ANDHRA PRADESH HIGH COURT

Katragadda Ramayya

Vs

Kolli Nageswararao

(P.Jaganmohan Reddy, C.J. Seshachalapathi and C Reddy, JJ.)

25.09.1967

JUDGMENT

P. Jaganmohan Reddy, C.J.

1. Manohar Pershad, J. (as he then was) and Kumarayya, J., after hearing fully this Letters Patent Appeal, preferred against a judgment of Sharfuddin Ahmed, J., referred the case to a Full Bench because not only a question as to whether Sec. 19 of the Indian Limitation Act, 1908 (hereinafter referred to as "the Limitation Act") controls Section 48, Civil P.C. but also in addition, other questions of law and fact are involved in the case. Before we set out the questions of law upon which we are required to express an opinion, it is necessary to set out briefly the relevant facts. Katragadda Rajaratnamma, whose legal representatives are the appellants herein filed a suit, O. S. No. 32/35 in the District Judge's Court, Masulipatnam on the foot of a promissory note dated 28-4-1932 and obtained a decree on 26-2-1937 for recovery of Rs. 4484-11-2 together with interest and costs against defendants 1 and 2, Sunkara Ramakotayya and Kolli Seshayya personally and against all the defendants from their joint family assets. Defendants 1 and 2 died and their legal representatives have been brought on record, respondents 1 to 3 herein being the two sons and widow of defendant. An execution petition No. 26 of 1940, was filed in the executing Court on 2-2-1940, for the sale of properties which were attached before judgment. That E. P. was, however, closed on 19-4-1940, as a consequence of an application filed under Section 20 of the Madras Agriculturists Relief Act (4 of 1938), for scaling down of the debt, the decree was amended on 8-4-1941.

2. It may however be stated that the decree-holder in O. S. 32 of 1935 viz., Katragadda Nagaratnamma filed a suit O. S. No. 67/33 on the file of the Sub Court, Tenali against Devineni Basavayya and Devineni Raghavayya. That suit was dismissed with costs. There was an appeal against the dismissal of that suit, which also was dismissed on 9-9-1938 (vide Ex. A-8). Since the costs were not paid by Katragadda Nagaratnamma, the judgment-debtor, Devineni Basavayya

and Raghavayya filed E. P. 67/40 for execution and had a precept issued by the Sub Court, Tenali, to the District Judge's Court, Masulipatam, for staying the execution of the decree in O. S. No. 32/35. This precept was issued on 5-11-1940 and was served on the Sheristadar of the District Court, Masulipatam on 15-11-1940 (vide Ex. A-3(a)). After this precept was issued, Nagaratnamma filed E. P. 41/42 in O. S. 32/35 in the District Court. Masulipatam, on 6-3-1942 (vide Ex. A-4). But this E. P. was returned on the ground that the decree in O. S. 32/35 was attached in O. S. 67/33, Sub Court, Tenali. The Plaintiff (Nagaratnamma) stated that she had put in a petition in the attaching Court for permission to execute her decree. Notice were directed to be issued to the Sub Court, Tenali, and several adjournments were given for payment of batta and for awaiting return of those notices. Ultimately, the attaching decree-holders (Devineni Basavayya and Raghavayya) were personally served on 9-11-1942 and the case was posted for ascertainment of the result of the petition for permission said to have been filed in the Tenali Sub Court. On 12-11-1942, the District Judge noted that permission from the attaching Court was not produced and accordingly dismissed E. P. 41/42. After the dismissal of that E. P. the plaintiff filed E. P. 3/46 in O. S. 32/35 (Ex. A-5) on 29-10-1945. But since the decree was still under attachment by reason of the precept issued by the Sub-Court, Tenali, notices under Order 21, Rule-22 to the attaching decree-holders and the judgment-debtors in O. S. 32/35 were ordered on 29-1-46. But as the batta was not paid, the E. P. was dismissed on 1-3-1946.

3. The attaching decree-holders in O. S. 67/33. filed an Execution Application No. 54/67 Ex. A-8 praying that the decree may be transmitted to the District Munsif's Court, Masulipatam for execution. That application was returned with certain objections and in resubmitting the same, the attaching decree-holders stated that the previous E. P., shows that the decree in O. S. 32/35 on the file of the District Court, Krishna was attached and the attachment was made absolute. Some other objections also were raised, but they were satisfied. Ultimately, the Court passed the following order on 19-3-1947:

"J. D. affixed as gone to Pesaralanka Called absent. Ex parte, Transmit."

4. The plaintiff-decree holder in O. S. 32/35 filed an Execution Application No. 72/49 Ex. A-6 in the District Court, Krishna, praying for transmission of the decree to the Sub Court, Masulipatam for execution, upon which the Court ordered on 4-4-1949:"Transmit, Notice subject to be taken in the Sub Court, Masulipatam" After transmission of the decree to the Sub Court, Masulipatam the plaintiff filed E. P. 38/49 (Ex. A-7) in that Court for execution. The Subordinate Judge directed issue of notice subject to the objection regarding Limitation. After notices were served, a counter was filed, in which the judgment-debtors also took the plea of Limitation. Ultimately the plaintiff/s pleader endorsed on 31-8-1949 that the E. P. was not pressed. The Subordinate Judge dismissed the E. P. and ordered payment of costs by the plaintiff to the judgment-debtors therein,

on the same day, viz., 31-8-1949.

