy*, [(1908) I.L.R., 31 Mad., 163 at 167], doubted.

SECOND APPEAL against the decree of M. J. Murphy, District Judge of Kurnool, in Appeal Suit No. 30 of 1906, presented against the decree of K. Krishnamachariar, District Munsif of Gooty, in Original Suit No. 777 of 1904.

The facts for the purpose of this case are sufficiently set out in the judgment.

*H. Balakrishna Rao* for *P. S. Parthasarathy Ayyangar* for appellant.

*T. V. Seshagiri Ayyar* and *T. V. Muthukrishna Ayyar* for respondents.

JUDGMENT.—The question in this case is whether article 139 or article 144 of the Limitation Act applies. Kondanna, the father of defendants Nos. 3 and 4, was a lessee under Exhibit A which was a lease for a term certain. It is found by the District Judge that the lease was determined about the year 1891. It appears Kondanna died some time afterwards. It is not found exactly when. But he was succeeded by his sons in the possession of the property.

\* Second Appeal No. 686 of 1907.

The District Judge does not find adverse possession for 12 years to bar the suit. The tenancy having determined in 1891, if article 139 is applicable the suit is clearly barred. The appellant argues that the suit is not one to recover possession from a tenant. It is urged that although Kondanna was a tenant and a suit against him after the determination of the tenancy might be described as a suit against a tenant on account of his former tenancy, the suit against the sons cannot be described as one to recover possession from a tenant, for they were not tenants at any time. Reliance is placed on *Vadapalli Narasimham v. Dronamraju Seetharama Murthy*(1). It is there stated "the representatives of a tenant by sufferance who enter after his death cannot, in our opinion, be said to have ever been tenants within the meaning of article 139, and a suit against them would appear to fall within article 144." With great respect we find ourselves unable to accept this reasoning. Kondanna remained in possession after the expiry of the term. The tenancy was determined within the meaning of article 139, for under section 111 of the Transfer of Property Act, "a lease of immovable property is determined by efflux of the time limited thereby." Time began to run therefore in Kondanna's favour. He is succeeded by his sons in the possession of the property. They are entitled to tack on the time of their father's possession after the determination of the tenancy to the period of their own possession. The time that had begun to run in favour of their father continues to run in favour of the sons. It seems to us therefore difficult to hold that article 139, which would be applicable to the suit against Kondanna, ceases to be applicable because Kondanna is succeeded by his sons in the possession of the property. Suppose, for example, Kondanna was alive and in possession for 12 years after the termination of the tenancy, and he having died subsequently the suit is brought against the sons. Can it be then contended that article 139 becomes inapplicable. It seems to us that the article should be read as if it ran "By a landlord to recover possession from a tenant or his representative in interest." Such a reading of the language of the Act would appear to be necessary in the case of other articles as well to give effect to the intention of the legislature. See for example, articles 78, 81 and 82. The Calcutta

BENSON, C.J.,  
AND  
KRISHNA-  
SWAMI  
AYYAR, J.  
—  
SUBBRAVETI  
RAMIAH  
v.  
GUNDALA  
RAMANNA.

BENSON, C.J.,  
AND  
KRISHNA-  
SWAMI  
AYYAR, J.

High Court in *Madan Mohan Gossain v. Kumar Rameswar Malia* (1) has adopted the same view. Kondanna, it is said, is a tenant by sufferance and his possession is under the common law not adverse, while his representatives are trespassers.

SUBBRAVETI  
RAMIAH  
v.  
GUNDALA  
RAMANNA.

It seems doubtful whether the fiction of a tenancy by sufferance should be kept up after the Transfer of Property Act, according to which a lease is determined by efflux of the time limited thereby (see section 111). Such a tenancy does not operate in England to interrupt the running of time. See *Day v. Day* (2). Nor under article 139, is it of any avail to the landlord. Whether for purposes of article 144 a distinction should be made between Kondanna and his sons appears to us to be doubtful. But however this may be, there seems to us to be nothing wrong in holding that if the plaintiff would be barred against Kondanna if now alive, he would be likewise barred against his sons.

The second appeal is dismissed with costs.

## APPELLATE CIVIL.

*Before Mr. Justice Abdur Rahim.*

1909.  
July 19, 22.

KARUMBAYIRA PONNAPUNDAN AND ANOTHER  
(DEFENDANTS NOS. 1 AND 2), PETITIONERS,

v.

AUTHIMOOLA PONNAPUNDAN AND ANOTHER (PLAINTIFFS),  
RESPONDENTS.\*

*Plaint, amendment of, by party to whom it is returned for proper valuation.*

A plaintiff, to whom a plaint was returned for properly valuing the properties claimed therein, altered the valuation as directed therein and struck out some of the properties to bring the suit within the jurisdiction of the Court:

*Held*, that there was nothing illegal in the amendment and that it was competent to the Court to accept such amended plaint.

CIVIL Revision Petition under section 622 of Act XIV of 1882 presented against the order of K. S. Lakshmi Narasaiyar, District Munsif of Valangiman, in Original Suit No. 337 of 1907.

The facts of this case are set out in the judgment.

(1) (1907) 7 C.L.J., 615 at p. 626. (2) (1908) L.R., 3 P.C., 751 at p. 761.

\* Civil Revision Case No. 740 of 1908.