
(1919) 04 MAD CK 0012
In the Madras High Court

Thattantavita alias Thattante Kandom Veetu Parambil Parkum
Chathoth Vachali Rohini (dead) and Others

APPELLANT

Vs

Puthalathad Kandi Kombi Aliassan and Others

RESPONDENT

Date of Decision : 25-04-1919

Acts Referred:

Civil Procedure Code, 1882 — Section 230, 269

Citation : (1919) 10 LW 410 : (1919) 37 MLJ 340

Hon'ble Judges : John Wallis, C.J.;Sadasiva Aiyar, J;Ayling, J

Bench : Full Bench

Judgement

John Wallis, C.J.—The period of limitation prescribed by articles 165 and 168 may be traced back to Sections 230 and 269 of the Code of

Civil Procedure, 1859, which dealt only with obstructions by and, dispossessions of, persons other than the defendant. The provision in Section

230 was re-enacted as Article 158 (now 165) of the Limitation Act of 1871, as follows: ""Under the CPC by a person dispossessed of Immovable

property and disputing the right of the decree-holder to be put into possession.""

This, in my opinion, must be read as meaning ""disputing the right of

the decree-holder to be put into possession under the decree."" That question had been decided against the defendant in the suit itself, and it was

not open to him to raise it again in execution. This shows that Article i 58 was intended to apply only to a case covered by Section 280 of the

Code where a person other than the defendant had been dispossessed, and that is in, accordance with the ordinary presumption that no substantial

alteration is intended when a particular provision is transferred from one statute to another. Article 158 of the Act of 1871 did not provide for

applications by a decree-holder who had been resisted by third persons in taking

possession under the decree, whereas Article 160 (now 167)

dealt with complaints in the case of court sales both by the purchaser and by persons dispossessed by him (Section 269 of the Code of 1859). In

the Act of 1877 Article 158 was re-produced as Article 165 and amended by inserting after decree-holder the words ""or purchaser at a sale in

execution of a decree,"" and Article 167 was amended by extending it to complaints of obstruction by decree-holders as well as by purchasers, (a

case not dealt with by the Act of 1871), and by making it applicable to applications complaining of dispossession, not only by auction purchasers,

but also by decree-holders. Both these cases were however covered by Article 165 as amended, and the latter portion of this article was therefore

not reproduced in Article 167 of the Act of 1908. In A.A.A.O. No. 25 of 1889, which was followed in *Ratnam Aiyar v. Krishna Doss Vital Doss*

ILR (1898) Mad. 494 the learned Judges relied on the fact that articles 165 and 167 do not in terms exclude the judgment-debtor, but their

attention was not called to the fact that the articles were transferred from the Code of 1859 where the restriction was to be found. They further

observed that "" unless the articles referred severally to judgment-debtors as well as to third parties there would be tautology."" There was however

tautology in the Act of 1877 in either view, and in the Act of 1908 Article 167 was amended so as to remove it. There is in my opinion nothing in

these changes to show any intention of widening the scope of the article so as to make it applicable to defendants.

2. The decision in *Ratnam Ayyar v. Krishna Doss Vital Doss* ILR (1898) Mad. 494 having stood so long unquestioned in this Court and

elsewhere I have felt great doubt as to whether we should not continue to follow it, having regard to the nature of the points decided, on the

principle of *stare decisis*. The legislature has however itself restricted the scope of Article 165 by restricting in the Code of 1908 applications by

third parties under Order XXI Rule 100 to applications with reference to property covered by the decree or sale in pursuance thereof, and the fact

that this procedure is not now applicable to complaints by third parties of dispossession of property not covered by such decree or sale appears to

me to afford an additional reason for excluding from the scope of the articles similar complaints by defendants who, as I am satisfied, were never

intended to be covered by it. I think moreover that the rights of defendants are sufficiently restricted by their being required to apply u/s 17 within

the period limited by Article 181. Agreeing with the decision in Ahdul Karim v. Islamunnissa Bibi ILR (1916) All. 339 I would overrule Ratnam

Aiyar v. Krishna Doss Vittal Doss ILR (1898) Mad. 494 and answer the question in the negative.

Ayling, J.

3. I agree.

Sadasiva Aiyar, J.

4. In this case, I shared with my Lord (if I may respectfully say so) the hesitation he felt in overruling the old decision in Ratnam Aiyar v. Krishnan

Doss Vital Doss ILR (1898) Mad. 494. But I am convinced after reading his opinion that that decision is erroneous. As cases of wrong delivery of

judgment-debtors' property in excess of that decreed are rare and as it is very unlikely that many titles could have been created arising from

alienations of such property by decree-holders to purchasers who believed the title to have been perfected by the default of judgment-debtors to

file their applications within the shorter period of limitation till now prevailing, and as most of even those titles would have been perfected by the

lapse of 3 years since the dates of such alienations, I agree in the answer proposed by my Lord.