5. The present E. P. 83/52 was filed on 30-8-1952 in the Sub Court, Masulipatam with a prayer for sending for E. P. 3/46 filed on 29-10-1945 and that the same may be continued. It was there stated as follows:

> "As this E. P. is a continuation of the E. P., dated 29-10-45, there is no Limitation. Moreover, the defendants (judgment-debtors) while alienating some of their properties, made the decree-holder believe from time to time that they will pay up this decree-debt and promised to do so, and in the sale deeds executed by them, they directed the vendee to pay this decree debt out of the sale price by a specific clause and thereby made the decree-holder believe that they will discharge the decree debt in that manner, but ultimately they failed to do so and acted contrary to the terms if the sale deeds executed by them and thus deceived this decree-holder. Hence the period commencing from 1939 when they started making the alienations will have to be deducted from the prescribed period of 12 years. If it is so deducted this decree is not barred by Limitation.' It is further stated:"Apart from this, as this decree was attached in execution of the decree in O. S. No. 67/33 on the file of the Sub Court, Tenali, this decree could not be executed. The said attachment was in force till the year 1946. For that reason also the E. P. dated 29-10-1945 should be revived and continued. Hence the rule of 12 years Limitation will not apply to the execution of this decree. Moreover this decree was amended as per Act IV of 1938. The decree can be executed within 12 years from the date of the amended decree. In these circumstances, there is no Limitation for the execution of this decree."

The acknowledgments referred to above are Exs. A-9 and A-10, which are sale deeds executed in favour of third parties by the judgment-debtors in O. S. 32/35. Admittedly Ex. A-9 sale deed D/-21-12-39, in which the alleged acknowledgment is contained, was one before the filing of the first E. P. 26/40 (Ex. A2) dated 19-4-1940, Ex. A-10 sale deed dated 4-1-1943 is relevant in that it contains an acknowledgment whereby judgment-debtors 2 to 4 (defendants 2 to 4 in the suit) while selling their property to Yarlagadda Raghavayya and Vemulapalli Achayya, acknowledged the decree debt in O. S. 32/35 as follows.:

> "Out of the sale consideration ..... we have received Rs. 2500 by your undertaking to pay the same on our behalf to Katragadda Rajaratnamma Guru towards the decree obtained by her against us in O. S. 32 of 35 on the file of the said District Court, Krishna."
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> It may be noticed that there is no acknowledgment by the 1st defendant, and as such, there is no acknowledgment binding on his legal representatives, respondents 4 to 8.

6. On the above facts, the questions raised and argued before this Full Bench are as follows;

1. Whether E. P. No. 83/52 is a fresh application or is it merely to revive an earlier E. P. viz, 3/46 which was dismissed as not pressed.

2. Whether E. P. 26/40 dated 19-4-1940 which was closed by reason of Act IV of 1938 can be revived and proceeded with.

3. Whether the period during which the precept, issued by the Subordinate Judge, Tenali on 11-11-1940 to the District Judge, Masulipatam, served on the Sheristadar on 15-11-1940, subsisted can be excluded under Section 15 of the Limitation Act for the purpose of computing the 12 years outer limit prescribed in Section 48, Code of Civil Procedure.

4. If the 5 years 2 months and 21 days, i.e., the period during which the precept subsisted, cannot be excluded by the application of Section 15 of the Limitation Act, whether by reason of acknowledgment in Ex. A-10 the decree-holder is entitled under Section 19 of the Limitation Act to a fresh period of 12 years from the date of the acknowledgment, namely, 4-1-1943; and

5. Whether the execution petition Ex. A-7 filed on 6-4-1949, which was obviously beyond the period of 12 years from the date of the decree passed on 26-2-37 regarding which, notwithstanding an objection by the judgment-debtors that it is barred by Limitation, was dismissed as not pressed on 31-8-1949, operates as res judicata.

7. It is apparent from the statement of facts that what the appellants are confronted with in the execution of their decree is the bar of 12 years under Section 48 Civil P.C. Admittedly, E. P. 83/52 was filed beyond the period of 12 years from the date of the decree, Section 48 Civil P.C., is in the following terms:

"(1) Where an application to execute a decree not being a decree granting an injunction has been made, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of twelve years from -

(a) the date of the decree sought to be executed or

(b) where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the appellant seeks to execute the decree.

(2) Nothing in this Section shall be deemed-

(a) to preclude the Court from ordering the execution of a decree upon an application presented

after the expiration of the said term of twelve years, where the judgment debtor has by fraud or force prevented the execution of the decree at some time within twelve years immediately before the date of the application: or

(b) to limit or otherwise affect the operation of Article 183 of the First Schedule to the Indian Limitation Act, 1908."

This Section inhibits a Court from passing any orders in execution, if a fresh application is presented after the expiration of 12 years from the date of the decree sought to be executed. There is little doubt that E. P. 83/52 filed on 30-8-1952 is afresh application, and it was filed long after 12 years from the date of the decree, viz, 26-2-1937. In order to get over this objection, the appellants have raised various contentions viz., (1) that it is not a fresh application but only a revival or a continuation of the execution petition No. 3/46 which was closed; (2) alternatively, if for any reason that contention is negatived and E. P. 83/52 is considered to be a fresh application, then the bar of 12 years is again sought to be got over (a) by the acknowledgment contained in the sale deed Ex. A-10, under Section 19 of the Limitation Act; (b) the inability of the decree-holder to execute her decree by reason of the attachment of that decree in execution of the decree in O. S. 67/33 on the file of the Sub Court, Tenali; and (c) that the decree was amended as per Act IV of 1938 and accordingly the 12 year period should be counted from the date of the amendment of the decree on 8-4-1941.

