

(1909) 11 MAD CK 0025
In the Madras High Court

Vattakulakaran Sowdaker Abu Backer Sahib, Bemblassery Sankunni Menon and Krishna Menon and Another	APPELLANT
Vs	
The Secretary of State for India in Council	RESPONDENT

Date of Decision : 25-11-1909

Acts Referred:

Limitation Act, 1877 — Section 12, 6

Citation : (1911) ILR (Mad) 505

Hon'ble Judges : Arnold White, C.J.; Wallis, J.; Miller, J

Bench : Full Bench

Judgement

Arnold White, C.J.—I am of opinion that the provision in Section 12 of the Limitation Act, 1877, that in computing the period of limitation

prescribed for an appeal the time requisite for obtaining a copy of the order appealed against should be excluded, does not apply to appeals u/s 10

of the Madras Forest Act, 1882.

2. I think this opinion might reasonably be based on the short ground that Section 10 of the Forest Act, which gives a right of appeal from the

forest Settlement Officer to the District Court, in the case of certain claims to a right in or over land within 30 days from the date of the order

appealed against, empowers the Governor in Council to extend the time for appeal. The application of the provision of Section 12 of the Limitation

Act with reference) to the exclusion of time in computing the period of limitation prescribed for an appeal, as it seems to me, necessarily operates

as an extension of the prescribed period of limitation. Section 10 of the Forest Act in express terms gives the power to extend the period to the

Governor in Council. Notwithstanding that the provision as to the exclusion of time in Section 12 of the Limitation Act works automatically whilst

the power of extension given to the Governor in Council is a discretionary power to be exercised on just and reasonable cause being shown, I

should be disposed to hold that the express power to extend the time given to the Governor in Council shows that the legislature intended that the

general provisions of the law requiring the Courts to extend the period of limitation in certain cases should have no application to appeals u/s 10 of

the Act in question.

3. It may well be, as suggested in the order of reference, that section, 14 having provided a period " of 60 days and Section 10 only a shorter

period of 30 days, the power of extension for just and reasonable cause was inserted with a view to enable the Local Government to treat the

appeal u/s 10 on the same footing as an appeal u/s 14.

4. Apart, however, from the special proviso in Section 10, I am of opinion that the effect of Section 6 of the Limitation Act, in the case of a special

and local enactment such as the Madras Forest Act, is to exclude the application of Section 12 of the Limitation Act in the case of appeals under

the Forest Act. I cannot adopt the view that the application of Section 12 of the Limitation Act does not affect or alter the prescribed period of

limitation, and with all respect, I am unable to follow the reasoning of the learned Judges in Reference under Forest Act V of 1882 ILR (1887)

Mad. 210 where, in dealing with a case u/s 14 of the Forest Act, they draw a distinction between the words ""shall affect such law"" which occur in

Section 6 of the Act of 1871 and the words ""shall affect or alter the period so prescribed"" which were substituted in Section 6 of the Act of 1877

and are reproduced in Section 29 (1) (b) of Act of 1908.

5. In Veeramma v. Abbiah ILR (1895) Mad. 99, Shephard, J. (See page 112) dissented from the decision in Reference under Forest Act V of

1882 ILR (1887) Mad. 210 and although it would seem that in Haji Ismail Sait v. Trustees of the Harbour, Madras ILR (1900) Mad. 389,

Shephard, J., referred to that decision without disapproval, in Kumara Akkappa Nayanam Bahadur v. Sithala Naidu ILR (1897) Mad. 476 he

says in so many words that he adheres to the opinion expressed by him in Veeramma v. Abbiah ILR (1895) Mad. 99 on the question of

construction. I think Shephard, J., was right,

6. As regards the contention that, as there is nothing in Section 12 of the

Limitation Act to limit its application to suits specified in the schedule, the section is applicable to appeals u/s 10 of the Forest Act, I think the answer is that Section 12 must be read with Section 4, and is one of the

provisions to which section I, which in terms applies the periods prescribed in the second schedule, is subject,

7. Further it seems to me that the provision in Section 12 of the Limitation Act as to excluding the time requisite for obtaining a copy of the order

appealed against does not apply when the special enactment which gives the right of appeal does not require that the notice of appeal should be

accompanied by a copy of the order appealed against. I do not think it follows from the Full Bench decision in, *Kamaraju v. The Secretary of*

State for India ILR (1888) Mad 309 that a second appeal lies from a decision of a District Court passed u/s 10 of the Forest Act, that the

provisions of Section 541 of the CPC of 1882 apply to an appeal from the Forest officer to the District Court.

8. The basis of the decisions in *Sambasiva Chari v. Ramasami Reddi* ILR (1899) Mad. 179 and *Haji Ismail Sait v. Trustees of the Harbour,*

Madras ILR (1900) Mad. 389, was the general principle of law under which parties who are prevented from doing a thing in Court on a particular

day, not by any act of their own, but by the Court itself, are entitled to do so at the first subsequent opportunity.

9. I do not think it necessary to consider whether the view I have indicated can also be supported on the ground that the Forest Act is an

enactment dealing with a special subject, and intended, so far as the provisions of the Act go, to be a complete body of law *See Veeramma v.*

Abhiah ILR (1895) Mad. 99, *Kumara Ahkappa Nayanim Bahadur v. Sithala Naidu* ILR (1897) Mad. 476 and *Nagendro Nath Mullich v.*

Mathura Mahun Parhi ILR (1891) Calc. 368.

10. On the true construction of Section 6 of the Limitation Act, 1877, I think the answer to the question which has been referred to us should be in

the negative,

Wallis, J.

11. I am of the same opinion. The language of Section 6 of the Limitation Act appears to me to be perfectly plain and unambiguous. That being so

we are not, I think, at liberty to go back to the language of the earlier Acts, to

speculate as to reasons which led the legislature to alter that

language, and as a result of such speculation, to put a forced and unnatural construction upon the existing section.

Miller, J.

12. I agree, To my mind it is clear that the provisions of Section 12 of the Limitation Act of 1877 do affect the periods of limitation prescribed by

that Act, and would, if applicable to other laws, affect the period prescribed by those laws.