

## APPELLATE CIVIL.

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

SRINIVASA AYYANGAR AND TWO OTHERS (PLAINTIFFS),

APPELLANTS,

v.

THE SECRETARY OF STATE FOR INDIA, REPRESENTED BY THE  
COLLECTOR OF TANJORE AND TWO OTHERS (DEFENDANTS), RESPONDENTS.\*

*Limitation—Limitation Act (IX of 1908), sec. 15 (2), applicability of.—Suits under special Acts—Madras Revenue Recovery Act (II of 1864), sec. 59, suits under.*

Section 15, clause (2) of the Limitation Act (IX of 1908) which excludes from the computation of the period of limitation, the time occupied by the notice legally necessary to be issued before instituting certain actions, is applicable to suits brought under section 59 of the Madras Revenue Recovery Act (II of 1864).

*Venkata v. Chengadu* (1839) 1 L.R., 12 Mad., 168 (F.B.) and *Isvara Pattar v. Karuppan* (1893) 3 M.L.J., 255, followed.

*Abu Backer Sahib v. Secretary of State for India* (1911) 1 L.R., 34 Mad., 505 (F.B.), distinguished.

The question whether the general provisions of the Limitation Act should be applied to cases where a special period of limitation is prescribed by a special or local Act depends on whether the provisions of such Act should be regarded as enacting a complete body of provisions with regard to limitations of suits coming within the purview of the Act. In other words the question is whether the special or local Act should be construed as excluding the applicability of the general provisions of the Limitation Act.

SECOND APPEAL against the decree of J. T. GILLESPIE, the Acting District Judge of Tanjore, in Appeal No. 767 of 1909, preferred against the decree of G. S. VENKATARAMANA RAO, the District Munsif of Mannargudi, in Original Suit No. 69 of 1909.

The following facts are taken from the judgment of the District Judge on appeal:—

“The appellants sued in the lower Court for a declaration that a sale of the plaint lands for arrears of revenue on 30th May 1903 is null and void, and for recovery of possession of the said lands from the first and second defendants. The lower Court held that the suit was barred by limitation and accordingly dismissed it with costs. Hence this appeal.

“The Revenue sale was held on 30th May 1908, and was confirmed by the Divisional Officer (a Deputy Collector) on 30th June 1908. Against the order confirming the sale, an appeal seems to have been preferred to the District Collector on 7th

\* Second Appeal No. 2104 of 1910.

“September 1908, and dismissed by him on 2nd November 1908.  
 “Notice of the present suit was sent to the Collector on 22nd  
 “December 1908, and the suit was brought in the District  
 “Munsif’s Court on 22nd February 1909. . . .

“The next point argued by the pleader for the appellants is that  
 “granting that the cause of action arose on 30th June 1908, and  
 “that section 59 of Act II of 1864 is applicable to the case, the  
 “suit is nevertheless in time because the lower Court having been  
 “closed for the Christmas recess on 30th December 1908, the  
 “last day of the period of 6 months prescribed by section 59, the  
 “appellants were entitled to file their suit on the first subsequent  
 “day on which the Court was open, *i.e.*, on 4th January 1909, and  
 “as by that time the new Limitation Act IX of 1908 had come into  
 “force, the appellants are entitled to claim the benefit of section  
 “15 (2) of that Act and to exclude from the computation of the  
 “time taken to bring their suit the period of two months required  
 “for giving notice to the Collector. It is argued that limitation  
 “being a law of procedure only, and not a substantive law [*Valia*  
 “*Tamburatti v. Vira Rayan*(1), *Her Highness Ruckmaboye v.*  
 “*Lulloohoy Mottichund*(2), and *Kali Amma v. Palappakkara*  
 “*Manukal*(3)] the law of limitation in force at the time when a  
 “suit for appeal is filed must be applied to it. That is no doubt  
 “correct, but the law of limitation applicable to this suit was  
 “and continued to be after Act IX of 1908 came into force,  
 “section 59 of the Revenue Recovery Act II of 1864. It was  
 “not by virtue of section 5 of the old Limitation Act as the  
 “District Munsif says in his judgment that the appellants would  
 “have been able to bring their suit on 4th January 1909 although  
 “it became barred by time on 31st December 1908, but by virtue  
 “of the general principle of law that where parties are prevented  
 “from doing a thing in Court on a particular day, not by any  
 “act of their own, but the act of the Court itself, they are entitled  
 “to do it at the first subsequent opportunity—see *Sambasiva*  
 “*Charvi v. Ramasami Reddi*. The suit was none the less barred  
 “on 31st December 1908, and the fact that by virtue of the general  
 “principle of law above referred to, the plaint might have been  
 “presented on 4th January 1909 cannot operate to entitle the  
 “plaintiffs to claim the benefit of the new Limitation Act on