8. In so far as the first question is concerned, we have little doubt that E. P. 83/52, though the appellants state that it is a continuation of E. P. 3/46 filed on 29-10-1945, is a fresh application for execution within the meaning of Section 48, Civil P.C. The whole anxiety of the appellants is to save E. P. 83/52 from the bar of 12 years as such, they have furnished several grounds for getting over that objection. It is clear that E. P. 3/46 was dismissed for non-payment if batta, on 1-3-1946 and therefore it can neither be revived nor can it be said that E. P. 83/52 is a continuation of that E. P. in Pingle Venkata Rama Reddy v. Kakarla Buchanna, (FB), Chandra Reddy, C. J, delivering the judgment of the Full Bench of this Court consisting of himself, Kumarayya and Narasimha, JJ., observed that there is a long course of authority for the position that when once an execution petition is dismissed for default of the decree-holder, it terminates the execution proceedings and a subsequent application for the same purpose will constitute a fresh application within the meaning of Section 48 that there is no question of continuing of reviving a petition which has been finally and property dismissed that it is a different matter if the petition was dismissed without any fault on the part of the decree-holder or without notice to the parties, and that in such as event, the execution petition would be treated as one "pending in the eye of law" (Vide page 3). Nor can we, on the second question, entertain an oral application of the learned advocate for the appellants, Mr. Kikshitulu, that E. P. 26/40 dated 19-4-1940 which

was closed by reason of Act IV of 1938 to revive and proceeded with the execution because it was followed by several fresh applications, in none of which did the decree-holder pray for revival of E. P. 26/40. In the present E. P. also. the specific prayer is only for the revival of E. P. 3/46 and consequently what is not asked for or prayed cannot be granted.

9. On the third question, the argument of the learned Advocate for the appellants is that the period during which the attachment of the decree in O. S. 32/35 was continued as a result of the precept issued by the Sub Court, Tenali, in execution of the decree in O. S. 67/33 should be deducted under Sec. 15 and if the 5 years 2 months and 21 days is deducted in computing the period of 12 years under Section 48, Civil P. C. the execution petition 83/52 would be well within time. We have already stated that the precept Ex. A-3 (a) issued by the Tenali Court in execution of the decree in O. S. 67/33 was served on the of the District Court, Masulipatam on 15-11-1940. Both the learned Advocates appear to have assumed under some misapprehension that this precept was issued under Sec. 46 Civil P.C.. On this assumption the learned Advocate for the respondents, Sri Srinivasa Rao contended that by virtue of the proviso to Section 46 Civil P.C. no attachment under that precept can continue for more than 2 months, unless the period of attachment is extended by an order of the Court which passed the decree or unless before the determination of such attachment the decree has been transferred to the Court by which the attachment has been made and the decree-holder has applied for an order for sale of such property. This was countered by Mr .Dikshitulu for the appellants who submits that due to the fault of the Court, E. P. 41/42 was not proceeded with on the ground that there was an attachment of the decree by the Tenali Court in O. S. 67/33. If the precept could only endure for two months, then the attachment would not subsist on the date when the decree holder filed E. P. 41/42 and the Court ought to have proceeded with the execution, and that for this fault of the Court in not proceeding with the execution of the decree, the decree-holder ought not to be made to suffer. It however became apparent during the course of the arguments, when we called for the original precept Ex. A-3 (a), that the order of attachment was issued under Order 21, Rule 53, Civil P.C. and was effected by a notice in Form 22 in Appendix E of the Civil Procedure Code. This form is in conformity with sub-rule (4) of R. 53, of Order 21, which is as below:

"Where the property to be attached in the execution of a decree is a decree other than a decree of the nature referred to in sub-rule (1) the attachment shall be made, by notice by the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way and where such decree has been passed by any other Court, also by sending to such other Court a notice to abstain from executing the decree sought to he attached until such notice is cancelled by the Court from which it was sent."

There is a provision for attachment of decrees in Rule 177, of the Civil Rules of Practice also, which are applicable to the mofussal Courts in addition to the Civil P.C. it provides:

> ".....If an order of attachment is made it may be as in Form No. 63 or 64 and the application shall be adjourned to a fixed day for the applicant to apply to the Court, or if the decree of another Court is attached to that Court, for execution of the attached decree and notice may, if the Court thinks fit, be given to the holder of the decree..." Form 63 if the Civil Rules of Practice is to be used for issuing an order of attachment of the decree when both the decrees are of the same Court, while Form 64 is for attachment of a decree of another Court. The form that would be applicable in cases such as the one we are considering is Form No. 64.

10. Both under Form No. 22 in Appendix E of the Civil P.C. and Form No. 64 in the Civil Rules of Practice the Court whose decree is attached is requested to stay the execution of the decree until an intimation from the Court issuing the notice is received canceling the said notice. Apart from this, in Form 22 there is a further provision that the stay of the execution of the decree is to continue only until execution of the said decree is applied for by the holder of the decree sought to be executed or by his judgment-debtor.

