

APPELLATE CIVIL.

Before Mr. Justice Cornish.

THE CO-OPERATIVE CREDIT SOCIETY OF ARUNGUNAM
VILLAGE BY ITS PRESIDENT, SATAGOPACHARI
(PLAINTIFF), APPELLANT,

1936,
September 22.

v.

CHINNASWAMI UDAYAN (SECOND DEFENDANT),
RESPONDENT.*

Indian Limitation Act (IX of 1908), art. 181—Applicability of, to applications to enforce in Court an award under rule 14 (5) of the statutory rules framed under the Madras Co-operative Societies Act (VI of 1932).

Article 181 of the Indian Limitation Act applies to applications to enforce in Court an award made in accordance with the procedure laid down by rule 14 (5) of the statutory rules which have been framed under the Madras Co-operative Societies Act.

APPEAL against the order of the District Court of Chingleput, dated 10th October 1933 and made in Appeal Suit No. 63 of 1933 preferred against the order of the Court of the District Munsif of Chingleput, dated 3rd February 1933 and made in Executive Petition No. 1674 of 1932 in Claim No. 80 of 1927-28.

K. E. Rajagopalachari for appellant.

C. Krishnamachari for respondent.

JUDGMENT.

The appellant is the Co-operative Credit Society of Arungunam. It obtained an award under the provisions of the Madras Co-operative

* Appeal Against Appellate Order No. 74 of 1934.

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Societies Act against the respondent for a sum of money. The award was made on 30th January 1928. The application to enforce the award was made by the Registrar of Co-operative Societies to the Court on 15th January 1932. The only question in this appeal is whether the application is time-barred. Admittedly it is, if article 181 of the Limitation Act governs it. But the argument is that the application, not being one under the Civil Procedure Code, the Limitation Act has no application. The application to enforce the award was made in accordance with the procedure laid down by rule 14 (5) of the statutory rules which have been framed under the Madras Co-operative Societies Act. The particular course taken by the Registrar in the present case was under rule 14 (5) (b) which says :

“On application to the Civil Court having jurisdiction over the subject-matter of the decision or award, that Court shall enforce the decision or award as if it were a decree of the Court.”

It is clear that the application is made to the Court to exercise its functions as a Court. But the argument is that, admitting that the application is made to the Court, it is not an application made to the Court under the Civil Procedure Code, but is an application made under the provisions of the Madras Co-operative Societies Act. There is no doubt upon the case law that article 181 of the Limitation Act only relates to applications under the Code. But if these cases are examined it will be found that they refer to applications to the Court to order something which the Court has no power to order or to do under the Civil Procedure Code ; e.g., an application for probate to the Court

under the Probate and Administration Act [*Bai Manekbai v. Manekji Kavasji*(1)], or for an order under the special rules of the High Court for recovery of costs by a solicitor [*Wadia, Gandhi & Co. v. Purshotam*(2)], or an application by a liquidator under section 186 of the Indian Companies Act for an order upon the contributories of the company to pay debts [*Hansraj Gupta v. Official Liquidators of Dehra Dun etc. Company*(3)]. In each of these instances the remedy given by a particular Act is enforceable in the manner provided by that Act and not by the machinery of the Civil Procedure Code. In the present case the application is to the Court to exercise its execution jurisdiction as if the award was a decree. I think that means that it is to be executed in the same manner as decrees are executed under the Code. In fact, a Court has no other power than that which is conferred upon it by the Code to put its execution machinery in motion. In my judgment this case is hardly distinguishable from *Sambasiva Mudaliar v. Panchanada Pillai*(4). There, an application was made in pursuance of section 40 of the Revenue Recovery Act which provides that, on production of a sale certificate by the purchaser, the Court shall cause a proper process to be issued for the purpose of putting such purchaser in possession in the same manner as if the purchased lands had been decreed to him by a decree of the Court. The same argument was raised there, as here, that the application was not one made under the Civil Procedure Code. But it was held that, inasmuch as the application to

(1) (1880) I.L.R. 7 Bom. 213.

(2) (1907) I.L.R. 32 Bom. 1.

(3) (1932) I.L.R. 54 All. 1067 (P.C.).

(4) (1907) I.L.R. 31 Mad. 24.

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the Court was to put in motion the machinery of the Code, it was an application under the Code. This reasoning seems to be decisive of the present appeal. The appeal accordingly fails and is dismissed with costs.

G.R.

APPELLATE CIVIL—FULL BENCH.

*Before Mr. Justice Varadachariar, Mr. Justice Burn and
Mr. Justice Pandrang Row.*

1936,
November 16.

THE RAJA OF VIZIANAGRAM, REPRESENTED BY HIS
NEXT FRIEND, THE ESTATE COLLECTOR APPOINTED UNDER
THE COURT OF WARDS ACT (PLAINTIFF),
PETITIONER,

v.

DINDI CHINA THAMMANNA (DEFENDANT),
RESPONDENT.*

Madras Local Boards Act (XIV of 1920), sec. 88—"Intermediate landholder"—Holder of inam in zamindari, if an, from whom zamindar can claim to recover cess paid by him to Government—Test as to—Suit by zamindar to recover from inamdar as intermediate holder cess paid by zamindar to Government—Limitation—Indian Limitation Act (IX of 1908), art. 120—Applicability of—Interest prior to date of plaint in such suit—Zamindar's right to.

In regard to the question whether the holder of an inam in a zamindari can be dealt with as an "intermediate landholder" from whom the zamindar can claim to recover the whole or a portion of the cess paid by the zamindar to Government under section 88 of the Madras Local Boards Act, the decisive fact is not whether the inam is a pre-settlement inam or post-settlement inam but whether even in the case of a pre-settlement inam the lands have been excluded from or included in the

* Civil Revision Petitions Nos. 1063 to 1070 of 1933.