(1) (1876) I.L.R., 1 Mad., 228. (2) (1852) 5 M.I.A., 234.

(3) (1910) 20 M.L.J., 347. (4) (1899) I.L.R., 22 Mad., 179 at p. 181.

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"22nd February 1909, the date when the suit was actually filed. I therefore uphold the lower Court's finding that the suit was barred by limitation before the present Limitation Act came into force, and that for this reason alone, none of the provisions of that Act are applicable to the case."

The plaintiffs preferred this Second Appeal.

Mr. T. Rangachariar for the appellants.

C. B. Napier, Government Pleader, for the first respondent.

V. Ratnasomanathan for the second respondent.

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JUDGMENT.—This is a suit to set aside a sale held for arrears of revenue on the ground of fraud. The suit has been dismissed by the lower Courts on the ground that it is barred by limitation. Section 59 of Madras Act II of 1864 provides a period of six months for such a suit from the date on which the cause of action arose. There are several ways in which the plaintiffs attempt to get rid of the bar. We consider it sufficient to deal with one of their contentions as we have come to the conclusion that it must succeed and that the suit must be held to be not barred. Section 15, clause (2) of the Limitation Act enacts that "in computing the period of limitation prescribed for any suit . . . of which notice has been given in accordance with the requirements of any enactment for the time being in force, the period of such notice shall be excluded." This clause did not exist in the previous statute, Act XV of 1877. The six months provided by section 59 of Act II of 1864 elapsed on the 31st December 1908. The Court was closed on that day for the Christmas holidays and re-opened only on the 4th January 1909. On the 1st January 1909 the present Limitation Act came into force; that is before the suit was barred. The plaintiffs are therefore entitled to have the question of limitation decided in accordance with the provisions of the present statute. They claim the benefit of section 15, clause (2). If this claim be well-founded, the suit would be within time. The question argued is whether the provision in question is applicable to suits governed by section 59 of Act II of 1864, it being conceded that the period of limitation for the suit is that provided by section 59 of that Act and not article 12 of the Limitation Act, which has provided a period of one year for a suit to set aside a sale for arrears of Government revenue. The respondent's contention is that section 15, clause (2) and other general provisions enacted in sections 4 to 25 of

