

**(1904) 08 MAD CK 0012**  
**In the Madras High Court**

Latchmanan Chetty

APPELLANT

Vs

Ramanathan Chetty through his mother and next friend  
Alamelu Achi and Another

RESPONDENT

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**Date of Decision :** 10-08-1904

**Acts Referred:**

**Citation :** (1905) ILR (Mad) 127 : (1904) 14 MLJ 436

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**Judgement**

1. The suit out of which the present appeal arises was brought for the partition of a house and some lands to which the parties to the suit were

jointly entitled. The parties, entered into a compromise which was recorded by the Court and according to it the first plaintiff was declared entitled

to half a share, the first defendant to one-fourth and the second plaintiff who is the appellant before us, to the remaining one-fourth. Steps for the

actual partition and delivery of the respective plots or for the adjustment of the rights of the parties otherwise remained to be taken. The first

plaintiff having died, his minor son and representative applied for the appointment of a Commissioner to make a division of the property. The

Subordinate Judge dismissed the application on the ground that the first plaintiff's right to claim further relief in the matter had become barred by

the law of limitation. On appeal the District Judge reversed the order of the Subordinate Judge and remanded the case for disposal according to

law.

2. It was contended before us, as it was in the lower appellate Court also, that no appeal lay to that Court against the order of the Subordinate

Judge inasmuch as that order was not one passed in execution of a decree, a decree properly such having had to be passed in the suit after the

steps required for division by metes and bounds had been completed.

3. This contention is clearly untenable. For the order of the Subordinate Judge on the face of it purports to decide a question to be dealt with u/s

244 of the CPC and is therefore a decree within the meaning of the definition of that term in the Code and the party against whom it is passed is

therefore entitled to appeal therefrom.

4. Assuming that there was no decree to be executed, that the Subordinate Judge erroneously supposed the matter was one in execution and that

he proceeded to decide that the right to obtain such execution was unenforceable by lapse of time, such usurpation of jurisdiction with the object of

putting an end to litigation cannot make the order passed in consequence thereof the less appealable than would have been the case had the order

been passed in execution proceedings under a decree duly passed. See *Hurish Chunder Chowdhry v. Kali Sundari Debia* L.R. 10 IndAp 4 and

17 and *Abdul Rahaman Saheb v. Ganapathi Bhattar* ILR 23 M. 521.

5. Nor can we agree with the argument that the application for the appointment of a Commissioner was governed by Article 178 of Schedule II to

the Indian Limitation Act. If the order passed on the compromise did not amount to a decree, it is incumbent on the court to bring the litigation to

an end by causing such steps to be taken as will result in the due disposal thereof. The appointment of a Commissioner is one which it was

competent to the Court to make without being put in motion by any party to the litigation. And therefore an application by a party with reference to

such a matter is not an application of the description contemplated by the article relied on. See *Virthal Janurdhan v. Vithoji Rao Putlaji Rao* ILR 6

B. 586 *Darbo v. Ketsho Rai* ILR 9 A. p. 364 and *Dwarka Nath Misser v. Barinda Nathmisser* ILR 22 C. 425.

6. If, on the other hand, the order on the compromise be regarded as the decree in the case and the application made to the Subordi-nate Court as

one in execution the article applicable would have been Article 179 and upon the facts admitted, the application was undoubtedly in time. The

appeal is, therefore, dismissed with costs.