

BENSON, C.J.,
 AND
 KRISHNA-
 SWAMI
 AYYAR, J.
 —
 NARAYANA-
 SWAMI
 NAIDU GARU
 v.
 CHELLAPALLI
 HANUMA-
 NULU.

Both the lower Courts held that the defendant had the right of retainer and dismissed plaintiff's suit.

Plaintiff appealed to High Court.

C. R. Tiruvenkatachariar for appellant.

E. V. R. Sarma for respondent.

JUDGMENT.—In the face of the specific instructions contained in exhibits E and F, the defendant had no business to appropriate the amounts realised in execution of the small cause decree towards his dues in other cases conducted by him, even if we are to assume a previous course of practice according to which it was usual to make such appropriations. It is not suggested that these instructions were subsequently cancelled or varied. The cases cited by Mr. Tiruvenkatachariar are good authority for the position that a solicitor has no right of retainer in moneys realised by him in one cause for his dues in other causes conducted by him. See *Boson v. Bolland*(1), *Hall v. Laver*(2), *Mackenzie v. Mackintosh*(3). A pleader in India has no larger rights. Section 217 of the Contract Act does not help the defendant. We must therefore reverse the decrees of the Courts below. The plaintiff will have a decree for Rs. 556-14-4 with interest at 6 per cent. from the 1st June 1903 to this date with further interest at 6 per cent. on the whole sum until realisation not exceeding six months from this date. The plaintiff is entitled to his costs throughout.

APPELLATE CIVIL.

*Before Mr. Justice Sankaran-Nair and Mr. Justice
 Krishnaswami Ayyar.*

SILAMBAN CHETTY (DEFENDANT), APPELLANT,

v.

RAMANADHAN CHETTY (PLAINTIFF), RESPONDENT.*

Limitation Act (Act XV of 1877), s. 12, sched. II, art. 152—Party applying for portions of the record, entitled to deduct time spent in obtaining them.

Where a party appealing from the decree of a lower Court applies for copies of the judgment and decree at different times, the time which he is entitled to

(1) (1891) 48 R.R., 121.

(2) (1842) 66 E.R., 1158. (1 Hare, 571).

(3) (1891) 64 L.T.N.S., 706.

* Second Appeal No. 698 of 1907.

exclude in computing the period of limitation for such appeal is the aggregate of the periods required to grant the copies after the applications were made.

Raman Chetty v. Kadirvelu, [(1898) 8 M.L.J., 148,] referred to and approved.

SANKARAN-
NAIR
AND
KRISHNA-
SWAMI
AYYAR, JJ.

SECOND APPEAL against the decree of V. Swaminatha Aiyar, Subordinate Judge of Madura (West), in Appeal Suit No. 150 of 1906, presented against the decree of T. Jivaji Rao, District Munsif of Tirumangalam, in Original Suit No. 305 of 1904.

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SILAMBAN
CHETTY
v.
RAMANADHAN
CHETTI.

V. Purushothama Ayyar for The Hon. The Advocate-General for appellant.

C. S. Venkatachariar for respondent.

JUDGMENT.—The decree was passed on the 12th October 1905. The respondent applied for a copy of the decree on the 18th October and obtained it on the 19th December. He then applied for a copy of the judgment on the 22nd December and obtained it on the 16th February 1906. The appeal was filed on the 3rd March and the question is whether the appeal to the lower Appellate Court was barred under article 152 of schedule II to the Limitation Act of 1877. The Subordinate Judge has held that under section 12 the respondent is entitled to a deduction of the time between the 18th October and the 19th December and the further time between the 22nd December and the 16th February, and he relies upon the decision in *Raman Chetti v. Kadirvelu*(1). This decision, no doubt, supports the Judge's conclusion though in that case the later application was made before the copy of the record first applied for was ready and a portion of the time in obtaining one record formed a part of the time in obtaining the other. The learned Judges held that such overlapping period should not be counted twice over and with that exception both the two periods should be excluded. It is true no doubt that this would enable a party to apply for the copy of one record and then after obtaining that copy to apply for the copy of the other record and thus extend the time while if he had applied for both the copies at the same time, the time requisite for obtaining the copies would have been less. But we are unable to say that the learned Judges who decided the case in *Raman Chetti v. Kadirvelu*(1) were wrong in holding that the time requisite for obtaining a copy is the period required to grant the copy after the application is

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

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.