11. It is obvious therefore that the attachment in this case was effected under Order 21, Rule 53 and has nothing to do with a precept under Section 46, Civil P.C., under which the attachment to be effected is in Form No. 2 of Appendix E. directing the Court in which the property specified in a schedule to be annexed thereto, is situate to hold the same pending any application which may be made by the decree-holder for execution of the decree. This is to enable the decree-holder to apply for execution of the decree within 2 months from the issue of the precept in the Court to which the precept was sent.

12. The attachment in this case, as we have already stated, is in Form 22 and therefore there is no question of the attachment ceasing to have effect after 2 months. On the other hand, it will continue till the happening of one of the contingencies specified in Form 22. While no doubt the decree-holder was unable to execute the decree as long as the attachment in O. S. 67/33 by the Tenali Sub-Court continued, it is contended by Mr. Srinivasa Rao that it is due to the fault of the decree-holder, the execution could not be proceeded with, because the decree-holder could have paid the amount to the attaching decree-holders in O. S. 67/33 and satisfied the decree or could have moved to obtain permission from the Tenali Sub Court to raise the attachment, which is what she had represented to the District Court, Masulipatam that she would do when an objection to the execution was taken by that Court. There is force in this contention, inasmuch as attachment under Order 21, Rule 53 does not amount to an absolute stay because it is within the power of both the holder of the decree sought to be executed and the holder of the decree

attached, if they choose, they can execute the decree by getting the notice withdrawn. The crucial question is whether an attachment under Order 21, Rule 53 satisfies the requirement of Section 15 of the Limitation Act in order that the period during which the attachment subsisted, can be excluded for the filing of the execution application. A Full Bench of the Madras High Court in Kandaswami Pillai v. Kannappa Chetty, (FB), no doubt held that Section 48, Civil P.C. is controlled by Section 15 of the Limitation Act. In that case, an insolvency Court ordered stay of execution of the decree on 18-8-1931 under Section 29 of the Provincial Insolvency Act, and that stay continued till 10-2-1942, when the decree-holder filed an I. A. in the said E. P. and got permission to execute the decree and put the proceeds into Court. when two E. Ps. were filed in 1942, they were dismissed in limine as having been barred by Limitation under Section 48 Civil P.C. Later he filed another E. P. and claimed that it was in time as he was entitled, under Section 15 of the Limitation Act, to deduct the period from 18-8-1931 to 10-2-1942 covered by the stay order given by the insolvency Court for which he was not responsible. There is no doubt that a stay of institution of a suit or an application for execution of a decree by an injunction or order entitles the plaintiff or the decree-holder to exclude the period during which that stay or injunction continues, in computing the period of Limitation prescribed for any suit or application for execution and accordingly the period during which the stay of execution of the decree continued, would be an order contemplated by Sec. 15 of the Limitation Act. WE are for the present not concerned as to whether Sec. 48, Civil P.C. is controlled by Section 15, Limitation Act. The question is whether the attachment under Order 21, R. 53, Civil P.C. would amount to an injunction or order of stay within the meaning of Section 15. It has been held that it does not.

13. In *Soorayya v. Mallayya*[1], Subba Rao, C. J and Bhimasankaram, J., held that an order made under Rule 53 of Order 21, Civil P.C. by the attaching Court is not a stay order contemplated by Section 15 of the Limitation Act and that the period during which the stay subsisted cannot be excluded from the period of Limitation prescribed for the filing of the execution application. In that case also, the order of stay issued by the Collector to the District Munsif was in terms of Form 22 of Appendix E of the Civil P.C. The learned Chief Justice after examining the several cases which were subjected to judicial scrutiny by the various High Courts, observed at pp. 303, 304 (of Andh WR) = (at p. 232 of AIR):

> "It will be seen from the aforesaid decisions that the scope of the provisions of Section 15 of the Limitation Act is confined only to an absolute stay granted by Courts. The principle underlying the Section is apparent. If the execution of the decree was stayed, it would be an unnecessary burden on the decree-holder and an empty formality if he should be compelled to file execution applications at the risk of his decree otherwise getting barred. A decree, which has been stayed, cannot obviously be executed. So, under this Section, the period covered by the stay order is allowed to be excluded from the period of

> Limitation. That reason cannot hold good if the decree-holder or his representative is not prevented from executing the decree."

After setting out the terms of Order 21, Rule 53 it was further stated:

> "But both the holder of the decree sought to be executed and the holder of the decree attached can, if they choose, execute the decree. Their right to execute the decree was not affected in any way by the stay order. In the circumstances, following the aforesaid decisions, we hold that an order made under Order 21, Rule 53, Civil Procedure Code, by the attaching Court was not a stay order contemplated by Section 15 of the Limitation Act and therefore that period could not be excluded from the period of Limitation prescribed for the filing of the execution application."

The Supreme Court in Siraj-ul-Haq v. S. C. Board of Waqf, , also held that for excluding the time under Section 15, it must be shown that the institution of the suit in question had been stayed by an injunction or order in other words, the Section requires an order or an injunction which stays the institution of the suit, and that in cases falling under Section 15, therefore, the party instituting the suit would by such institution be in contempt of Court that if an express order of injunction. is produced by a party, that clearly meets the requirements of Section 15 and that even assuming that Section 15 would apply even to cases where the institution of a suit is stayed by necessary implication of the order passed or injunction issued in the previous litigation, there would be no justification for extending the application of Sec. 15 on the ground that the institution of the subsequent suit would be inconsistent with the spirit or substance of the order passed in the previous litigation. Gajendragadkar, J. (as he then was) observed at p. 205:

> "It is true that rules of Limitation are to some extent arbitrary and may frequently lead to hardship but there can be no doubt that in construing provisions of Limitation equitable considerations are immaterial and irrelevant and in applying them effect must be given to the strict grammatical meaning of the words used by them."

