

(1919) 04 MAD CK 0018
In the Madras High Court

A. Ramaswami Pillai

APPELLANT

Vs

The Thasildar of Madura and Another

RESPONDENT

Date of Decision : 24-04-1919

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 2
Land Acquisition Act, 1894 — Section 54

Citation : (1919) 10 LW 226 : (1919) 37 MLJ 110

Judgement

1. This is an appeal from an award of the District Judge of Madura in certain Land Acquisition proceedings and the preliminary question is whether

Article 156 of the Limitation Act applies. The court fees were paid on the memo of appeal one year and 149 days out of time, and if Article 156

applies the appeal would be barred, The question is of first impression and cannot be said to be quite free from difficulty The Land Acquisition Act

gives a right to appeal by Section 54 which lays down,"" subject to the provisions of the CPC applicable to appeals from original decrees, an

appeal shall lie to the High court from the award or from any part of the award of the court in any proceedings under that act."" There is no special

period of limitation provided in the Land Acquisition Act, nor is there any allusion, unless it be by implication of this very section, to the Limitation

Act. Article 156 of the Limitation Act provides a period of 90 days for " Appeal under the Code of Civil Procedure, .1908, to a High Court,

except in the cases provided for by Article 151 and Article 153" the time to run from "the date of decree or order appealed from." The argument

on behalf of the appellant is that you must read the 1st column of the article as meaning that the appeals provided for here are those the right to

which is conferred by the Code of Civil Procedure, and it is contended that this

interpretation is strengthened by the language of column 3. There is no direct authority on the point. There is however a ruling of the Calcutta High Court in *Aga Mahomad Hamadani v. Cohen* ILR (1886) C. 221 the reasoning of the decision in which seems to apply to the present question. There the objection was raised with reference to an appeal provided for under the Burma Courts Act, XVII of 1875. Section 49 of that Act provided for an appeal to the High Court of Calcutta in cases where the amount of value of the subject matter exceeded Rs. 3000 and was less than Rs. 10,000. Wilson and Porter JJ., interpreted the words "Appeals under the Code of Civil procedure" in Article 156 of the Limitation Act as meaning appeals the procedure in respect of which is governed by the Civil Procedure Code. They say, "'The Limitation Act, Schedule II, Article 156, when it speaks of the 'Civil Procedure Code is, on the face of it, speaking of a Code which relates to procedure and does not ordinarily deal with substantive rights; and the natural meaning of an appeal under the CPC appears to us to be an appeal governed by the CPC so far as procedure is concerned.'" It seems to us that this is the correct interpretation of Article 156. There seems to be no good reason for saying that an appeal under the CPC means only an appeal the right to prefer which is conferred by the Code itself. On the other hand it would not be straining the language of the article too much to hold that an appeal the procedure with respect to which from its inception to its disposal is governed by the Civil Procedure Code, may rightly be spoken of as an appeal under the Code : this interpretation seems to us to be strengthened by the reference, in Article 156 itself to Article 151 of the same schedule. Article 151, provides for appeals from a decree or order of the High Court in the exercise of its original jurisdiction. Now though the right to appeal from such decrees or orders is not given by the Code of Civil Procedure, but by the Letters Patent yet Article 166 speaks of such appeals as appeals under the Civil Procedure Code. That also tends to show that what is meant by the legislature is appeals the hearing and disposal of which, is governed by the rules of procedure laid down in the Civil Procedure Code.

2. As regards column 3 there can be no doubt after the decision of the Privy Council in *Rangoon Botatong Co. Ltd. v. The Collector Rangoon* ILR (1912) C. 21 that an award under the Land Acquisition Act is not a decree

passed in the ordinary jurisdiction of a Civil Court. But their

Lordships themselves point out in that case that appeals from awards as provided for in Section 54 of the Land Acquisition Act are governed as to

their procedure from the date of the filing of the appeal to its disposal by the rules provided for in the CPC : and in a Letters Patent Appeal in this

Court in *Manavikraman Tirumalpad v. The Collector of Nilgiris* ILR (1918) M. 948 it has been held that Section 98 of the CPC applies. Though

the award of the Land Acquisition Judge is not a decree or order for purposes of further appeal from the decision of the High Court in appeal

nevertheless, the procedure laid down in the CPC with reference to appeals from original decrees which are also made applicable to appeals from

Orders by Rule 2 of Order XLIII, Civil Procedure Code, governs appeals u/s 54 of the Land Acquisition Act, although in the rules the word

decree"" is used. It is to be pointed out that the provisions of the CPC regarding procedure to be followed in appeals from original decrees are

incorporated in the Land Acquisition Act by virtue of Section 54. If the 1st column of Article 156 includes, as we hold, appeals provided for by

Section 54 of the Land Acquisition Act there is really no difficulty created by the use of the words ""decree or order "" in the 3rd column. Then we

think it rightly pointed out in *Dropadi v. Hira Lal* ILR (1912) A. 496 that there are several acts, for example, the Succession Act, the Probate and

Administration Act and the Land Acquisition Act, which make the CPC applicable to the proceedings under the Act, and give a right of appeal to

the High Court, but do not prescribe any period of limitation for the appeal. It has always been assumed probably rightly, that such appeals are

under the CPC governed by what is now Article 156 of Schedule 1 to the Limitation Act and by the general provisions of the Act also.

3. Our attention has been drawn by Mr. A. Krishnasami Aiyar, to certain especial Acts, such as, the Calcutta Improvement Act and the Bombay

Improvement Act, in which special rules of limitation are provided for. That, to our mind, does not affect the question. It might have been perhaps

better if the legislature enacting the Land Acquisition Act had also provided some special provision or made an express and direct reference to the

provisions of the Limitation Act. But that is another question.

4. We hold upon a proper construction of Article 156 that it applies to appeals

provided for by Section 54 of the Land Acquisition Act.

5. This appeal must be dismissed with costs.