

restricted to mesne profits from the date of suit. Credit must be given with regard to any past mesne profits which have been paid. All the parties are before us in the partition suit either as appellants or as respondents so that if any appeals have been filed in the lower Court they can be transferred *pro forma* to this Court.

Each party to bear his own costs of the appeal.

Cross-objections are dismissed. No order as to costs.

Decree varied.

R. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

TIMMAPPA GANPAT GUDGAR (ORIGINAL PLAINTIFF), APPLICANT v.
MANJAYA SUBRAYA HEBBAR (ORIGINAL DEFENDANT), OPPONENT ^o.

1924.

February 21.

Indian Limitation Act (IX of 1908), section 12—Appeal—Exclusion of separate periods of time taken for obtaining a copy of judgment and a copy of decree.

Under section 12 of the Limitation Act, 1908, two separate periods, one for obtaining a copy of the judgment and one for obtaining a copy of the decree, can be excluded in computing the period of limitation.

Silamban Chetty v. Ramanadhan Chetty⁽¹⁾, relied on.

APPLICATION under extraordinary jurisdiction praying for reversal of the order passed by V. M. Ferrers, District Judge of Kanara.

The petitioner-plaintiff sued the opponent-defendant in the Court of the Subordinate Judge at Honawar for three years' rent.

The suit was dismissed on August 10, 1922.

Thereafter, for the purpose of preferring an appeal to the District Court, the petitioner applied for a certified copy of the decree on August 28, 1922 and the

^o Application No. 157 of 1923 under extra-ordinary jurisdiction.

⁽¹⁾ (1909) 33 Mad. 256.

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copy was obtained on September 7. On September 9, he applied for a certified copy of the judgment and obtained the copy on September 14.

The appeal was filed on September 25, 1922, with a note that the presentation of the appeal was within limitation if periods taken up in obtaining the copies of the decree and judgment of the Subordinate Court were excluded under section 12 of the Limitation Act, 1908.

The District Court was of opinion that the time requisite for obtaining both copies was the time taken in obtaining the first copy. He, therefore, allowed only that period to be excluded and on this calculation found the presentation of the appeal out of time and rejected it.

The plaintiff preferred an application to the High Court.

S. N. Karnad, for the applicant.

G. P. Murdeshwar, for the opponent.

MACLEOD, C. J.:—The question in this application for revision is whether the Judge was right in holding that the appeal was time-barred on the ground that two separate periods could not be excluded, one for obtaining a copy of the judgment and another for obtaining a copy of the decree. In this case there was an interval between the two periods. The case, therefore, comes within the decision in *Silamban Chetty v. Ramanadhan Chetty*.⁽¹⁾ There the decree was passed on October 12, 1905. The respondent applied for a copy of the decree on October 18, and obtained it on December 19. Then he applied for a copy of the judgment on December 22 and obtained it on February 16, 1906. The Court held that the party was entitled to deduct both the periods, and

⁽¹⁾ (1909) 33 Mad. 256.

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consequently, the appeal was in time. Reference was made to the case of *Raman Chetti v. Kadirvalu* ⁽¹⁾, where the two periods overlapped, and it was decided that the overlapping period should not be counted twice over.

There is no decision in this Court directly in point. In *Macmillan & Co., Ltd. v. K. & J. Cooper* ⁽²⁾ the unsuccessful party applied for a certified copy of the judgment on June 12, and of the decree on June 30. The certified copies were supplied respectively on July 3 and August 8. It was held that the whole period of time occupied in obtaining certified copies of the judgment and decree appealed from should be excluded. Though that was a case of the two periods overlapping, the decision in *Silamban Chetty v. Ramanadhan Chetty* ⁽³⁾ was approved of. We think, therefore, that these two distinct periods should be excluded in computing the time for the admission of the appeal. The Rule, therefore, must be made absolute and the appeal remanded to the lower appellate Court for being heard on the merits. Costs costs in the appeal.

Rule made absolute.

J. G. R.

⁽¹⁾ (1898) 8 Mad. L. J. 148.

⁽²⁾ (1923) 48 Bom. 292.

⁽³⁾ (1909) 33 Mad. 256.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

SUBBA RAMA HEGDE, HEIR OF SUBRAYA HARIAPPA HEGDE
 (ORIGINAL PLAINTIFF), APPELLANT v. VENKATSUBBA SHRINIWAS
 HEGDE (ORIGINAL DEFENDANT), RESPONDENT*.

1924.

 February
 25.

Transfer of Property Act (IV of 1882), Sections 123, 126—Gift—Immovable property—Execution of deed of gift—Suit by donor to restrain donee from registering the document—Gift invalid.

* Second Appeal No. 551 of 1922.