

the party or his pleader has before him a copy of the judgment.

THE  
SECRETARY  
OF STATE FOR  
INDIA, *In re.*

Authority on the point is scant. *Mahabir Prasad Tewari v. Jantuna Singh*(1) is direct authority, though the reasons given are not those we have given. *Anderson v. Periasami*(2) was under the old section 12 in which "applications were limited to applications to appeal *in forma pauperis* and therefore section 12 could not be then called in aid at all.

We rule that time requisite for obtaining copy of judgment should be excluded.

N. R.

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## APPELLATE CIVIL.

*Before Mr. Justice Spencer and Mr. Justice Ramesam.*

1925,  
April 30.

PETA NAGAYYA (THIRD WITNESS FOR DEFENDANTS).

APPELLANT.\*

*Order XVI, rules 10, 11, 12, Civil Procedure Code—Imposition of fine on refractory witness without previous proclamation or attachment of his property, validity of.*

Neither the issue of a proclamation nor an order for attachment of property under rules 10 and 11 of Order XVI of the Code of Civil Procedure is a condition precedent to the imposition of a fine on a refractory witness, under rule 12. *Ashutosh Mullick v. Secretary of State for India* (1920) 57 I.C., 302, and *Ram Gopal v. Secretary of State for India* (1920) 55 I.C., 425, dissented from.

APPEAL against the order of the Additional Subordinate Judge of Masulipatam in Original Suit No. 47 of 1923.

The facts are given in the judgment.

*A. Venkatachalam* for appellant.

*The Government Pleader* for respondent.

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(1) (1922) I.L.R., 1 Pat., 429.

(2) (1892) I.L.R., 15 Mad., 169.

\* Appeal against order No. 360 of 1924.

## \* JUDGMENT.

NAGAYYA,  
In re.

SPENCER, J.

SPENCER, J.—The Appellant was summoned on 28th January 1924 to appear as a witness on 8th February. He did not appear and a warrant was issued and he was fined Rs. 40 for disobedience of summons. His explanation was that, as he was going to Court, after arriving at the place where the Court was held, he was met by the plaintiff and defendants who told him that the case had been adjourned. We have no means of testing whether this statement was true. The parties were not examined to corroborate him; but the Judge did not accept the explanation. He only gave him five days' time to pay the fine.

It is argued that the Subordinate Judge acted without jurisdiction inasmuch as there was no issue of a proclamation or attachment of property before the fine was imposed. This argument is based on the decisions in *Ashutosh Mullick v. Secretary of State for India*(1) and *Ram Gopal v. Secretary of State for India*(2). I regret that I must express dissent from the opinion of two learned Judges of the Calcutta High Court who decided those cases. I am unable to construe the provisions of rules 10 to 12 of Order XVI of the Civil Procedure Code as meaning that the issue of a proclamation or an order for attachment of property are conditions precedent to the imposition of a fine for non-attendance of a person who has been summoned to attend a Civil Court. BEACROFT, J., treats rule 12 as an alternative to rule 11 and he understands the words, "such person" in rule 12 as meaning a person against whom a proclamation has been issued or whose property has been attached. In my opinion "such person" means a person to whom a summons has been issued and who

(1) (1920) 57 L.C., 302.

(2) (1920) 55 L.C., 425.

fails to attend under rule 10 (1). Rule 12 itself provides both for cases where an attachment has been made and for cases where an attachment has not been already made but is made in enforcement of the order of fine. It seems to me that to say that a Judge cannot fine a witness for disobedience of summons unless the preliminaries are first gone through of attaching his property or issuing a proclamation against him is to put a great and unnecessary limitation on the powers of Courts to deal with refractory witnesses. The Subordinate Judge's order was thus passed in the exercise of his jurisdiction.

There is nothing to show that the witness had ever previously disobeyed a summons of Court. He did not prove that he was told by the parties that the case had been adjourned; and, even assuming that story were true, it would not legally be sufficient excuse for non-attendance. The fine of Rs. 40 is rather excessive, and is in contrast with the fact that all the other witnesses who were fined in the case were excused when they appeared before the Court and represented their reasons for non-appearance. I reduce the fine imposed by the lower Court from Rs. 40 to Rs. 5 (Rs. five). The excess will be refunded. In other respects the appeal is dismissed. No costs.

RAMESAM, J.—I entirely agree.

RAMESAM, J.

The case in *Ashutosh Mullick v. Secretary of State for India*(1) merely follows the earlier case in *Ram Gopal v. Secretary of State for India*(2) and contains no additional reasoning. It seems to me that the argument addressed to BEACHCROFF, J., in *Ram Gopal v. Secretary of State for India*(2) and which was rejected by him, namely, that Order XVI, rule 12, should be construed independently of rule 11 and should be taken to refer to rule 10 is sound and might

(1) (1920) 57 I.C., 302.

(2) (1920) 55 I.C., 425.

NAGAYYA,  
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 RAMESAN, J.

have been accepted by him. I am of opinion that Order XVI, rule 12, deals with all cases of disobedience not covered by rule 11, whether there has been attachment or not. If it were not so, there would be cases of flagrant disobedience with which Courts would have no power of dealing; but, apart from such considerations, Order XVI, rule 12, contains clear indications that it deals also with cases where there has been no attachment. It provides for a fresh attachment of property where the witness has failed to give a satisfactory explanation, if there has been no attachment of property, and if there has been an attachment already, for sale. Both cases being expressly referred to in the section, it is difficult to construe Order XVI, rule 12, as being confined to cases in which there has been an attachment.

I agree with the order passed by my learned brother.

N.B.

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### APPELLATE CIVIL.

1925,  
 February 12.

*Before Mr. Justice Devadoss and Mr. Justice Wallace.*

VISWANATHA MUDALI AND ANOTHER (2ND AND 3RD  
 DEFENDANTS), APPELLANTS

*v.*

DORAISWAMI MUDALI AND ANOTHER (PLAINTIFFS 1 AND 2),  
 RESPONDENTS.\*

*Hindu Law—Legitimate descendants of a Hindu dancing  
 woman—Right of succession inter se.*

The legitimate descendants of two sons of a Hindu dancing woman are under the Hindu Law entitled to succeed to each other. *Mayna Bai v. Ultaram*, (1864) 2 M.H.C.R., 196, applied.

APPEAL against the order of P. SUBBAYYA MUDALIYAR,  
 District Judge of North Arcot at Vellore, in Appeal

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\* Appeal against Order No. 39 of 1924.