Subsequently a Full Bench of this Court consisting of Chandra Reddy, C. J Gopalakrishnan Nair and Gopalrao Ekbote, J. in Ramarao v. S. Ranganakalu, (FB), held that Clause (b) of Rule 53(1) of Order 21 does not enact an absolute rule prohibiting the execution of the decree that it is a request to the Court which passed the decree, to stay execution until the two events contemplated by R. 53 (1) (b) happen that being the position, it does not in any way affect the right of the assignee decree-holder to pursue the remedy available to him under O.21. R. 16 and that it cannot be predicated that an attachment destroys the right of an assignee decree-holder to apply for execution. It was further held that the object of Order 21, Rule 53 is to prevent the holder of the attached decree from realising and taking away the fruits of the decree and to enable the

attaching creditor or creditors to come to the Court which passed the decree to apply for execution and thus to safeguard the interest of the attaching creditors also and that it also appears from Rule 53 that all persons interested in the decree attached have to approach the Court which passed the decree, which means that the claims of all persons have to be adjudicated upon only by that Court.

14. Having regard to the above decisions, it is apparent that the period during which the order of attachment subsisted under Order 21, Rule 53, Civil P.C. cannot be excluded under Section 15, Limitation Act.

15. On the question whether Section 48 Civil P.C. is governed by Sec. 19 Limitation Act, at the very outset it may be pointed out, as we have already noticed, that Ex. A-10 would amount to an acknowledgment as contemplated by Section 19. It is therefore necessary to consider whether the outer limit of 12 years prescribed in Sec. 48. Civil Procedure Code, can be extended by a fresh period, by reason of the acknowledgment, Sri Dikshitulu, the learned Advocate for the appellants, placed great reliance on two Full Bench decisions of the Madras High Court, in *Suryanarayana Rao v. Venkata Raju*[2], and (FB) (Supra) for the propositions (I) that the word "prescribed" in Sections 15, 19 and 20 of the Limitation Act means 'prescribed' not only under that Act or the schedule thereto but also by any other general law, and that the period of outer limit specified in Section 48 is a period of Limitation; (ii) that having regard to the specific reference to Section 48, Civil P.C. in Art. 181 of the Limitation Act, the period prescribed in that Section will be deemed to have been prescribed under the Limitation Act if so Sections 19 and 20 of the Limitation Act will equally govern Section 48, as Section 15 has been held, by the Full Bench in Kandaswami Pillai's case, (FB) (Supra), to govern it. In other words, he contends, that if Section 48, Civil P.C. is deemed to have been incorporated in the schedule to the Limitation Act, the all the provisions of the Limitation Act including Sections 15, 17, 18, 20 etc., will apply to the Limitation prescribed in Sec. 48, Civil P.C. In order to answer the question whether Section 15, Limitation Act controls Section 48, Civil P.C. the Full Bench in Kandaswami Pillai's case. (FB) Supra, had to consider the following three questions, viz., (1) whether the word "prescribed" in Section 15, Limitation Act means prescribed in the schedule to the Limitation Act or does it mean prescribed either in the schedule to that Act or in any other enactment; (2) is the period of 12 years mentioned in Section 48, Civil P.C. a period of Limitation within the meaning of Section 15 of the Limitation Act; and (3) whether Civil P.C. is a special or local law within the meaning of S. 29, Limitation Act. Rajamannar, C. J, speaking for the Full Bench said at p. 672 (of Mad LJ) = (at p. 187 of AIR):

> "It is obvious that unless the 12 years' period is a period of Limitation and "prescribed" is understood in an extended sense as not confined to the provisions of the schedule to the

Limitation Act. Section 15 of that Act cannot apply in computing the period of 12 years under Section 48 of the Code."

The learned Chief Justice having regard to the divided judicial opinion apparent from the several decisions of the High Court, traced the history of legislation of the Limitation Act and the Code of Civil Procedure, form 1859 till the enactment of the now current Civil Procedure Code and the Limitation Act both passed in 1908. The legislative history of these two pieces of legislation as pointed out would reveal that both being procedural law, they were in pari materia and had to be read and considered together as one system and explanatory of each other. The Limitation ACT 1859 did not prescribe periods of Limitation for several applications to be made under the Civil P.C. This was provided for in the Code of 1859. It was pointed out by the Full Bench that the Privy Council in *Phollbas Koonwir v. Lalla Jogeshur*[3], had also stated that both the enactments of 1859 were treated as supplementary to each other and concerned with procedural law and that the object of the Code of Procedure was to enact a general code of Civil Procedure while the object of the Limitation Act was to establish a general law of Limitation in suppression of the laws that existed till then and if there was a general provision in the Limitation Act it would govern also the periods of Limitation presented by other statutes of a general nature like the civil Procedure Code. While it may be stated that there was no provision corresponding to Section 48 in the Civil P.C. of 1859, such a provision was contained in Section 230 of the Code of 1877 (Act XI), and because of the provision in Section 230 fixing the period of Limitation. the second schedule to the Limitation Act 14 of 1877 contained a new Article 178, where under for applications for which no period of Limitation was provided elsewhere or by S. 230 three years' Limitation was provided for from the date when the right to apply accrued. After referring to the change in the Civil Procedure Code (Act 5 of 1908) and the Limitation Act (9 of 1908), respectively, the learned Chief Justice observed at p. 679 (of Mad LJ) = (at pp. 191 and 192 of AIR):

