

(1898) 09 MAD CK 0010
In the Madras High Court

Nilakanta Rotho and Another

APPELLANT

Vs

Gongapani Panda and Others

RESPONDENT

Date of Decision : 06-09-1898

Acts Referred:

Citation : (1898) 8 MLJ 217

Judgement

1. It is argued that the suit was barred by limitation in accordance with the decision of the Full Bench of this Court reported in Ramachandra

Bayaguru v. Modhu Padhi, I.L.R., 21 M., 326 . The respondent's vakil argues that the plea of limitation was given up. It is, however, clear from

the facts as they appear on the record and from the affidavit of the pleader engaged that the point of law was given up simply because the pleader

thought that he could not argue it in the face of the decision in Rangasami v. Muthukumarappa ILR 10 M. 509. We do not think this case

precludes the point being argued in this Court, and we have no doubt that the case is governed by the recent ruling of the Full Bench above

referred to, namely, that Article 147 of the 2nd Schedule of the Limitation Act is not applicable to a case like the present in which no prayer for

fore - closure or sale, in the alternative is or could be made. The Article applicable must, therefore, be 132 and under that, the suit is undoubtedly

barred.

2. We must, therefore, reverse the decree of the Court below and dismiss the plaintiffs' suit with costs.