

(1962) 09 KL CK 0013
In the High Court Of Kerala
Case No : Second Appeal No. 210 of 1958

Thycattuseri Church	Vs	APPELLANT
Sicillyamma and Another		RESPONDENT

Date of Decision : 28-09-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 103, Order 21 Rule 63
Limitation Act, 1908 — Article 11, 11A, 14

Citation : AIR 1963 Ker 137

Hon'ble Judges : M.S. Menon, C.J; P. Govindan Nair, J; M. Madhavan Nair, J

Bench : Full Bench

Advocate : T.S. Krishnamoorthy Iyer, for the Appellant; George Vadakkal, for 1st Respondent, for the Respondent

Final Decision : Dismissed

Judgement

Madhavan Nair, J.—This appeal raises two questions on which there is considerable divergence of opinion; and they are:

(1) Whether time under Article 11 A, Limitation Act, runs from the date of the order of the executing Court on the claim petition or of the High Court on a petition for its revision; and

(2) if the starting point be the former, can the time taken by the revision proceeding be excluded from computation u/s 14 of the Limitation Act.

2. The suit property having been purchased by the plaintiff in Court sale was delivered to him by process of Court. The first defendant who had been in possession of the property as mortgagee under the purchaser in an earlier Court sale applied under Order 21 Rule 100 for restoration of possession to him and it was allowed by the executing Court on 18-3-1122. The plaintiff's petition for revision of that order was dismissed by the High Court on 25-4-1122. The present suit under Order 21 Rule 103 C. P. C. was instituted on 23-4-1123. It was allowed substantially by the Munsif, but has been dismissed on appeal by the

Subordinate Judge as being barred under Article 11A, Limitation Act. The plaintiff has come up in second appeal.

3. Articles 11 and 11A of the Limitation Act deal with suits contemplated in Rules 63 and 103 of Order 21 C. P. C., usually known as "claim suits". The limitation prescribed is "one year" from "the "date of the order". Courts have differed as to the meaning of the expression "the date of the Order" in the above Articles, when a petition for revision of the order of the executing Court had been admitted and ultimately dismissed by the High Court. The Madras and Travancore High Courts have held the order concerned is the "final order" on the revision petition; but other High Courts have refused to take note of any infructuous revision petition in the matter.

In *Ouseph Chacko v. Krishna Pillai Govinda Pillai*, AIR 1958 Kerala 22 a Full Bench of this Court noticed "the divergence of judicial opinion" on the point but found it unnecessary to decide the same in the case.

4. The erstwhile Travancore-Cochin High Court considered the question in *Govinda Menon Raman Menon v. Krishna Pillai Kesava Pillai* AIR 1955 Trav-Co 51 when Koshi C. J. delivering the judgment of the Full Bench, observed:

"No order mentioned in Rule 100 is appealable under the Civil Procedure Code, and it is well settled on authorities, and for a suit under the concerned Article of the Limitation Act, time runs from the date of the order of the execution Court and not from the date of the order passed on an infructuous and incompetent appeal or revision".

5. Earlier, the Cochin High Court had also expressed the same view in *Raman Menon v. Lakshmi Amma* 21 Cochin 436 (FB) thus:

"On a plain construction of the Section, therefore, the order referred, to in Article 7, (corresponding to Articles 11 and 11A of the Indian Limitation Act) is the order of the first Court. No doubt, when an appeal lies against such an order the order referred to in the Article must refer to the order passed in appeal.....

It may be that when a review is granted and on the re-hearing the original order is confirmed, limitation would reckon only from the date of the order passed on review. But when the review was dismissed even after notice to the opposite party limitation runs from the date of the original order. We fail to see why a revision petition which was admitted and heard after notice to the opposite party but which was dismissed, should stand on a different footing from a review petition.

It may be that a revision lies against an order passed u/s 328 C. P. C. (corresponding to Order 21, Rule 103 of the present Code) and that, when that order was set aside on revision, no suit need be brought. But this applies to the case of a successful review also. It is no doubt open to a party against whom an order u/s 328 is passed, either to apply for a review of that order or to prefer a revision petition against it. But this cannot prevent the running of time under

Article 7 of the Limitation Regulation, which begins to run from the date of the order. If, instead of instituting a suit referred to in Section 328 C. P. C. the party applies for a review of the order or prefers a revision against it and ultimately the review or revision is rejected, he does so at his peril. We are of opinion that if a revision preferred against an order u/s 328 C. P. C. Is dismissed, the order mentioned in the 3rd column of Article 7 is not the order in revision but the original order".

6. The leading decision of the Madras High Court is mentioned to be one of Somayya 3. In Koppolu Venkataswami Vs. Uttarkar Sara Bai and Others, . The decision really turned on the second question posed before us though the learned Judge had noticed the. first also in a passing way. After concluding that a Court of revision is a Court of appeal within the meaning of Section 14(1), Limitation Act, and that therefore "the pendency of the revision petition in the High Court should be deducted" in reckoning time for a suit under Order 21, Rule 63, the learned Judge adverted to the question which, in his own words, is "whether the starting point under Article 11, Limitation Act, must be taken to be the final order, i.e. the order in the revision petition", and observed:

"If the real reason for holding that in the case of an appeal the starting point should be the date of the appellate order is that the appeal is a continuation of the proceedings of the trial court, the same reasoning should apply in the case of a civil revision petition and there is no reason why a different construction should be applied in the case of a civil revision petition. I am aware that a different view has been expressed in some judgments and I would say, speaking for myself, that there is much to be said in favour of the view that under Article 11, Limitation Act, the starting point should be taken to be the date of the final order, whether that order was passed on an appeal from that order or whether it was passed in a civil revision petition from that order. Having regard to my decision on the first point, it is unnecessary to go further into this question".

I would have regarded these observations as mere obiter but for the assurance of counsel that it has been followed in numerous decisions in the same Court and in the subordinate Courts of the State.