the Limitation Act are not applicable to suits for which a special period of limitation has been provided by a local or special act, and reliance is placed on section 29 which lays down that nothing in the Limitation Act "shall affect or alter any period of limitation specially prescribed for any suit, appeal or application by any special or local law now or hereafter in force in British India" and on a Full Bench decision of this Court in *Abu Bucker Sahib v. Secretary of State for India*(1). The appellant on the other hand contends that that case which decided that section 12 of Act XV of 1877, allowing a deduction of the time requisite for obtaining a copy of the judgment and decree of the lower Court in computing the period of limitation for an appeal in a case decided under the Indian [Madras?] Forest Act V of 1882, should not govern this case and that it is in conflict with another Full Bench decision of this Court in *Venkata v. Chengadu*(2) and the decision of a Division Bench in *Seshama v. Sankara*(3) which were not overruled by or noticed in that judgment. In *Abu Bucker Sahib v. Secretary of State for India*(1), the question whether section 12 of the Limitation Act was applicable, arose with respect to an appeal presented against the decree of the District Court on an appeal against an order of the Forest Officer under the Forest Act of 1882. The Full Bench composed of three learned judges held that it was not. The learned Chief Justice based his judgment on three grounds: (1) that the provisions of the Forest Act showing that the power to extend the period of limitation in cases coming within that Act was vested in the Governor-in-Council must be taken to indicate that the general provisions of the Limitation Act having the effect in certain cases of extending the period of limitation should not be applicable; (2) that the application of those general provisions would have the effect of affecting the period of limitation prescribed by the Forest Act within the meaning of section 6 of Act XV of 1877; (3) that section 12 of the Limitation Act could not be applied to cases where the law did not render it necessary for an appellant to produce a copy of the decree and judgment of the lower Court for the valid presentation of an appeal. WALLIS and MILLER, JJ., the other members of the Court proceeded purely on the language of section 6 of Act XV of 1877 which in

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(1) (1911) I.L.R., 34 Mad., 505 (F.B.) (2) (1889) I.L.R., 12 Mad., 168 (F.B.)

(3) (1889) I.L.R., 12 Mad., 1.

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their opinion was plain and unambiguous and held that the application of the general sections of the Act would have the effect of affecting the period of limitation prescribed by special or local Acts and was therefore disallowed by section 6. Those learned judges did not refer to the earlier decisions of this Court in *Venkata v. Chengadu*(1) and *Veeramma v. Abbiah*(2). According to those decisions the question whether the general provisions of the Limitation Act should be applied to cases where a special period of limitation is prescribed by a special or local Act, would depend on whether the provisions of such Act should be regarded as enacting a complete body of provisions with regard to the limitations of suits coming within the purview of the Act. In other words, the question would be whether the special or local Act should be construed as excluding the applicability of the general provisions of the Limitation Act. Each case would have to be decided on the construction of the particular statute which provides a special period of limitation. The learned Chief Justice's judgment also makes no reference to *Venkata v. Chengadu*(1). He refers to the observations of SHEPPARD, J., in *Veeramma v. Abbiah*(2) as supporting the view that section 6 would make the provisions of the Limitation Act inapplicable to any suit coming within a local or special Act. SHEPPARD, J., in that case based his judgment in part at least on the construction he placed on the provisions of the Registration Act, which in his opinion excluded the applicability of any of the sections of the Limitation Act, although he also expressed the opinion that the language of section 6 of the Limitation Act rendered the general provisions of the Act inapplicable to cases coming under special or local Acts. In *Haji Ismail Sait v. Trustees of the Harbour, Madras*(3), he accepted *Veeramma v. Abbiah*(2) as authority for the proposition that section 5 of the Limitation Act would be applicable to cases under the Forest Act—see page 397—although he was also prepared to apply to the principle of section 5 on general grounds. In *Venkata v. Chengadu*(1), four learned judges took part. Two of them, MURHUSWAMI AYYAR and KERNAN, JJ., held that section 18 of the Limitation Act was applicable to a suit falling under section 59 of Act II of 1864. It was, however, not necessary to decide the question as the

(1) (1890) I.L.R., 12 Mad., 168 (F.B.)

