

Court which is the appellate Court of the District.....They should be read with reference to the object of the section and as meaning the Court of Appeal for the district, treating Calcutta as a district, which it is for the purposes of this Act, and the High Court exercising its appellate jurisdiction as the Court of Appeal. There is nothing in the Act (the General Clauses Act I of 1868) to prevent us from putting on s. 35 of the Land Acquisition Act a construction which carries out the object of the Legislature. For these reasons we think that the appeal lies." See also *In the matter of the Petition of Syud Abdool Ali*, 15 Bengal L. R., p. 107.

1875.  
October 8.  
R. A. No. 65  
of 1875.

**Appellate Jurisdiction.(a)**

*Civil Miscellaneous Special Appeal No. 244 of 1875.*

MAHALAKSHMI AMMAL.....*Appellant.*  
LAKSHMI AMMAL.....*Respondent.*

Under Act No. IX of 1871 deductions can no longer be made on account of proceedings between the decree-holder and third persons, to remove obstacles to the execution of the decree, for the present Limitation Act makes the date of application for execution of decree the time from which the computation must be made.

**T**HIS was an Appeal against the order of Mr. A.C. Burnell, the Acting District Judge of South Tanjore, dated the 1st May 1875 passed on Civil Petition No. 138 of 1875 presented against the order of the Court of the District Munsif of Combaconum, dated 9th February 1875.

1875.  
October 15.  
C. M. S. A.  
No. 244  
of 1875.

In Original Suit No. 147 of 1866 a decree was passed on the 22nd June 1868 for the payment of a certain sum of money by the defendant to the plaintiff solely on the liability of the mortgaged house. Accordingly, plaintiff applied for execution and had the house attached, but upon a petition of claim preferred by one Narayanaran, the attachment of the property was withdrawn on the 2nd February 1870.

Thereupon, on the 6th October 1870, the plaintiff instituted a suit for cancellation of the above order and for a declaration of his right to recover the decree amount from the said property. In that suit a decree was passed in favor of the plaintiff on the 28th October 1873, and that decree was affirmed in appeal on the 20th April 1874.

Subsequently, on the 13th June 1874, the plaintiff put in an application praying for realization of the amount of the

(a) Present :—Sir W. Morgan, C.J., and Kindersley, J

1875. *decree in the above suit by the attachment and sale of the*  
*mortgaged property. As the first application for execution*  
*of the decree was dismissed on the 2nd February 1870, and*  
*as no other application for its enforcement was made by the*  
*plaintiff within the three years preceding the 13th June*  
*1874, the date of the present application, it was contended*  
*by the defendant that execution of the decree is barred under*  
*the Indian Limitation Act.*

*1875.*  
*October 15.*  
*C. M. S. A.*  
*No. 244*  
*of 1875.*

The District Munsif of Combaconum being of opinion that so far as applications for the execution of decrees and orders in suits brought before 1st April 1873, are concerned, the period of limitation should be reckoned under Act XIV of 1859 it was unnecessary to give the reasons shewing that the present case is barred under the new Limitation Act and accordingly dismissed the defendant's application.

Against this order the defendant appealed, and the Acting District Judge of South Tanjore passed the following order upon the said appeal:—

“The decree is dated 22nd June 1868, and application for execution is dated June 1874. But meanwhile there were proceedings in respect of the property up to 20th April 1874 from 6th October 1870, and in consequence of which nothing could be done meanwhile. Execution is not therefore barred, and I must reject this application.”

From the said order the counter-petitioner (defendant) appealed on the following grounds:—

“1. The application for the execution of the decree is governed by the present Act for the Limitation of suits, and not by the old Limitation Act No. XIV of 1859.

2. The execution of the decree is barred by Clause 4 of Section 167 of the second Schedule of Act No. IX of 1871.”

*V. Bhashiam Iyengar*, for the appellant, contended that the suit was barred as the proceedings in the suit filed on the 6th October 1870 could not be deducted. *Krishna Chetty v. Rami Chetty* (1).

A. *Ramachendra Iyer*, for the respondent, contended that the suit was not barred as the proceedings under the original decree were stayed in consequence of the subsequent suit. *Ragava Pisharri v. Valia Thambraile*. (1). 1875.  
October. 15.  
C.M.S.A. No.  
244 of 1875.

The Court delivered the following

UDGMENT:—The two cases cited are distinguishable from the present case.

In both of them, applications had been made and execution had taken place, although it had not been completed. The orders postponing sale “operated simply as a temporary stay of the process for the sale of the property,” See 4 H. C. 262, (2) and when the litigation between the claimants and the decree-holders closed, the latter were in this position—that they had not to apply a fresh to the Courts to enforce or keep in force these decrees but merely to ask the Court to proceed with the sales, which the Court had for a time stayed.

Here the case is wholly different. The decree-holder is an applicant for execution. The proceedings of 2nd February 1870 wholly terminated his former application, and he can show us no subsequent *application* to the Court (within 3 years of his present application) to enforce or keep in force his decree.

But he shows us litigation undertaken by him in furtherance of that decree and to remove obstacles to its execution. This litigation between himself and a successful claimant would have saved the decree-holder under the old Act, for it was a *proceeding taken* within the meaning of Section 20, but the new Act makes the *date of applying* to the Court to enforce &c. the time from which the computation must be made. We can no longer, therefore, make deductions on account of proceedings between the decree-holder and third persons.

*Special Appeal allowed.*

(1) 4 Madras E. C. Rep., p. 261.

NOTE.—See *Naranappa Aiyar v. Nanna Ammal*, ante p. 97, and the cases in the note thereto.