7. in C.V. Venugopal Mudali Vs. C. Venkatasubbiah Chetty and Others, Sadasiva Iyer J., with concurrence of Napier J., held an appeal, under the Letters Patent, competent against the order of a single Judge on the Original Side of the High Court on a claim petition and therefore the one year's period under Article 11, Limitation Act, to run from the date of the appellate order which the learned Judge characterised as "the only subsisting order in the claim petition", because

"the proceedings in an appeal against an order passed in a petition case are continuation of the proceedings commenced by the petition and hence the appellate order is also an order on the same claim petition".

Obviously, this ruling is not of much assistance here as the orders on claim proceedings in the Subordinate Courts are not appealable; but the concluding

portion of the judgment is pertinent which is as follows:

"I need not say that where the order on a review petition as distinguished from an appeal petition merely refuses to interfere with the judgment or order sought to be reviewed or where an appeal is not entertained at all though filed, the original decree or order is and continues to be the subsisting final decree or order. In this respect an order rejecting a review petition stands on a different footing from a decision passed on appeal confirming the lower Court's judgment and dismissing the appeal. If the decision on review or revision does interfere with the original decision, the former decision becomes the only subsisting order and stands on the same footing as the decision passed in a competent appeal. It will in that case become the starting point for limitation".

8. in Travancore, the latest decision on the subject in Narayanan Pisharodi v. Pathoo, 1947 Trav LR 484. In laying down that "the period of limitation runs from the date of the order in revision", Krishnaswamy Aiyar C. J., with whom Habeeb Muhamed J. agreed, observed:

"The question arising for consideration is whether the orders passed by the execution Court and the orders passed in the revision petition are not orders passed under CPC upon an application of the kind mentioned in the Article... The Courts of review, revision or appeal could only pass the order which, in all correctness, ought to have been passed by the first court The application in the original court bred the revision petition, and the revision petition is the result of the application and the order thereon. The order in the revision owes its vitality only to the original application. it is certainly not a proceeding which is distinct and unconnected with the original application, it may not be a continuation of the original application for some purposes as perhaps an appeal is. But if a revision proceeding is still a proceeding under the Civil Procedure Code, that proceeding being connected with and based ultimately on the original application any order passed on the revision petition refusing to interfere is virtually an order passed against the petitioner, a party to the original application. The sequence which is the only thing that is needed is clearly established Furthermore, for the purposes of the Limitation Act, Article 8 Clause 2 (corresponding to Article 11A of the Indian Limitation Act) we cannot draw any difference between a revision and an appeal A man who prefers a revision frequently describes it as an appeal and for certain purposes of the Limitation Act, appeal includes a revision".

I am unable, with respect, to agree with this decision or with the reasoning upon which it proceeds.

9. To me the correct position appears to be what Niyogi A. J. C. has expressed in AIR 1931 17 (Nagpur) .

"It should be observed that as Chunnilal's application made under Order 21, Rule 100, was rejected, his only remedy was to institute a suit to establish the right which he claimed to the present possession of the property, under Order

21, Rule 103. This rule makes the order conclusive subject to the result of such a suit. In other words, the only remedy Rule 103 provides is by way of a suit, and it is with reference to this provision that Article 11A Schedule I, Limitation Act, provides the period of one year computed from the date of the order. The question is whether Article 11A contemplates computation of the period of limitation from the date of any order passed in revision. In my opinion it does not.....

There is a clear distinction between an appeal and an application for revision. Right of appeal is a substantive right created by statute and the powers of the Court in appeal are conterminous with those exercised by the Court of original jurisdiction. Even when the appeal is dismissed, the appellate Court exercises its jurisdiction. Not so with the revisional jurisdiction as of right; it is entirely discretionary with the High Court to exercise its jurisdiction or not. Even this power is limited. When the High Court declines to exercise its revisional powers, can it be rightly said that the order rejecting a petition for revision is the only subsisting order in the case? Obviously not, because the High Court abstains from exercising its jurisdiction and allows the subordinate Court's order to stand".

In *Meghmala Debi v. Saday Parhya* AIR 1935 Cal 577 B. K. Mukherjea J. (as he then was) has also held:

"If the High Court in the exercise of its powers u/s 115, Civil P. C. refuses to interfere in a claim case, it merely amounts to an abstention from exercising jurisdiction and the only final order that remains subsisting is the order passed by the trial Court. It may be otherwise where the High Court interferes in revision with the original decision".

10. The scope of revision u/s 115 C.P.C. has been considered by the Supreme Court in *Keshardeo Chamria Vs. Radha Kissen Chamria and Others*, . After pointing out that "the High Courts have not always appreciated the limits of the jurisdiction conferred by this Section", their Lordships adopted the observations of the Privy Council in AIR 1949 156 (Privy Council) that there could be no justification for the view that the Section authorises the High Court to interfere and correct gross and palpable errors of subordinate Courts so as to prevent grave injustice in non-appealable cases. The citation continued:

"Section 115 applies only to, cases in which no appeal lies, and where the Legislature has provided no right of appeal, the manifest intention is that the order of the trial Court, right or wrong, shall be final. The section empowers the High Court to satisfy itself upon three matters, (a) that the order of the subordinate Court is within the jurisdiction; (b) that the case is one in which the Court ought to exercise jurisdiction; and (c) that in exercising jurisdiction the Court has not acted illegally, that is, in breach of some provision of law, or with material irregularity, that is, by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate

decision. If the High Court is satisfied upon those three matters, it has no power to interfere because it differs, however profoundly, from the conclusions of the subordinate Court upon questions of fact or law".

In *Rajah Amir Hassan Khan v. Sheo Baksh Singh* 11 Ind App 237 (PC) and in AIR 1949 239 (Privy Council) the Judicial Committee had pointed out that a subordinate Court does not act illegally or with material irregularity because it decides wrongly a matter within its competence, and that the High Court had no power to interfere in revision merely because it disagreed with its decision.

The following observations of Vivian Bose J. in his order of reference in AIR 1948 253 (Nagpur) at p. 263 (FB) have also been endorsed by the Supreme Court.