(2) (1895) I.L.R., 18 Mad., 99 (F.B.). (3) (1900) I.L.R., 23 Mad., 389.

application of the sections would not save the suit from limitation. PARKER and WILKINSON, JJ., cannot in our opinion be taken to have expressed any opinion on the point, although Mr. Rangachariar contends that they intend to do so. In a later case *Iswara Pattar v. Karuppan*(1), COLLINS, C.J., and DAVIES, J., applied section 18 to a suit under section 59 of the Revenue Recovery Act. In *Seshama v. Sankara*(2), COLLINS, C.J., and MUTHUSWAMI AYYAR, J., applied section 14 of the Limitation Act to a suit under the Madras Boundary Act XXVIII of 1860. They observed: "The true construction of s. 6 then is that save as to the period of limitation, the other provisions of the General Act of limitations are applicable to cases falling under special or local law." We do not consider it necessary for the purpose of this case to consider whether section 29 of the present statute corresponding to section 3 of Act XV of 1877 may not render the general sections of the Limitation Act inapplicable to special and local Acts generally. We think that *Abu Backer Sahib v. Secretary of State for India*(3) cannot be regarded as overruling the decisions in *Venkata v. Chengadu*(4) and *Iswara Pattar v. Karuppan*(1) which laid down the law with regard to suits coming under section 59 of Act II of 1864. They were not considered or dissented from in that case. We are of opinion that on a construction of Act II of 1864 the conclusion can be arrived at that the period of six months was intended to be subject to the general provisions of the Limitation Act. *Abu Backer Sahib v. Secretary of State for India*(3) would not preclude us from giving effect to that conclusion.

Act II of 1864 was enacted when the General Limitation Act in force was Act XIV of 1859. Section 16, clause (3) of that Act provided that "where by any law now or hereafter to be in force a shorter period of limitation than that prescribed by this Act is specially prescribed, such shorter period shall be applied notwithstanding this Act." The starting point of limitation and the period of limitation are clearly distinguished as distinct factors in the various statutes of Limitation Act XIV of 1859, Act IX of 1871, Act XV of 1877 and Act IX of 1908. Section 3 of Act XIV of 1859 provided a limitation of one year to set

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(1) (1893) 3 M.L.J., 255. (2) (1889) I.L.R., 12 Mad., 1 at p. 5 (F.B.).

(3) (1911) I.L.R., 34 Mad., 505. (4) (1889) I.L.R., 12 Mad., 168 (F.B.).

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aside sales for arrears of Government revenue from the date of the confirmation of the sale. The period was liable to be shortened by any special statute. In *Mussumat Phoolhas Koonwar v. Lalla Jogeshur Sahoy*(1), the Judicial Committee of the Privy Council held that clause 11 of section 16 of Act XIV of 1859 postponing the starting point of limitation in cases of disability on account of minority was applicable to suits provided for by section 246 of the Civil Procedure Code, Act VIII of 1859. Referring to Acts VIII and XIV of 1859 their Lordships observed: "The object of the first was to enact a general code of procedure for the Courts of Civil Judicature not established by Royal Charter. The object of the second was to establish a general Law of Limitation in supersession both of the regulations which had governed those Courts, and of the English Statutes which had regulated the practice of the Courts established by Royal Charter. Looking to the 5th sub-section of the 1st section" (providing a period of one year for suits to alter or set aside summary decisions and orders of Civil Courts) "and the 3rd and 11th sections" (providing a limitation of one year for suits to set aside sales under decrees or for arrears of Government revenue, and a limitation of twelve years to suits for the recovery of immoveable property) "of Act XIV of 1859, their Lordships have no doubt that the intention of the Legislature was that the period of limitation resulting from the 246th section of Act VIII should in the case of a minor be modified by the operation of the 11th section of Act XIV: and that this construction has obtained in the Courts of India appears from *Huro Soonduree Chowdhraim v. Anundnath Roy Chowdhry*(2)." The above passage shows that their Lordships based their decision on the construction of section 246 of Act VIII of 1859, whether it excluded or not the provisions of the Limitation Act of 1859. Their Lordships distinguished an earlier decision of theirs in *Mohammad Buhadoor Khan v. The Collector of Bareilly*(3). There certain property belonging to A was taken possession of by B. Some years later B was convicted and executed as a rebel and all the property in his possession was confiscated including the property of A. The sons of A sued for the recovery of the lands of

(1) (1876) L.R., 3 I.A., 7 at pp. 24 and 25.

