

(1944) 03 MAD CK 0001
In the Madras High Court

Chigurupalli Krishna Rao and Another	APPELLANT
Vs	
Manager, Bhashararaopuram Co-operative Society	RESPONDENT

Date of Decision : 16-03-1944

Acts Referred:

Madras Revenue Recovery Act, 1864 — Section 40

Citation : AIR 1944 Mad 434 : (1944) 57 LW 399

Hon'ble Judges : Happell, J

Bench : Division Bench

Judgement

Happell, J.—The question raised in this appeal is one of limitation. Three awards were obtained against the appellants under the

Cooperative Societies Act, in 1931. Rule 15, Clause 7 of the rules made under the Co-operative Societies Act states that a decision or award

shall be enforced in any of three ways. In the present case, the award was enforced under Rule 15 Clause 7, i.e., by an application to the

Registrar. On 27th November 1934, in enforcement of the award under the provisions of Rule 22 the appellants' property was brought to sale and

purchased by the decree-holder and the sale was confirmed on 21st January 1935. The execution petition out of which this appeal arises, E.P. No.

364 of 1940, was presented in the civil Court under the provisions of Rule 22, Clause 12 on 22nd July 1940. The learned District Munsif held that

the application was out of time and repelled the contention put forward for the purchaser that the starting point for limitation was the date on which

his attempt to enter on the land was resisted. On appeal, the District Judge of Vizagapatam reversed the decision of the District Munsif. The

District Judge referred to the case in Sambasiva v. Panchanatha (1908) 31 Mad. 24 and holding that Article 181 applied and that the right to apply

accrued when the purchaser of the land was resisted, found that the application was in time. Section 40, Revenue Recovery Act, is not

distinguishable in terms from Rule 22, Clause 12 of the rules made under the Co-operative Societies Act, and in *Sambasiva v. Panchanatha* (1908)

31 Mad. 24 the question was with regard to the article of the limitation applicable where an application had been made for delivery of possession

u/s 40, Revenue Recovery Act. The learned District Judge, however, seems to have overlooked the fact that the result in *Sambasiva v.*

Panchanatha (1908) 31 Mad. 24 was that the application which had been put in more than three years after the date of confirmation of sale was

dismissed. The District Judge in his judgment has set out the whole of the first two paragraphs of the headnote to *Sambasiva v. Panchanatha*

(1908) 31 Mad. 24 and between the two paragraphs he has interpolated an observation of his own to the effect that the right to apply accrues

when the purchaser of the land is resisted and prevented from obtaining possession of the land purchased. It does not seem to me that in 31 Mad.

241 there is any warrant for this observation. As the learned District Munsif points out, it would be a remarkable position if the purchaser was

entitled to come to Court at any time he pleases after the date of confirmation of sale, stating that an attempt made by him to gain possession has

been resisted, and claiming that he was entitled to a period of three years" limitation from the date of the resistance. In my opinion the right to apply

accrued on the date of the confirmation of the sale and the application for delivery of possession had to be made within three years from that date.

That being so, the appeal must be allowed with the appellants' costs throughout. Leave to appeal is refused.