"The words 'illegally' and 'with material irregularity' do not cover either errors of fact or of law. They do not refer to the decision arrived at but to the manner in which it is reached. The errors contemplated relate to material defects of procedure and not to errors of either law or fact after the formalities which the law prescribed have been duly complied with".

It is clear from the above authorities that the only grounds on which the revisional jurisdiction can be exercised by the High Court are: wrongful assumption of jurisdiction or the non-exercise of it or some defect of procedure amounting to an illegality or material irregularity in the approach of the question by the subordinate Court. In the absence of one of these grounds, the High Court has no jurisdiction to interfere with an order of the subordinate court in revision u/s 115, C. P. C. The demerits of the decision as such is of little relevance to the revisional. court.

11. it then follows that the issuance of notice to the respondent on a Civil Revision Petition is not a proceeding upon the original application which gave rise to it. The notice is only to hear on the jurisdictional or procedural aspects of the enquiry that led to the decision complained of, and not to hear on the correctness of the decision itself, or for a rehearing of the original application which gave rise to it. If on hearing both sides, the High Court is not convinced of any defect of jurisdiction" or of a material defect in the trial of the case in the subordinate Court, the High Court has to refrain from exercising its powers u/s 115 C. P. C. and dismiss the revision petition, however grossly erroneous the decision of the subordinate Court be on its merits. It then follows that a dismissal of the Civil Revision petition, whether its be in the first instance when it came up for admission, or at the second stage after notice to the respondent, is in effect a refusal to interfere with the decision of the subordinate Court, and not an approval thereof. No rehearing of the original application on its contents takes place. It cannot then be said that the order rejecting or dismissing the revision petition is an order on the original petition which gave rise to it, much less the final order thereon; it concerns only the collateral proceeding, the Civil Revision Petition itself.

12. As indicated by Vaidyanatha Ayyar Ag. C. J. in 21 Cochin 436 (FB) a revision

petition, in its incidence, is similar to an application for a review of the judgment or for the restoration of a suit. A dismissal of the application is never taken as a renewal of the decision on the suit. Even if notice is ordered on the application, it is only to hear the respondent on the truth or sufficiency of the grounds urged in support of the motion and not to rehear the suit. If a revision petition or an application for review or for restoration be allowed, the original order or decree is set aside and the matter will then be reheard and thereafter the only subsisting order on the original suit or petition will be the revised decision. It goes without saying that in such cases, limitation for any further action or appeal can run only from the date of the revised decision. But a dismissal of a petition for revision, review or restoration can only be the refusal to exercise the jurisdiction to affect the impugned decision. None of them is ever held to be a continuation of the original proceedings; it is only a collateral proceeding which, if it succeeds, may affect an earlier disposal of the original matter.

It is pertinent to note that for appeals from decrees which have been sought to be reviewed, limitation is always calculated from the date of the decree and not from the date of dismissal of the review petition.

13. Counsel read the observation of the Supreme Court in *State of U. P. v. Mohammad Nooh* AIR 1958 SC 86 at p. 95. "The filing of the appeal or revision may put the decree or order in jeopardy". But nothing turns on this observation here. Their Lordships have not said that limitation should therefore be calculated from the date of disposal of the revision. The filing of an application for review of the judgment, or for restoration of the suit may likewise "put the decree in jeopardy" but nobody has set that as a ground for computing limitation for an appeal against the decree from the date of disposal of such application.

Counsel relied much on another observation in the same judgment of the Supreme Court that

"a decree of a Court of first instance may be said to merge in the decree passed on appeal therefrom or even in the order passed in revision".

The words "order passed in revision" in the context can only mean the order on the original application passed in revision of that made by the Subordinate Court. In the context of the expression "the order passed in revision" obviously connotes "the order passed in revision of the decree of a Court of first instance". That can only be when a revision petition is allowed and the revisional jurisdiction exercised by the High Court. An order of dismissal or a Civil Revision Petition cannot therefore come within the purview of the above observation of the Supreme Court.

14. Counsel submitted that a suit, under Rule 63 or 103 of Order 21 C. P. C. following an adverse decision in a claim case is a suit to establish the plaintiff's right to the property in dispute and therefore would normally be governed by the "3 years" rule under Article 49, or "12 years" rule under Article 142 or 144 of the Limitation Act, such period being calculated from the date of the dispossession

and therefore the Articles 11 and 11A, Limitation Act, should not be construed within narrow limits but must be given as large a scope as possible. I find little persuasion in this argument, for the claim suit is not "an original action" but "a form of appeal" from the order in the claim case.

15. In *Phul Kumari v. Ghanshyam Misra* ILR Cal 202 the Privy Council had to consider, though for purposes of determining Court-fee, "the object and the nature of a suit" under Order 21 Rule 63 C. P. C. The plaintiff purchased the suit properties from the second defendant on 2nd September 1893, took possession and was registered as proprietor thereof. In 1898 the 1st defendant obtained a money decree against the 2nd defendant, attached the properties and proclaimed them for sale, whereupon the plaintiff lodged a claim to the properties. That was rejected by the Subordinate Judge on 24th April 1899 and consequently on 30th May 1899 the plaintiff instituted the suit against defendants 1 and 2 claiming the reliefs

"(a) That the plaintiffs' title to and possession of the aforesaid properties be declared, and that it be declared that the defendant second party has no right or title left in the said properties after sale to the plaintiff as aforesaid; (b) That it be further declared that the said properties are not liable to be sold in execution of the decree of the defendant first party against the defendant second party as aforesaid; and (c) That a permanent injunction may issue on the defendant first party not to execute his said decree against the said properties of the plaintiff".

It was dismissed by the Subordinate Judge, and the appeal to the High Court did not succeed. The plaintiff then appealed before the Privy Council.

Lord Robertson, reporting the decision of the Judicial Committee, observed thus:

"For the right determination of the question at issue it is necessary to ascertain what are the object and the nature of the suit....The appellant lodged with the Subordinate Judge of Purneah, before whom the execution proceedings took place, a claim to the property claiming that her right should be declared and that an injunction should issue against the execution of the decree held by the first respondent. This claim was rejected by the Subordinate Judge on 24th April 1899, and his decree is the cause of action in the suit which gives rise to this appeal.

