

(1911) 08 MAD CK 0034
In the Madras High Court

Subramania Pillai

APPELLANT

Vs

Seethai Ammal and Nachiar Ammal

RESPONDENT

Date of Decision : 02-08-1911

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : 12 Ind. Cas. 38 : (1913) 24 MLJ 457

Judgement

1. The question for decision is whether an order of the High Court passed in the exercise of its revisional powers u/s 115 of the CPC is an order on an appeal within the meaning of Article 182 Sub-clause 2 of the Limitation Act so as to create a fresh starting point for the calculation of limitation. Wallis J. has held that it is not, and we are inclined to agree with him. The decisions in Chappan v. Moidin Kutti ILR (1898) M. 68, Secretary of State for India in Council v. British India Steam Navigation Co. (1911) 15 C.W.N. 848 and Harish Chandra Acharya v. The Nawab Bahadur of Murshidabad do not really touch the question. They only consider the effect of orders passed by the High Court in the exercise of its revisional jurisdiction as they stand in relation to the power of appeal conferred by Sections 15 and 39 of the Letters Patent.

2. When a question was raised whether an order passed u/s 622--corresponding to Section 115 of the present CPC was passed in the exercise of the High Court's original or appellate jurisdiction it involved no straining of language to decide that the word appeal used in Sections 15 and 39 was used in a comprehensive sense so as to include both what is described technically as an appeal as also the common Law writ of Error. But the word appeal seems to be used in its narrower sense in the Limitation Act, for in the first schedule of the Act a division is made between suits, appeals and applications and it could never be contended that the second division includes revision petitions among appeals for which ninety days' limitation is prescribed. There is no reason to suppose that the word is used in a narrower sense in Articles 150 to 157 and in a more extended sense in Article 182 of the same schedule. If the High Court interfere on revision either there is a decree passed by the High Court which may be executed under the first sub-

clause of Article 182 or the case is sent down with a direction to the Lower Court to amend its decree. The latter appears to be the regular course and in such event there is no room to employ any sub-clause other than Sub-clause 1 or the new Sub-clause 4. Where a revision petition is simply dismissed, as was the case here with the revision petition presented u/s 25 of the Provincial Small Cause Courts Act, no fresh starting point of limitation arises.

3. At first sight it may seem somewhat anomalous, to take a concrete instance that if a Small Cause Court passed a decree for Rs. 100, and the sum is reduced on revision to Rs. 50, the decree-holder should while getting less money be allowed more time to recover it than he would have if the revision petition were simply dismissed. But even greater anomalies would arise were we to accept the position which the appellant wishes us to take. We should for instance be driven to the conclusion that the word Appeal was used in two different senses in the same Act. We are also conscious of the fact that in the present instance it may be said that there has been an appeal (an appeal under the Letters Patent) but it is evident that the decision of this Court cannot provide a new starting point in a case where the order appealed against did not give any.

4. This appeal is dismissed with costs.