"It appears to me from the course of legislation to which I have adverted above that the provisions of the Limitation Act must be read with those provisions of the Civil Procedure Code which are intimately connected therewith. There is no doubt room for comment in the fact that while other provisions prescribing periods of Limitation in the Civil Procedure Code of 1859 are subsequently transferred to the Limitation Act, the provision corresponding to Section 48 of the Code, namely, Section 230 of the Code of 1877, continued to remain in the Code and did not find a place in the subsequent Limitation Act. But it is equally apparent that the Legislature was well aware that Section 48 of the Code also prescribed a period of Limitation apart from the period of Limitation Act. This appears to me to be conclusively established by the reference to Sec. 48 of the Code (and its corresponding provision in the earlier Code) in column 1 of Articles 181 and 182 of the Limitation Act of 1908 (and the corresponding articles in the earlier Acts). I

do not find anything repugnant to legal sense in that for an application for execution there should be an outside limit of a longer period after which there should be no further execution at all as well as shorter periods for successive applications within this longer period."

16. On the third questions as to whether Section 29, Limitation Act as it now stands after the amendment by Act 10 of 1922, would help in concluding that Sec. 15 (1) controls Section 48 of the Code, the Full Bench disagreed with the view which the Nagpur High Court in *Sitaram v. Chunnilalsa*[4], was inclined to take which was that the Code would be treated as a Special law in so far as it provides a period of Limitation under Sec. 48, Civil P.C. Rajamannar, C. J, said that the expression "Special law" which has not been defined in the Limitation Act, was intended to cover only laws like the Rent Act of 1859 which was held by the Privy Council to be a complete Code in itself that in the ordinary sense "special" is used in antithesis to "general" or a public Act means one that is directed towards a special subject or special class of objects. According to him, it is a specious argument to say that the Civil Procedure Code deals with a particular subject, namely, procedure. He further stated:

> "The special law contemplated is the law which gives rise to special causes of action and which itself provides for the method of enforcement of rights conferred by that Act or for redress of injuries suffered by the application of the provisions of that Act. The Provincial Insolvency Act, for instance, would be a special law likewise the Income-tax Act. The Civil Procedure Code is not such a special law. It is a general law relating to procedure. I am definitely of opinion that Section 29 has no bearing on the question referred to us." The learned Chief Justice with whose judgment Panchapagesa Sastry and Somasundaram, JJ. agreed, having come to the conclusion that the Civil Procedure Code was not a special law but is a general law relating to procedure nonetheless hesitated to apply the logic of his conclusion for the applicability of Section 19 of the Limitation Act to Section 48 of the Code. Towards the end, he observed:"Though it did not directly arise in this case, one other question has given me considerable difficulty, namely the applicability of Section 19 of the Limitation Act to Section 48 of the Code. Will an acknowledgment in writing before the expiry of the period prescribed by Section 48 of the Code furnish a fresh period of twelve years from the date of the acknowledgment? If the expression "prescribed" in that Section (19) means "prescribed not only in the schedule but also prescribed by Section 48 of the Code", then it may be contended that an acknowledgment will have that effect. It has, however, been held by the Patna High Court in *Krishan Dayal Gir v. Mst. Sakina Bibi*[5], the words "fresh period of Limitation" in S. 19 do not refer to the term of twelve years prescribed by S. 48 of the Code. No reasons are given. The questions will have to be carefully examined if and when it arises directly."

