

(1898) 01 MAD CK 0001
In the Madras High Court

Rathnamaiyar

APPELLANT

Vs

Kristna Dos Vital Dos

RESPONDENT

Date of Decision : 18-01-1898

Acts Referred:

Limitation Act, 1963 — Section 7

Citation : (1898) 8 MLJ 75

Judgement

1. The respondent obtained against the appellant and others a decree for the division of some lands held in common by the parties to the suit and

for the delivery of the respondent's share thereof. In execution of the decree, some lands were delivered to the respondent. The appellant

presented an application objecting to the delivery of certain of the parcels and complaining that he was dispossessed of them improperly. Both the

lower Courts dismissed the application on the ground that it was barred by limitation. There can be no doubt as held by the lower appellate Court

that Article 165 is applicable to a case where the applicant is a party bound by the decree as well as where he is a stranger (See C. M. S. A. No.

25 of 1889), and that Article, therefore, is the one by which the present case is governed. But, though the application here was presented after the

expiry of thirty days from the date of dispossession prescribed by that Article, yet it is clear that the application was in time, inasmuch as the

applicant was, when the right to apply accrued to him as well as on the date of the application, a minor. For, unquestionably the case falls within

Section 7 of the Limitation Act, XV of 1877. The respondent's pleader laid much stress on the Full Bench decision in Rama Row v. Venkatesa

Bhandari, ILR 5 M. 171 . There it was held that property or right in Section 19 of the Limitation Act did not include such a right as that which

entitles a party to a suit or proceeding to make certain applications in the course of such suit or proceeding. It is, however, difficult to see how this decision affects the present case. Now Section 7, by its very terms, applies to all applications for which a period of limitation is prescribed in the second schedule to the Act; and the application in question is, of course, one for which the schedule does prescribe a period. It is scarcely necessary to say that the appellant's application is not, as was assumed by the respondent's pleader in the argument, an application for execution of a decree, but one which relates to a question arising in execution between parties to the suit. Moreover, even if it were possible to treat the application in question as one for execution of a decree, it could not be held that Section 7 would be inapplicable to such an application. For *Anantharama Ayyan v. Karuppanan Kalingarayan* I. L. R., 4 M. 119 is a direct authority for the proposition that applications for execution of decrees come within Section 7.

2. The lower Courts were, therefore, in error in holding that the appellant's application was time-barred.
3. We set aside the orders of the Courts below and direct that the application be restored to the file and disposed of according to law.
4. The costs in this Court and in the lower appellate Court will abide and follow the result.