

(1911) 02 MAD CK 0040
In the Madras High Court

Kondi Ramasawmy Chetty

APPELLANT

Vs

Neli Hari Krishna Chettyar and Others

RESPONDENT

Date of Decision : 13-02-1911

Acts Referred:

Limitation Act, 1877 — Article 62

Citation : (1911) 21 MLJ 705

Judgement

1. The question is whether this suit is barred by limitation. The Subordinate Judge has held that Article 62 of Schedule II of the Limitation Act, 1877, applies and that the suit is barred as it was brought more than three years after the defendants realised the decree amount. We do not think that Article 62 applies. For that article to be applicable the money realised by the defendants must have been actually or constructively received by the defendants for the plaintiff's use. But seeing that at the time the money was realised the plaintiff was debarred from collecting the money himself by reason of the dismissal of the suit, we do not think the money can, in any sense, be said to have been received by the defendant for the plaintiff's use. See *Narayana v. Narayana* ILR (1889) M. 473. We do not think that either Article 29 or Article 49 applies to a case like the present, and no other article is suggested. In these circumstances, we have to fall back upon Article 120, and under that article the suit is in time. We, therefore, reverse the decree of the Subordinate Judge and restore the decree of the District Munsif with costs in this and in the lower appellate court.