17. Mr. Dikshitulou confidently avers that if the judgment in 68 Mad LJ 12= (AIR 1935 Mad 64 FB) (Supra) had been cited before the Full Bench in Kandaswamy Pillai's case, (FB), the doubt and difficulty of Section 19 of the Limitation Act to Section 48, Civil P. C. would not have been felt. But though we have carefully gone through the Judgment in Suryanarayana Rao's case 68 Mad LJ 12 = (AIR 1935 Mad 64 FB) (Supra), was not dealing with the applicability of Section 31 of the Limitation Act (now repealed) which was enacted to remove the hardship caused by a decision of Privy Council in *Vasudeva Mudaliar v. Srinivasa Pillai*[6], to persons who had therefore acted on the basis of the applicability of the 60 years' rule even to suits on simple mortgages, while in fact the 12 years rule was held to be applicable by the above decision. In that case, the plaintiff sued on a mortgage bond ext A of 1905 and the principal contesting defendant, the 11th defendant, had a mortgage in the favour of 1902, Ext I. To get over the prima facie priority of Ext. I, the plaintiff relied on the fact that his mortgage Ext. A was practically a renewal of Ext B dated 24th May 1892, i.e., long anterior to Ext. I. The subordinate Judge in appeal , Jackson, J. reversed that decision holding that on the date of Ext. A the claim under Ext B had become barred by Limitation and therefore the plaintiff was not entitled to priority as against the 11th defendant. Against this judgment, an L .P . A. was filed, which was referred to the Full Bench. It was pointed out that the renewal under Ext. A of 1905 was effected at a time when, according to the law as declared by a Full Bench of that Court in *Narayana Aiyar v. Venkatarama Aiyar*[7] , the claim under Ext. B has not become barred by Limitation and Ext. A allowed time for payment by instalments up to 1916. The privy council, as we have stated earlier, had in 1907 ILR 30 Mad 426 (supra), declared the law otherwise so that the 11th defendant could contend that on the application of 12 years rule of Limitation , the remedy under Ext. B must be held to have become barred on the date of Ext. A In that case the plaintiff also claimed the benefit of Section 31 of the Limitation Act of 1908, which was introduced to remedy the hardship caused by the very decision of the privy council. The main contention urged on behalf of the respondent as pointed out by Varadhachariar., J., speaking for the Full Bench, was that whether Section 31, Limitation Act, 1908, only provided a special period of grace of two years for instituting suits on mortgages of a particular description and that where no suit had been instituted within the period so allowed, no general benefit could be held to have been accrued to the holders of such mortgages, as if their mortgages had been revived even for purposes of Section 19 and 20 of the Limitation Act. This question, it was stated, concluded by a decision of a Bench of that Court in *Somisetti Seshayya Chetty v. Rolla Subbadu*[18] where it was held with reference to the special class of cases dealt with in Section 31, that Section must be interpreted as prescribing a period of Limitation even for purposes of the application of Sections for the purposes of the application of Section 19 and 20 of the Limitation Act. At p. 14, it was observed: "The argument that the word "prescribed" in these Sections (i.e., Section 19 and 20) must be understood as only meaning prescribed in the second schedule to the Limitation Act, is not

warranted by the language of the Section and is opposed to the weight of authority." Nothing appears from the judgment to show how the application of Section 19 and 20 fell for consideration . At p. 15 (of Mad LJ) = (at p. 66 of AIR) it was observed:

> "The declared object of the Legislature in enacting Section 31 was to remove the hardship caused by the privy council decision to persons who had thereto fore acted on the basis of the applicability of the 60 years' rule even to suits on simple mortgages. There is no reason why a provision introduced for this purpose should be unnecessarily restricted in its scope or why the Legislature should be assumed to have intended that all persons holding such mortgages should immediately rush to Court, even though the mortgagors were prepared to make part payments or execute renewals."

What was decided was that neither Sec. 31 of the Limitation Act nor the principle of the decision in 59 Mad LJ 881 = (AIR 1930 Mad 991) (Supra) need be limited to acknowledgments or part-payments made between 1908 and 1910.

18. The question whether the general provisions of the Limitation Act would be applicable to all special Acts in which a period of limitation has been prescribed had given rise to a conflict of opinion prior to the amendment of Section 29 by the Act 10 of 1922. The principle that was recognised and adopted was that where a special or a local Act is a self contained one i.e., a complete code by itself, it would not be governed by the provisions of the Limitation Act. But where the periods of limitation were specifically prescribed by special or local laws which were not intended to be complete codes in themselves, the general provisions of the Limitation Act were held applicable to suits, appeals or applications. Nonetheless, some Courts took the view that even if the special law is not a complete Code by itself, the provisions of the Limitation Act would not be applicable, as such application would affect the period provided by the Special Act. The amending Act has modified the position which led to the conflict of views. Now the period prescribed by a local or special law will be regarded as the period prescribed by the first schedule for the purpose of Section 3.

19. Section 29 (2) makes only Sec. 4 , 9 to 18 and 22 applicable to the special or local law and the remaining sections shall not apply unless they are expressly made applicable by the special or local law. It will observed that all the sections, that have been made applicable to special or local have been made applicable to appeal or have been made applicable to special or local law by Sec. 29 (2) are general provisions extending the time because of some act of Court or on principle of public policy, sections 4, 9, 12, 15, 17 and 22 of the Limitation Act are all sections where proceedings in Court could not be taken or were stayed or something has to be done to continue them while Section 10, suits against express trustees and their representatives Sec. 11 suits on foreign contracts Section 13 exclusion of time of defendant's absence from India and

certain other territories Section 14 exclusion of time or proceedings bona fide in Court without jurisdiction Section 16, exclusion of time during which proceedings to set aside execution sale are pending and section 18, suits or applications which could not be filed because of concealed fraud or where any document necessary to establish a right to establish a right to institute suit or make an application has been fraudulently concealed form him... are all based on public policy and good reason, because the plaintiff or the petitioner was either pursuing a course which ultimately turns out to be wrong, or was prevented from doing so by the active participation in fraud by the opposite party and through no fault of the plaintiff or the petitioner. The other general provisions, such as Section 19, extenuation of period by reason of an acknowledgment in writing or section 20, by reason of payment on account of debt interest or legacy, have specifically been excluded by Section 29 (2) of the Limitation Act, from this application to special or local laws because they depend upon the debtor to extend the period.