Now the right of the appellant to sue for the establishment of her right, which the Subordinate Judge had negatived, rests on the 283rd Section of the CPC (XIV of 1882).

The party against whom an order u/s 280, 281 or 282 is passed may institute the suit to establish the right which he claims to the property in dispute; but subject to the result of such suit, if any, the order shall be conclusive".

This is clear of itself, and the High court, in the judgment appealed against, describes the suit as of the nature referred to in SECTION 283".

It is true that, instead of asking the Court to alter or set aside the decree which is the cause of action, she categorically asks from the Court the several decrees which she had asked from the Subordinate Judge, and which the Subordinate Judge had refused. But this is merely a verbal or formal difference, and Section 283 of the Civil Procedure Code, under which the action is brought, recognises such a suit as not merely an appropriate but the only mode of obtaining review in such cases.

....."Misled by the form of the action directed by Section 283, both parties have treated the action as if it were not simply a form of appeal, but as if it were unrelated to any decree forming the cause of action.....this is not the proper view of the suit taken as a whole".

Their Lordships then found fault with the respondents for ignoring "the essential fact that this is a plaint for review of a summary decision" and treating the action "as an original action".

In *Krishnappa Chetty v. Abdul Khader Sahib* ILR Mad 535: AIR 1915 Mad 495 (2)) Mr. Justice Sadasiva Iyer summarised the effect of the above ruling thus:

"I think this decision of their Lordships..... is almost conclusive to show that suits of this class, though called original suits, are not in their essence original actions, but merely forms of appeal allowed by the CPC to be brought in the guise of original suits. Though the Court in which this appellate action might be brought may be sometimes a Court which ordinarily is inferior to the Court by which the summary order was passed and though fresh enquiry may be adduced by both sides in that appellate action, the suit is in essence, in the words of their Lordships of the Privy Council, "a form of appeal", and hence it is not unrelated to the original claim proceedings and it is therefore, in essence, an appeal. The Legislature has allowed one year to file such an appeal suit which is, as I said just now, a continuation of the claim proceedings thus based on the right and liabilities forming the cause of action in the claim proceedings."

and therefore held an alienation made by the claimant after the order of the executing Court allowing his claim, and before the institution of a suit under Order 21 Rule 63, to be affected by *lis pendens*.

Mr. Justice Spencer also observed in that case:

"He comes in now only as a purchaser from the 2nd respondent *pendente lite*, i.e. by virtue of a purchase made between the date of disposal of the claim u/s 278 and the date of institution of a suit which is permitted by Section 283 to be brought in review of the order on the claim. Such actions are as pointed out by the Privy Council in ILR 35 Cal 202 (PC) simply a form of appeal. The plaint in suits of this description is described in that decision as "a plaint for review of a summary decision" ".

16. "A form of appeal" from the adverse decision on a claim case having thus been pointed out by the law as the only mode of challenging it, the parties who

overlook the same and go about gambling in unmerited revision petitions cannot later on turn round and plead for extension on equitable considerations of limitation to pursue the appointed remedy. The argument that the Articles 11 and 11A of the Limitation Act should be equitably construed to give them a wider scope than is warranted by their expression has no merits.

17. On the first question therefore I hold that limitation for a suit under Order 21 Rule 63, or 103, CPC runs from the date of the order of the executing Court on the claim petition, and not from the date of the order on an infructuous application for revision thereof.

18. The next question is whether the period taken by the revision proceedings can be excluded u/s 14 of the Limitation Act. On this there is a sharp difference of opinion. *S. R. M. M. A. Firm v. Maung Po Saung* AIR 1929 Rang 297 : *Meghmala Debi Chakravarti Vs. Saday Parhya and Others*, *Radha Kishun and Others Vs. Firm Sri Niwas Ram Kumar and Others*, :AIR 1930 Bom 505:P (S) AIR 1955 Trav-Co. 51 (FB). all have held against such exclusion.

AIR 1931 17 (Nagpur) and *Koppolu Venkataswami Vs. Uttarkar Sara Bai and Others*, allowed such exclusion.

The observation of the Privy Council in regard to Section 14 of the Limitation Act in *Ramdutt Ram-kissen v. E. D. Sassoon and Co.*, AIR 1929 PC 103 at p. 107

"In Indian litigation it is consistent with the experience of their Lordships that the time necessary for the decision in a suit may be of much longer duration than one is accustomed to in the Courts of Great Britain. Hence the necessity for some provision to protect a bona fide plaintiff from the consequences of some mistake which had been made by his advisers in prosecuting his claim"

seems to favour the latter view. However, we do not feel called upon to pronounce any opinion on this vexed question in this case.

19. Assuming, without deciding, that Section 14, Limitation Act, applies, it allows exclusion only of "the time during which the plaintiff has been prosecuting.....another civil proceeding", which is the revision petition in this case. The period of actual pendency of the revision petition can alone be thus excluded from computation. The Section reads:

"(1) in computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it

(2) in computing the period of limitation prescribed for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against

the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

Explanation I. In excluding the time during which a former suit or application was pending, the day on which that suit or application was instituted or made, and the day on which the proceedings therein ended, shall both be counted".

Plaintiff can therefore claim exclusion only of the period which began with his filing of the revision petition and ended with the passing of the order thereon. He cannot exclude the period between the date of the order of the executing Court and the date of his filing the revision petition, for he could not have been prosecuting a proceeding while he was merely making up his mind to apply for revision.

The present suit has been filed only two days before the expiry of one year from the date of the dismissal of the revision petition. Counsel states that, unless the entire period from the date of the order of the executing Court to the date of the order of the High Court in revision be excluded the instant suit would be beyond time.

20. The finding of the Court below that the suit is barred by time is then correct. The appeal, fails and is dismissed with costs.

21. M. S. MENON, C. J. : I agree.

Govindan Nair, J.

