

(1910) 10 MAD CK 0019
In the Madras High Court

Chidambabam Chetty alias Raman Chetty	APPELLANT
Vs	
Karuppan Chetty and Others	RESPONDENT

Date of Decision : 03-10-1910

Acts Referred:

General Clauses Act, 1897 — Section 6
Limitation Act, 1963 — Article 164, 6

Citation : (1912) ILR (Mad) 678

Hon'ble Judges : Krishnaswami Ayyar, J;Abdur Rahim, J

Bench : Division Bench

Judgement

1. This case is covered by the decision in Arayil Kali Amma and Others Vs. Palappakkara Manakal and Others, . An ex parte decree was passed on the 4th September 1894. The third defendant, a minor, who says he attained majority on the 16th January 1909, applies on the 25th idem to sot aside the ex parte decree. The new Limitation Act came into force on the 1st of January 1909. If this Act applies, it is clear that the application is barred. Article 164 of the new Act gives thirty days from the date of the decree for the application. The other alternative of thirty days from the date when the applicant becomes aware of the decree where he was not served with notice, has no application to the facts of this case as it is not alleged that notice was not served. The period of thirty days from the date of the decree would have expired on the 4th of October 1894. The appellant pleads the disability of minority, But u/s 6 of the new Limitation Act, it avails only as regards suits and applications for execution. It follows that if the new Act applies the application is barred. But the appellant contends on the authority of Maro Sadashiv v. Visas Raghunath ILR (1893) Bom. 536 that on general principles apart from Section 6 of the Act a fresh period must be held to run from the cessation of minority, Assuming that case to have been rightly decided, it has no application to the present, because Section 7 of the old Limitation Act has been deliberately modified so as to confine the operation of disability to suits and applications for the execution of decrees and it will be against all principles of interpretation to allow minority to operate as a ground of

disability in cases deliberately excluded from Section 6. An application to set aside an ex parte decree unlike an application u/s 230 of the old Code of Civil Procedure is specially provided for by Article 164 which is one of the applications falling within Section 3.

2. It is then contended that Section 7 of Act XV of 1877 under which the disability of minority applies to all applications governs this case. Such a contention runs counter to the express provision of Section 3 of Act IX of 1908. It runs "subject to the provisions contained in, sections 4 to 25 (inclusive), every suit instituted, appeal preferred, and application made, after the period of limitation prescribed therefor by the first schedule shall be dismissed.... "There is nothing in Section 6 (of the Act) that applies to this case. We may therefore read the clause so far as this case is concerned without the words "subject to the provisions contained in sections 4 to 25 (inclusive)" The present application is one made after the period of limitation prescribed for it by Article 164 of the first schedule. It follows that; the application ought to be dismissed. It is argued, however, that Section 6 of the General Clauses Act of 1897 renders the new Limitation Act inapplicable. That section provides that unless a different intention appears, the repeal of an enactment "shall not affect any right", privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed." Under Act XV of 1877 the applicant had the right or privilege to move the Court to set aside the ex parte decree within thirty days from the cessation of minority. It is said that that cannot be affected by the repeal of Act XV of 1877. There are two answers to this contention. First, assuming that the right to apply to set aside an ex parte decree is a right within the meaning of the section as to which see *Colonial Sugar Refining Company v. Irving* (1906) A.C. 369 such a right to apply is not acquired under the Limitation Act of 1877 but under the CPC (Order 9, Rule 13). The Limitation Act merely limits the period within which the right given by the Procedure Code may be exercised, see *The Ydun* (1899) P. 236, Clause C of Section 6 of the General Clauses Act therefore does not save the application.

3. *The Hope Mills Ltd. Vs. Vithaldas Pranjivandas*, to which our attention was drawn by the respondents' vakils is a case exactly in point. Another answer to the contention is given by the words "unless a different intention appears," see *Moon v. Durden* (1848) 76 R.R. 479. A different intention does appear in Section 3 of Act IX of 1908 which expressly makes Article 164 of the first schedule to the Act applicable to the case. Moreover Section 30 of the Act, which gives a special period of two years in the case of suits for which a shorter period of limitation is provided by the new Act than by the old Act, makes no similar provision in the case of applications. Expressio unius exclusio alterius. The intention seems to be abundantly manifest that the new Act applies.

4. It was pressed upon us that this was a case of hardship. On the date when the new Act came into force the period provided by it having expired the right which the applicant had is practically withdrawn from him, There is, no doubt, some

force in the argument. The facts of the Bombay case did not raise this difficulty, see Macleod, J. at page 734(5). But as pointed out in *Arayil Kali Amma and Others Vs. Palappakkara Manakal and Others*, the new Limitation Act which was passed in August 1908 and came into force nearly five months later on the 1st of January 1909, gave ample notice to all who would be seriously affected by the change in the law to seek their remedy under the old law before the new Act came into operation. There was a mode, of relieving one's self from the hardship created by the change in the law which was available to those who were likely to be affected by the change--*Towler v. Chatterton* (1829) 6 Bing. R. 258, *The Queen v. The Leeds and Bradford Railway Company* (1852) [N.S.] 21 L.J. M.C. 198. The plain language of Section 3 of the Act must be given effect to. The appeal is dismissed with costs.