(2) (1865) 3 W.R. (C.R.), 8.

(3) (1874) L.R., 1 I.A., 167 at pp. 175 and 176.

which they had been dispossessed by the rebel. The suit was brought more than a year after the younger plaintiff came of age and more than a year after the passing of Act IX. of 1859 which allowed only one year to sue and did not save the rights of persons under disability. Their Lordships held that the claim was barred by limitation. They observed: "The words are perfectly plain,—no suit brought by any party in respect of forfeited property shall be entertained unless it be instituted within the period of a year from the date of seizure. It is true that this limitation is introduced by way of proviso. But their Lordships think that, looking at the various parts of Act and gathering the purpose and intention of the Legislature from the whole, this was a substantive enactment; and that, although it appears under the form of a proviso, it was a limitation intended by the Legislature to apply to all suits brought by any persons in respect of forfeited property." With respect to the argument that a saving with regard to parties under disability must be taken to be by equitable construction implied in this case and that the clause in Act XIV of 1859 relating to disabilities might be imported into the Act, their Lordships held that it could not be done. They observed: "This Act is of a special kind and does not admit of those enactments being annexed to it." This seems to show that their Lordships' judgment was based on the construction of the special Act in question. Referring to this decision their Lordships observed in *Mussumat Phoobas Koonnur v. Lalla Jogeshur Sahoy*(1). "It arose upon a very special statute, and upon that ground the judgment rests." Then they refer to the passage cited above and point out: "And they proceeded to observe that the application of the statute (if it did apply) would not assist the appellants who would not even in that case have brought their suit in proper time." It is clear that their Lordships were disposed to regard the pronouncement in the earlier case as a dictum not necessary for the decision of the case. The learned Government Pleader argues that the decision in *Mussumat Phoobas Koonnur v. Lalla Jogeshur Sahoy*(1) proceeded on the ground that the two statutes, Acts VIII and XIV of 1859, were passed in the same year, a fact to which their Lordships no doubt refer; but

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(1) (1876) L.R., 3 I.A., 7 at pp. 24 and 25.



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we cannot agree that any stress was intended to be laid upon that circumstance. The basis of the decision, as we understand it, was that the provisions of the general Code of Procedure should be regarded as subject to those of the general Code of Limitation. We do not think any distinction can be drawn with respect to the applicability of the general provisions of the Code of Limitation between suits for which a special period of limitation is prescribed by the Civil Procedure Code and those for which a special period is prescribed by some other statute. Both the decisions of the Privy Council proceeded upon the construction placed upon the particular statute in question in each case. We must take it that the Legislature in Madras was not unaware of the provisions of Act XIV of 1859 when it enacted section 59 of Act II of 1864. In our opinion it did not intend to do anything more than shorten the period of one year given by the Limitation Act to suits to set aside sales for arrears of revenue, and having regard to the language of clause 3 of section 16 of Act XIV of 1859 we must conclude that the legislature intended that the period prescribed in section 59 of Act II of 1864 should be subject to the general provisions of the Limitation Act for the time being in force which might have the effect of postponing the starting point of limitation or of excluding any time in the computation of the period of limitation. The question of the construction to be placed on section 59 cannot be affected by section 29 of the Limitation Act IX of 1908. What effect section 29 would have upon provisions in special Acts which could not be construed as subjecting any special period of limitation prescribed therein to any provisions of the Limitation Act, it is unnecessary to consider in this case. We feel strengthened in this conclusion by the decisions of this Court already referred to above relating to the limitation for suits coming within section 59 of Act II of 1864. We hold therefore that the suit in the present case is not barred by limitation and reversing the decrees of the Courts below remand the suit for disposal on the merits to the Court of First Instance. The costs of this and in the Lower Appellate Court will abide the result.