22. The facts necessary for the disposal of this appeal have been stated in the majority judgment. The only question arising for decision is-whether the suit is barred by limitation or not In-dealing with this question, two aspects arise for consideration; whether under Article 11A the period of one year provided by the Article should be computed from the date of the order passed* by the execution Court or from the date of the order in revision by the High Court, and whether, if the period is to be computed from the date of the order of the execution court, the time taken by the proceedings in revision can be excluded u/s 14 of the Indian Limitation Act.

23. Article 11A of the Limitation Act is in these terms:

Description of suit

Period of limitation

Time from which period begins to run.

By a person against whom an order has been made under the Code of Civil Procedure, 1908 upon an application by the holder of a decree for the possession of immovable property or by the purchaser of such property sold in execution of a decree complaining of resistance or obstruction to the delivery of possession thereof, or upon an application by any person dispossessed of such property in

the delivery of possession thereof to the decree-holder or purchaser, to establish the right, which be claims to the present possession of the property comprised in the order.

one year

the date of the order

24. in interpreting this Article, different views have been expressed by the Courts in India and this conflict is referred to in a Full Bench decision of the Kerala High Court in 1957 Ker LT 742: (AIR 1958 Kerala 22).

"There would however appear to be divergence of judicial opinion as to whether when the order on a revision application is one rejecting it, the date of the original order should not be taken to furnish the terminus a quo for the suit under Rule 103. The Madras High Court and the erstwhile Travancore High Court favour the view that the period of limitation should be calculated from the date of the High Court's order see Koppolu Venkataswami Vs. Uttarkar Sara Bai and Others, and 1947 Trav LR 484. The Calcutta High Court would however seem to take the opposite view -- see Meghmala Debi Chakravarti Vs. Saday Parhya and Others, . In (S) AIR 1955 Trav-Co. 51 (FB), a similar though not identical matter came up for consideration and the decision rendered accords with the Calcutta view."

25. The conflict, however, was not resolved in that case, the decision of the case having turned on another aspect. The learned Chief Justice, who delivered the judgment in Ouseph Chacko Vs. Krishna Pillai Govinda Pillai, had occasion to observe earlier in 1954 Ker LT 913: AIR 1955 Trav-Co 51 a Full Bench decision of the Travanoore-Cochin High Court,

"No order mentioned in Rule 100 is appealable kinder the CPC and it is well settled on authorities and (sic) for a suit under the concerned Article of the Limitation Act, time runs from the date of the order of the execution court and not from the date of the order passed on an infructuous and incompetent appeal or revision. Dayaram v. Govardhandas ILR 28 Bom 458: AIR 1929 Rang 297 and Narayan Ambaji Chavan Vs. Hari Ganesh Navare, ".

26. The only point that was urged in the Rangoon and the later Bombay case referred to in the passage quoted above, was whether an exclusion of the time taken up by the revisional proceedings was allowable u/s 14(1) of the Limitation Act. This contention might have been put forward on the assumption that time should be-computed for the purpose of Article 11A, from the date of the order of the execution Court. But no point was raised, discussed or decided, as to whether time should or can be computed from the date of the order in revision. The facts of the earlier Bombay case adverted to in 1954 Ker LT 913: AIR 1955 Trav-Co 51, are these. There was an order by the execution Court under Rule 63 of Order XXI of the CPC in favour of one Dayaram. The plaintiff in that case appealed against that order to the District Court and that Court set aside the

order of the execution Court and allowed the appeal. There was a second appeal by the said Dayaram-to the High Court. It was held that no appeal-lay to the District Court from the order of the execution Court and hence the appeal to the District Court by the plaintiff was incompetent and for that reason it was also held that the appeal to the High Court too was not maintainable. The appellant before the High Court was allowed to convert the appeal into a revision petition. But the High Court declined to interfere in revision on the ground that,

".....if we are now to set aside the order of the District Court, it would have the effect of placing the present respondent in the position of being obliged to bring a suit to establish the right which he claims to the property in dispute though the period within which he was entitled to bring that suit has elapsed; in other words we should be placing him under an obligation to bring a suit, that, prima facie, would be barred by article 11 of the Limitation Act."

Here again, the question whether if the High Court had interfered in revision, the period of limitation should or should not be computed from the date of the High Court order was not resolved or even considered. These three decisions are not helpful in resolving the conflict that is referred to in Ouseph Chacko Vs. Krishna Pillai Govinda Pillai,

27. Though it was assumed in 1954 Ker LT 913: AIR 1955 Trav-Co. 51 that the law was well settled, the decision therein rested on the fact that the appeal to the District Court (A. S. 94 of 1111) from the order of the execution Court in obstruction proceedings was incompetent.

"Treated as an order in the obstruction proceedings it was not appealable and it cannot even be held that limitation commenced to run only from the date of the dismissal of A. S. 94 of 1111 (6-6-1112). A fortiori, the date of the order of the High Court dismissing C. M. A. 120/1115 cannot be taken to be the starting point of limitation in this case."

28. There is thus no clear pronouncement on this question by the Travancore-Cochin High Court. But the Travancore-High Court in 1947 Trav LR 484 came to the conclusion that time must be computed from the date of the revisional order. That seems to be the view of the Madras High Court as well- Koppolu Venkataswami Vs. Uttarkar Sara Bai and Others, .

29. A different view has been expressed in two cases; Meghmala Debi Chakravarti Vs. Saday Parhya and Others, and AIR 1931 Nag grounds of the decision of the Calcutta been stated by Mukherjea, J., (as he then was) in these terms:

"If the High Court in the exercise of its powers 15, Civil P. C, refuses to interfere in a it merely amounts to an abstention from exercising jurisdiction and the only final order that remains subsisting is the order passed by the trial Court. it may be otherwise where the High Court interferes in revision with the Original decision".

and the decision of the Nagpur case is rested on the reasoning :

"There is a clear distinction between an appeal and an application for revision. Right of appeal is a substantive right created by statute and the powers of the Court in appeal are conterminous with those exercised by the Court of original jurisdiction. Even when the appeal is dismissed the appellate Court exercises its jurisdiction. Not so with the revisional jurisdiction as of right; it is entirely discretionary with the High Court to exercise its jurisdiction or not. Even this power is limited. When the High Court declines to exercise its revisional powers, can it be rightly said that the order rejecting a petition for revision is the only subsisting order? Obviously not, because the High Court abstains from exercising its jurisdiction and allows the subordinate Court's order to stand."

