
(1966) 01 KL CK 0002
In the High Court Of Kerala
Case No : S.A. No. 491 of 1961

Abdu

APPELLANT

Vs

Marakkar and Others

RESPONDENT

Date of Decision : 10-01-1966

Acts Referred:

Limitation Act, 1963 — Section 3, 4

Citation : (1966) KLJ 541

Hon'ble Judges : S. Velu Pillai, J;K.K. Mathew, J

Bench : Division Bench

Advocate : V. Balakrishna Eradi and K.P.G. Menon, for the Appellant; V.R. Venkitakrishnan, for the Respondent

Final Decision : Dismissed

Judgement

S. Velu Pillai, J.—This second appeal by the first defendant is directed against the orders of the courts below, holding that the application presented by the first respondent-decree-holder on the 23rd August, 1957, for passing a final decree is not barred by limitation. The preliminary decree, which was for the realisation of a sum of money charged on property was passed on the 31st March, 1953. The application for the final decree was well beyond three years from the date of the preliminary decree and was prima facie barred by limitation under Article 181 of the Limitation Act. That this is the Article applicable to such an application was not disputed. But it was contended for the respondent in the courts below and that contention was repeated before us, that under the Madras Indebted Agriculturists (Temporary Relief) Ordinance, 1953, the Madras Indebted Agriculturists (Temporary Relief) Act, 1954, and the Madras Indebted Agriculturists (Repayment) of Debts Act, 1955, (Act I of 1955), the application for passing the final decree may be held to be within time, by excluding the periods specified in Section 4 of the Ordinance and the Act of 1954, and in Section 3 of Act I of 1955. But it has been held by one of us in Moidunni v. Alu (1962 K.L.J. 165) that the periods during which the proceedings in suit which

would include the proceedings for passing final decree, stood stayed, under the above provisions, cannot be excluded in computing the period of limitation for such proceedings. The correctness of this decision has not been challenged before us. Applying the decision, it must follow, that the application for passing the final decree as presented was barred by limitation. In this view no other question arises in this appeal, which is allowed but without costs. I. A. 1788 of 1957 in O. S. 286 of 1951, which is the application for passing the final decree, shall accordingly stand dismissed.