

(1948) 10 MAD CK 0007
In the Madras High Court

Ponnusami Goundan and Others		APPELLANT
	Vs	
Alamelammal and Others		RESPONDENT

Date of Decision : 06-10-1948

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 30 Rule 5

Citation : (1949) 1 MLJ 61

Hon'ble Judges : Satyanarayana Rao, J

Bench : Division Bench

Judgement

Satyanarayana Rao, J.—The order of the learned Subordinate Judge is unsustainable in view of the decision of this Court reported in

Dalgobinda Mahatha and Others Vs. Khatu Mahatha and Others, and the decisions referred to therein. Under Order XXX, Rules 5 and 6 of the

CPC as amended by this Court, the Court is not justified in shutting out evidence which the petitioners in this Court wanted to adduce in the lower

Court. They wanted to show that the suit which was sought to be instituted and for which leave to sue in forma pauperis was applied for was

barred by limitation as more than twelve years had elapsed from the date of the alienations which were impugned in the suit by proving that these

alienations really were in discharge of earlier mortgages. The learned Subordinate Judge thought that the enquiry contemplated in Order XX, Rule

6, perhaps meaning Order XXXIII, Rule 6 of the CPC does not permit such an enquiry. In the light of the decisions referred to, I have no

hesitation in holding that the view of the learned Subordinate Judge is wrong and his order therefore is set aside and the petition which is now

pending before him will be heard and disposed of in the light of this judgment. The petitioner is entitled to his costs in this civil revision petition.