30. it has not been contended that because a specific remedy by way of suit for setting aside an order under Rule 101 of Order XXI of the CPC has been conferred by Rule 103 of the same Order, this Court is precluded from exercising its revisional jurisdiction. In fact, it has been the practice of this Court "and that of the Travancore, Cochin, Travancore-Cochin, and the Madras High Courts to entertain and allow revision petitions in appropriate cases against orders passed under Rule 101 of Order XXI. This being so, when an application is made before the High Court for revising an order passed by the execution Court under Rule 101 of Order XXI that order is in jeopardy. That the filing of a revision will put the order sought to be revised in jeopardy is assumed by the Supreme Court in AIR 1958 SC 86 at p. 95.

"The filing of the appeal or revision may put the decree or order in jeopardy but until it is reversed or modified it remains effective."

It is possible that the petition, out of which the order sought to be revised arose, may be disposed of in a manner different from the way in which it was dealt with by the execution Court. In other words, if the execution Court, had dismissed the petition, it is open to the revisional Court in an appropriate case to set aside that order and allow the petition and remit the case again to the execution Court for fresh disposal. And it is conceded, and it has been so held in a number of decisions, that if the revision petition is allowed and the order sought to be revised reversed, time has necessarily to be computed from the date of the High Court order in revision. This is so because it is the High Court order that has disposed of the petition finally. There does not seem to be any distinction in principle if the High Court happened to dismiss the revision petition. Can it be said that a plaint is not disposed of by the appellate Court when in dealing with an appeal from a decree dismissing the suit the Appellate Court dismisses the appeal? it does not seem to be possible. But it is urged that the jurisdiction exercised in disposing of an appeal is quite different from that exercised by the revisional Court. The observation of the Supreme Court seems to indicate that no distinction can be drawn for the purpose of limitation from the fact that the order was passed in revision and not in appeal.

".....while it is true that a decree of a court of first instance may be said to merge in the decree passed on appeal therefrom or even in the order passed in revision, it does so only for certain purposes namely, for the purposes of computing the period of limitation for execution of the decree....."

31. There is nothing in the judgment of the Supreme Court to indicate that the interference in the judgment to "the order passed in revision" is to an order, and only to an order, allowing the revision petition. The wording is comprehensive enough to include an order refusing to interfere and there is no reason why a limited interpretation should be given so as to confine the observation to an order allowing the revision petition. In dealing with the question as to whether an order passed in revision would afford a fresh starting point of limitation for the purpose of Article 182, a Division Bench of the Travancore-Cochin High Court in *Abubaker Abdul Kadir v. Muhammad Kunju*, AIR 1954 Trav-Co. 97 held;

".....when the High Court has admitted the revision petition and ordered notice thereon to the decree-holder, the dismissal of that revision would give a fresh starting point of limitation even though the revision petition was finally dismissed on the ground that it was incompetent and no revision lay".

Reliance was placed in that judgment on the ruling of the Privy Council in AIR 1932 165 (Privy Council) wherein it has been observed that any application by a party to an appellate Court asking it to set aside or revise a decision of a subordinate Court, is an appeal within the ordinary acceptance of the term, "and that it is no less an appeal because it is irregular or incompetent". Hence even an order rejecting a revision petition must afford a fresh starting point of limitation for the purposes of Article 182(2) and the same rule must apply in considering another Article of the Limitation Act, Article 11A. Whether the order of the High Court in revision does or does not dispose of the petition that was moved in the execution Court finally cannot be decided on the basis of the result of the revision petition; whether it ends in failure or success nor on the grounds of the decision. The High Court u/s 115 of the CPC has been conferred a jurisdiction, limited though it is. This jurisdiction enables, and in fact imposes an obligation on the High Court to determine in each case whether all or any of the conditions mentioned in Section 115 exist. These are preliminary facts that have to be determined before deciding on the further exercise of jurisdiction also conferred by the same section. Such further exercise may take the shape of an interference with the order sought to be revised or a refusal to interfere.

A passage from *The Queen v. Commissioners for Special Purposes of the Income Tax* (1888) 21 QRD 313 at p. 319 is apposite:

"When an inferior court or tribunal or body, which has to exercise the power of deciding facts, is first established by Act of Parliament, the legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not

otherwise. There it is not for them conclusively to decide whether that state of facts exists, and, if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have "acted without jurisdiction, but there is another state of things which may exist. The legislature may entrust the tribunal or body with a jurisdiction, which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, on (sic) that it does exist, to proceed further or do something more. When the legislature are establishing such a tribunal or body with limited jurisdiction, they also have to consider, whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none. In the second Of the two cases I have mentioned it is an erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the legislature gave them jurisdiction to determine all the facts, including the existence of the preliminary facts on which the further exercise of their jurisdiction depends; and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction".

This passage has been approved by the Supreme Court in *Rai Brij Raj Krishna and Another Vs. S.K. Shaw and Brothers*, . The jurisdiction conferred on the High Court by Section 115 is the second one referred to by Lord Esher, M. R. In the passage referred to above. The legislature Was entrusted the High Court with a jurisdiction which includes the jurisdiction to determine whether the preliminary state of facts mentioned in Clauses (a), (b) or (c) exist and on finding that it does exist to proceed further and make such order in the case as it thinks fit. So when the High Court determines these preliminary facts, it exercises the jurisdiction conferred on it and when it decides to interfere or not to interfere then also it exercises its jurisdiction conferred by the section.

