

SANKARAN-
NAIR
AND
KRISHNA-
SWAMI
AYYAR, J.J. made. It may no doubt be fairly argued that the time
requisite for obtaining the copy is not necessarily the period
after the date of the application but any other construction
will introduce other complications. We are not therefore prepared
to differ from the decision in *Raman Chetti v. Kadirvelu*(1),
especially as it is a rule of practice, and hold that the appeal was
filed in time. There is no other question of law.

SILAMBAN
CHETTY
v.
RAMANADHAN
CHETTY. The second appeal is dismissed with costs.

APPELLATE CIVIL.

*Before Sir Arnold White, Chief Justice, and Mr. Justice
Krishnaswami Ayyar.*

1909. ROBERT FISCHER (DECEASED) AND OTHERS (APPELLANTS IN SECOND
November 19. APPEALS Nos. 1093 TO 1097 OF 1907),

v.

NAGAPPA MUDALY (RESPONDENT IN SECOND APPEAL
No. 1093 OF 1907).

SUBBARAYA MUDALY AND ANOTHER (RESPONDENTS IN SECOND
APPEAL No. 1094 OF 1907).

LAKSHMI AMMAL (RESPONDENT IN SECOND
APPEAL No. 1095 OF 1907).

MUTHAN AMBALAM AND ANOTHER (RESPONDENTS IN SECOND
APPEAL No. 1096 OF 1907).

KUMARAPPA MUDALY AND OTHERS (RESPONDENTS IN SECOND
APPEAL No. 1097 OF 1907).*

*Civil Procedure Code, XIV of 1882, ss. 30, 375—Subsequent suit filed after breach of
condition on which permission to withdraw previous suit given—Right of one
not a tenant to sue for himself and others, tenants under s. 30, Civil Procedure
Code.*

Where permission to withdraw from a suit with leave to bring a fresh
suit was given to a party, on condition of costs being paid within a certain time,
such party, on failing to fulfil the conditions, is precluded from bringing a fresh
suit.

*Abdul Aziz Molla v. Ebrahim Molla, [(1904) I.L.R., 31 Calc., 985],
distinguished.*

(1) (1898) 8 M.L.J., 148.

* Second Appeals Nos. 1093, 1094, 1095, 1096 and 1097 of 1907.

A person, who is not a tenant, cannot maintain a suit on behalf of tenants under section 30, Civil Procedure Code. WHITE, C.J.,
AND
KRISHNA-
SWAMI
AYYAR, J.
—
FISCHER
v.
NAGAPPA
MUDALI.

SECOND APPEAL against the decree of S. Ramaswami Ayyangar, the Subordinate Judge of Madura (East), in Appeal Suits Nos. 214, 215, 216, 217 and 218 of 1906, presented against the decree of T. K. Subbier, District Munsif of Manamadura, in Original Suits Nos. 240 to 244 of 1905.

The deceased first plaintiff instituted a prior suit against the defendants to establish his right to certain threshing floors, etc. Permission to withdraw with leave to bring a fresh suit was given on his undertaking to pay costs within a certain date, which was not done. The present suit was brought by the same plaintiff, on his own behalf and on behalf of his tenants, to establish the right to the same threshing floors, etc. Leave was obtained under section 30, Civil Procedure Code.

The Court of First Instance and the lower Appellate Court dismissed the suit as unsustainable.

Plaintiff appealed to High Court.

T. Rangachariar for appellants.

K. Ramachandra Ayyar for respondents.

JUDGMENT.—The leave to withdraw with liberty to bring a fresh suit given by the District Munsif was conditional on the plaintiff paying the costs of the former suit on or before a specified date. The time fixed for the performance of the condition had expired when the present suit was instituted. This distinguishes the present case from the case of *Abdul Aziz Molla v. Ebrahim Molla*(1) where no time was specified within which the condition was to be performed and in fact the condition had been performed when the second suit came on for trial. *Peria Muthirian v. Karappanna Muthirian*(2) is not in point, for there the time for payment had been extended by the Court which made the order for payment.

As regards the second point the plaint as correctly translated alleges that the plaintiff sues on behalf of himself and the villagers. So far as the plaintiff is concerned there is no new title and no new cause of action, so far as the villagers (by which word tenants are intended) the plaintiff is not entitled to sue on their behalf, for it is not alleged in the plaint that he is a tenant.

(1) (1904) I.L.R., 31 Cal., 965.

(2) (1906) I.L.R., 29 Mad., 370.

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.