

(1926) 12 MAD CK 0053
In the Madras High Court

Nukala Subbayya

APPELLANT

Vs

Naragam Kristayya

RESPONDENT

Date of Decision : 20-12-1926

Acts Referred:

Limitation Act, 1963 — Article 12

Citation : AIR 1927 Mad 488 : (1927) 52 MLJ 390

Hon'ble Judges : Devadoss, J

Bench : Division Bench

Judgement

Devadoss, J.—The contention of Mr. Venkatachalam for the appellant is that the suit is barred under Article 12 of the Limitation Act. This

question of limitation was not pressed before the Lower Appellate Court and was not put in issue in the first Court. Though the written statement

vaguely says that the plaintiff's suit is barred by limitation, yet no issue was taken on it and the plaintiff had no opportunity of meeting the point. It is

urged that the point being one of limitation it can be raised at any time. Granting that the appellant is entitled to raise the point here, I am satisfied

that Article 12 of the Limitation Act has no application to the present case. The clause under which the suit is sought to be brought is Clause (b) of

Article 12 which deals with ""sale in pursuance of a decree or order of a Collector or other officer of revenue"".

2. A sale u/s 118 of the Estates Land Act is not by virtue of an order or a decree of a Collector or other officer of revenue. The landholder is

entitled to bring a tenant's holding to sale u/s 112. Section 115 provides for the course that is to be pursued in case a suit is instituted. u/s 114 the

landholder may apply to the Collector for sale; and u/s 116 all that the Collector has to do is to appoint an officer to conduct the sale. u/s 117 the

selling officer shall by order fix a date for the sale and cause it to be proclaimed by beat of drum in the village in which the holding is situated; what

else he has to do is provided for in the section, and the sale takes place u/s 118. It is difficult to see how a sale u/s 118 could be said to be in

pursuance of a decree or order of the Collector or other officer of revenue. All that the Collector is asked to do is to appoint an officer for

conducting the sale in accordance with the provisions of Section 117. I think there is nothing in this point.

3. There is no other point raised and the second appeal fails and is dismissed with costs.