The restrictions imposed by the section are somewhat similar to the restrictions imposed on a court by Section 3 of the Limitation Act or Section 11 or Section 100 of the Code of Civil Procedure. If a suit is found to be out of time, it has to be dismissed. That dismissal will dispose of the plaint. Similarly, if a suit is barred by *res judicata* it has to be dismissed by applying the rule embodied in Section 11 of the Code of Civil Procedure, and if none of the grounds mentioned in Section 100 of the CPC is made out, a second appeal has to be dismissed. In all these cases, there is an effective disposal of the plaint and the fact that it has been disposed of on a preliminary ground will not amount to a non-disposal of the plaint. The revisional Court has a discretion to interfere or not to interfere.

Even if one of the grounds mentioned in Clauses (a); (b) or (c) of Section 115 is made out, the High Court may decide not to interfere because the petitioner has another remedy or because the revision petition raised complicated questions of fact which the High Court considers is best determined in a suit. This discretion is a judicial one and like any other judicial discretion will have to be exercised in a judicial manner. There must be a judicial evaluation as to whether in all the

circumstances of the case an interference is called for or not Such a decision arrived at by the High Court to interfere or not to interfere is also in the exercise of the jurisdiction conferred on the High Court by the section. That the High Court has inherent jurisdiction is accepted in *Meghmala Debi Chakravarti Vs. Saday Parhya and Others*, . *Mukherjea, J.*, said in that case:

"In my opinion this Court was quite competent to exercise jurisdiction in this case and it has not refused to entertain the application on any point akin to want of jurisdiction".

32. If the High Court declines to interfere revision, it does so by exercising its jurisdiction u/s 115 of the Code of Civil Procedure.

33. In *21 Cochin 436*, a different approach from that taken in *AIR 1931 17 (Nagpur)* and *Meghmala Debi Chakravarti Vs. Saday Parhya and Others*, already referred to and discussed above, has been made. The decision turned on the construction of Article 7 of the Limitation Regulation, II of 1079 which was then in force in the Cochin State, the relevant portion of which reads:

Description of suits

Period of Limitation

Time from which period begins to run.

By a person against whom an order is passed u/s 328, C.P.C., to establish his right to the present possession of the property comprised in the order.

One year

The date of the order.

The wording of Article 11A of the Indian Limitation Act and for that matter of Article 9 of the Travancore Limitation Regulation, VI of 1100, are similar. Article 11A has already been extracted earlier in this judgment. While Article 7 of the Cochin Limitation Regulation speaks of "an order passed u/s 328, C. P. C.", "Article 11A says "an order has been made under the Code of Civil Procedure." The order made under the CPC must include an order passed u/s 115 of the Code. Emphasis has been placed on the wording in column 1 of Article 7 of the Cochin Limitation Regulation in *21 Cochin 436*, and this is clear from the following passage;

"The order referred to in column 3 is the one passed u/s 328, C. P. C. referred to in column 1 and, therefore, time begins to run from the date of the order passed under that section. That order in the present case was passed by the Munsif on 4th Vrichigam 1100. No appeal is provided against such order."

No doubt, the judgment proceeded to discuss the ruling in *C.V. Venugopal Mudali Vs. C. Venkatasubbiah Chetty and Others*, and has placed reliance on a passage therein reading:

"In this respect an order rejecting a review petition stands on a different footing from a decision passed on appeal confirming the lower court's judgment and dismissing the appeal. If the decision on review or revision does interfere with the original decision, the former decision becomes the only subsisting order and stands on the same footing as the decision passed in a competent appeal. It will in that case become the starting point for limitation".

This passage apart from being pure obiter dictum seems to refer to a revision in the second sentence of the passage quoted above on a par with that of a review though in the earlier sentence quoted, the comparison is made only between an order rejecting a review petition and a decision passed on appeal confirming the lower court's judgment in 21 Cochin 436, the passage, is relied on for the purpose of drawing this distinction between an order rejecting a review petition and the dismissal of an appeal without notice.

"It may be that when a review is granted and on the re-hearing the original order is confirmed, limitation would reckon only from the date of the order passed on review. But when the review was dismissed even after notice to the opposite party limitation runs from the date of the original order".

Having drawn the distinction, it is further said:

"We fail to see why a revision petition which was admitted and heard after notice to the opposite party but which was dismissed, should stand on a different footing from a review petition".

34. I think there is a vital distinction between proceedings in revision and proceedings in review. A review is not a continuation of the proceedings which culminated in the decree or order sought to be revised. But a revision is a continuation of the same proceeding, however limited the jurisdiction of the revisional Court may be. Mr. Justice Sadasiva. Ayyar in ILR Mad 535: AIR 1915 Mad 495 following the decision of the Judicial Committee in ILR Cal (PC)202 has held that a suit filed to set aside an order passed in a claim proceeding is a continuation of the claim proceeding and, therefore, an alienation made by the claimant after the order of the executing Court allowing his claim and before the suit was instituted, is vitiated by the rule of *lis pendens*. If a suit is a continuation of the claim proceedings, it appears to me inconceivable that a revision proceeding u/s 115 of the CPC is anything different than a continuation of the claim proceedings when the order sought to be revised is one disposing of a claim petition. But the review proceeding is not a continuation of the proceedings which culminated in the decree or the order sought to be reviewed.

35. The learned Judge in 21 Cochin 436 proceeded to draw another analogy between appeals dismissed without notice and decrees confirmed in revision. It is said:

"In the case of appeals, though an appeal is dismissed without notice being issued, the decree to be executed is the decree of the original court, but

limitation runs, for the purposes of execution, not from the date of the original decree but from the date of the final decree or order of the "appellate court But if a decree is confirmed on revision, the only decree to be executed is the original decree, and time runs from the date of the original decree, for appeal does not include revision for the purposes of the Limitation Regulation. (Vide the cases quoted by Rustomji in his Law of Limitation, 4th edition, page 980)".

