

dians in some cases to Collectors, in others to the District Courts. The appellant, not being a guardian within the meaning of those Laws but deriving his authority from the will of the minors' father, could not thus apply to the District Court; and, on this ground alone, we dismiss the appeal. The costs will be paid out of the estate.

1875.  
August 27.  
C. M. R. A.  
No. 136  
of 1875.

*Appeal Dismissed*

**Appellate Jurisdiction.(a)**

*Civil Miscellaneous Special Appeal No. 178 of 1874*

NARANAPPA AIYAN.....(Defendant)Appellant  
NANNAAMMALiasPARVATHYAMMAL(Plaintiff)Respondent

Limitation Act No. IX of 1871, governs applications to execute decrees made before the Act, and, in computing the period of limitation, the Act directs the date of the prior application to be taken and that date cannot be altered because intermediate payments may have been made on account of maintenance.

**T**HIS was an Appeal against the order of Mr. J. H. Nelson, the Acting District Judge of North Tanjore, dated the 11th March 1874, passed on Civil Miscellaneous Petition No. 57 of 1874, presented against the order of the Court of the District Munsif of Negapatam, dated 20th January 1874.

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Plaintiff in O. S. No. 229 of 1864 sought to execute the decree she obtained in the said suit awarding her maintenance. The Judgment of the District Munsif of Negapatam, so far as it is material was as follows:—

“ The Act No. XIV of 1859, which was in force at the time the Judgment alluded to by the plaintiff was passed by the High Court, has been cancelled. It is laid down in para. 167 of Schedule 2 of the new Limitation Act IX of 1871 that the limitation period for the decree passed for payment of money by instalments should be calculated from the date of each instalment. It has to be ascertained now whether the plaintiff's decree had, prior to the date when the said new Act came into force, been barred under the said Act No. XIV and the High Court's decision, and if so, whether the benefit of the said new Act can be given to the said decree. It is clear from the records of this Court that the plaintiff's decree is not barred as aforesaid it appears that the execution of the plaintiff's decree was carried out in this Court in No. 182 of 1868 at the end of

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

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the year 1869. Hence, I decide that the plaintiff's decree is not barred by Limitation Rules."

From this order the defendant appealed, and the Acting District Judge of North Tanjore thereupon passed the following order:—

"I am of opinion that the order of the Lower Court must be affirmed, and the decree-holder held to have applied in time, with reference to the Judgment of the Madras High Court at p. p. 183 (1) and 275 (2) of the Reports. The decree is not for payment by instalments, but for a sum of money year by year, and therefore Article 6 of Section 167 of the Limitation Act of 1871 does not affect the case, but Article 4 does.

From that order the defendant appealed on the ground that

"The application for the execution of the decree is barred by the Act of Limitation."

*A Ramachendra Iyer*, for the appellant, defendant.

The Court delivered the following

JUDGMENT:—We must reverse the order of the Court below. Our Judgment was reserved because we desired to consider whether, upon any fair construction of the facts found or suggested to require a finding, it could be determined that process of execution was not barred. It has been already held that the new Limitation Act governs applications to execute decrees made before the Act; and, in computing the period of limitation, the Act directs the date of the prior application to be taken. The time must be reckoned from such date. We are not authorized to make deductions or to alter that date because intermediate payments may have been made on account of maintenance. The appeal will be allowed but without costs.

*Appeal allowed.*

(1) *Sinthayee v. Thanakapudayen*, 4 Madras H. C. Rep., p. 183.

(2) *Lakshmi Ammal v. Sashadry Aiyangar*, Ib., p. 275.

NOTE.—The oral decisions referred to in the above judgment were delivered by the Full Bench in *Saldanha v. Hajam Rama, Mannah Pujary v. Mannah* and others, *Vellayan Chetty v. Krishniyen* and others, and *Venkadare Sanjeevappa v. Mooktan Sahib*, on the 7th August 1874 but were not reported. With this decision compare that in *The Collector of South Arcot v. Thathacharry*, page 40 *ante*. See next case *Krishna Chetty v. Rami Chetty* and 2 others; *Mahalakshmi Ammal v. Lakshmi Ammal*, post p. 105; and *Govind Lakshman v. Narayan Moreshwar*, 11 Bombay H. C. Rep., p. 111.