The view also does not seem to be correct A Full Bench decision of the Madras High Court in P.P.P. Chidambara Nadar Vs. C.P.A. Rama Nadar (deceased) Pichaimani alias Arunachalam by guardian Thillai Ammal as L.R. of the deceased and Others, after an elaborate discussion, overruled the earlier view that an appeal referred to in Article 182 (2) of the Limitation Act will not include a revision petition, and held that a revision will be included within the meaning of the term "appeal" in the Article. Such is the view taken in AIR 1954 Trav-Co 97: Ajudhia Prasad v. U. P. Government AIR 1947 All 390 and Ratikanta Padhi and Others Vs. Ramesh Chandra Mohanty and Others, . In the light of the above ruling, the correct view seems to be that a revision petition is an appeal within the meaning of that term occurring in Article 182(2).

36. The decision in 21 Cochin 436 is supportable on the wording of Article 7 of the Cochin Limitation Regulation, II of 1079. But with respect, I am unable to agree with the further reasonings mentioned in the judgment which have been discussed above.

37. For reasons already stated and to be referred to just now I am unable, with great respect, to agree with the view of my learned brethren that the proceedings in revision are collateral proceedings. The revision petition seeks to cancel or vary an order that has been passed in a claim proceeding. Such cancellation or variation can take place only if the conditions imposed By Section 115 of the CPC are satisfied. Nevertheless, it is a direct attack on the order and is concerned with the question whether the order has been passed in excess of jurisdiction or as a result of failure to exercise jurisdiction or is vitiated by material irregularity in the procedure adopted by the execution Court in reaching the conclusion which is embodied in the order.

Any such defect results in the order being vacated and the case being sent back for a de novo decision or an order being passed by the High Court which not only disposes of the revision petition but the petition on which the claim proceeding were initiated. I do not think that the fact that the High Court's jurisdiction u/s 115 is circumscribed or limited by the conditions imposed by the section has any bearing in determining the question as to whether proceeding in revision is a proceeding on continuation of the claim proceeding or whether it is only a collateral proceeding. If proceedings in revision are merely collateral, it could not have been held for the purposes of Article 182(2) that it is the date of the order disposing of the revision petition that would furnish the starting point of limitation for purposes of that Article. It did not matter whether the order was one allowing the revision or dismissing it

In either case, the period commences only from the date of revisional order for purposes of Article 182(2). This is so because the proceedings in revision are considered as similar to proceedings in appeal for the purposes of Article 182(2), and necessarily, therefore, a continuation of the proceedings which gave rise to the orders sought to be revised. If such a view is tenable for the purposes of Article 182(2), there is no reason why it should not apply in construing Article 11A.

38. One would have thought that it is settled on authority that a revision would lie even in cases where a specific remedy by way of suit is provided as in Rule 103 of Order 21. This is so notwithstanding the provision in the rule "subject to the result of such suit, the order shall be conclusive". But this position seems to be challenged. I have already adverted to the practice obtaining in this Court and that which obtained in the Travancore, Cochin, Travancore-Cochin and the Madras High Courts. It is unnecessary to labour this point. A reference to the commentary u/s 115 of the CPC by Sir Dinshah Fardunji Mulla 12th Edition, page 414 under the heading "Alternative remedy by way of suit or otherwise", and the cases cited therein will make the position clear. It is seen that even when another remedy by way of suit exists, the High Court can interfere in appropriate cases and when it is necessary to avoid a multiplicity of proceedings. After all, whether interference is called for or not in a given case must depend on the view taken by the High Court on hearing the revision petition and the fact that the revision petition may ultimately fail would not justify the view that the revision petitioner is "gambling" when he approaches the High Court u/s 115.

There is nothing in the Privy Council Judgment in ILR Cat (PC) 202 which would indicate that a contrary view has been taken by the Judicial Committee. The only question that arose, in the case before the Judicial Committee was whether the reliefs claimed in the plaint which were interpreted therein, took the suit out of the ambit of Article 17 of Schedule U of Act 7 of 1887. It was held that the suit fell within the Article. The reference to the "only mode" in the judgment is based on the provision in Section 283 of the CPC that was then in force (corresponding to Rule 103 of Order 21) wherein also it is said that "subject to the result of the suit, the order challenged shall be conclusive". The Privy Council had no occasion whatever to consider whether a revision is maintainable or not and no reliance can be placed on the pronouncement of the Judicial Committee in that case for coming to the conclusion that a revision petition is not maintainable because of the provision for a suit.

39. A decade and a half have gone by since the decisions in 1947 Trav LR 484 and Koppolu Venkataswami Vs. Uttarkar Sara Bai and Others, had been rendered. The Courts which "decided those cases were exercising jurisdiction over territories which now form the bulk of the area within the jurisdiction of this Court. The Cochin High Court which apparently took a different view in 21 Cochin 436 did so on certain grounds, some of which, with the utmost respect do not appeal to me, though it seems to me that the decision is supportable on the

wording of the Article that was construed in that case. I dare not upset the rulings in 1947 Trav LR 484 and Koppolu Venkataswami Vs. Uttarkar Sara Bai and Others, on the basis of which many a litigant must have already instituted proceedings which might turn out to be infructuous as a result of the change in the judicial opinion embodied in the majority view. No new light has been shed by anything said--which had not been said before the decisions in 1947 Trav LR 484 and Koppolu Venkataswami Vs. Uttarkar Sara Bai and Others, -- after the above cases were decided.

40. For the reasons stated above, I venture, with great respect to my learned brethren, to dissent from the view that they have taken on the main point in the case. The decisions in 1947 Trav LR 484 and Koppolu Venkataswami Vs. Uttarkar Sara Bai and Others, must stand and I adhere to the view expressed in those cases.

41. in the view I have taken, it is unnecessary to consider whether Section 14 of the Limitation Act is attracted and I therefore refrain from expressing any opinion whatever on that point.

42. I allow this appeal and remit the case to the lower Appellate Court which will deal with the case on the merits which it had not done when it disposed of the appeal. The appellant will have the costs of this appeal from the respondent. The rest of the costs will be costs in the cause and will be provided for in the decree to be passed.

43. By Court: in accordance with the opinion of the majority this Appeal is dismissed with costs.