20. It appears to us that Section 48, Civil P.C., though incorporated in the general law relating to procedure, prescribes a period of limitation and to that extent is a special law within the meaning of Section 29 of the Limitation Act. AS held by a Full Bench of the Allahabad High Court in *Drigpal v. Pancham Singh*[9], any enactment which prescribed a period of limitation for any suit, appeal or application was a special law with reference to the Limitation Act which embodied the general law relating limitation." Rajamannar C. J, in Kandaswamy Pillai's case, FB) (supra), while dealing with the importance of the decision of the Privy Council in (1875) ILR 1 Cal 226 (PC), said at p. 678 (of Mad LJ) = (at p. 191 of AIR):

> "The importance of this decision of the Privy Council appears to me to be this, that the rules laid down in the Lim, Act relating to the computation of the periods of limitation need not necessarily be confined to periods prescribed in that Act and in proper case, "due regard being of course had to the language' can be applied to periods of limitation prescribed by other statutes of a general nature like the Civil Procedure Code." (Underlining (here in " ") emphasised).

What the learned Chief Justice disagreed with was the Nagpur view in ILR (1944) Nag 250 = (AIR 1944 Nag 155) (supra), viz., that because Section 48, Civil P.C., prescribed a period of limitation, the Civil Procedure Code could be treated as a special law. But that is far from saying that he was averse to hold that Sec. 48 was a special law relating to limitation embedded in a general law prescribing procedure. In fact, he did say that the Civil Procedure Code is not a special law it is a general law relating to procedure. Having said so, however, he expressed a definite opinion that Section 29 has no bearing upon the question referred to them. It appears to us with great respect that this conclusion does not seem t have been arrived at, having regard to the previous observations that in proper cases due regard being of course had to the language, the

rules laid down in the Limitation Act relating to the computation of periods of limitation can be applied to periods of limitation prescribed by other statutes of a general nature like the Civil Procedure Code. The view subscribed in this passage certainly leads one to conclude that the provisions reliant to limitation in a general law are equally to be treated as a general law. There can be little doubt that they are special provisions in a general law otherwise the word "prescribed" would have to be interpreted as prescribed not only in the Limitation Act and the schedule thereto but also by a general law relating to limitation. The framers of the Limitation Act, in our view, used the word "prescribed" not only to indicate the limit prescribed by the provisions of that Act but also any special provisions relating to limitation in any other general Act. They could not have completed a general law relating to limitation other than the Limitation Act itself, because this would presuppose that there would be more than one Limitation Act. What the Legislature intended by enacting sub-section (2) of Section 29 was to apply certain provisions specified therein to limitation prescribed in any special or local law for any suit, appeal or application, and it further provides that if the period of limitation in any special or local law is different from the period prescribed therefor by the first schedule to the Limitation Act, the provisions of Sec. 3 of the Limitation Act shall apply as if such period was prescribed therefor in that schedule. The provisions of Sections 4, 9, 13, and 22 of the Limitation Act were made applicable only in so far as end to the excluded by such special or local law for the purpose of determining any period of limitation prescribed for a suit, appeal or application. Sub-section (2) of Section 29 further took care to emphasise that except to the extent indicated above, the remaining provisions of the Limitation Act were specifically not made applicable to such special or local law.

21. In a recent case in Kaushalya Rani v. Gopal Singh, , the question of the applicability of Section 5, Limitation Act, to Sub-section (4) of Section 417, Criminal P.C., for the purpose of extending the period of limitation, was considered. Section 417 confers a right on the State Government to direct the Public Prosecutor to file an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court. For the filing of this application, there was a period prescribed in Art. 157 of the Limitation Act. Sub-sec (3) of Section 417, Criminal P.C., further confers a power on the High Court to grant special leave to appeal from an order of acquittal on an application filed by the complainant. It is in respect of this application that sub-section (4) prescribes a period of limitation of 60 days from the date of the order of acquittal. The said sub-section is as follows:-

> "No application under sub-section (3) for the grant of special leave to appeal from the order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order of acquitted."

Sinha, C. J, who spoke for the Court, held that enough the Criminal Procedure Code was a general law dealing with criminal procedure, nonetheless had within it a provision such as sub-section (4) of Section 417 which prescribed a period of limitation, and consequently it is a special law within the meaning of S. 29 (2) of the Limitation Act. With respect to the applicability of Section 5, Limitation Act to Art. 157, which prescribes the period for filing appeals against acquittal by the State Government it was observed at p. 262:

> "In our opinion, therefore, the position is clear that so far as appeal by the State Government is concerned, the law of limitation is the general law laid down in the Limitation ACT (Art 157) to which Sec. 5 would apply by its own force. But in so far as appeal by a private prosecutor is concerned, the Legislature was astute to specifically lay down that the foundation for such an appeal should be laid within 60 days from the date of the order of acquittal. In that sense, this rule of 60 days' bar is a special law, that is to say, a rule of limitation which is specifically provided for in the Code itself, which does not ordinarily provide for a period of limitation for appeals for a period of limitation for appeals or application. It is the general law of limitation as laid down in the Limitation Act, which governs appeals ordinarily preferable under the Code, vide Arts. 150, 154, 155 and 157. To such appeals the provisions of Section 5 would apply."

At p. 263 he further observed:

> "It is a general law in the sense that it lays down the general rule governing such relationship, but it may contain special provisions relating to bar of time, in specified cases different from the general law of limitation. Such a law will be a 'special law' with reference to the law generally governing the subject-matter of that kind of relationship. A "special law" therefore, means a law enacted for special case, in special circumstances, in contradistinction to the general rules of the law laid down, as applicable generally to all cases with which the general law deals. In that sense, the Code is a general law regulating the procedure for the trial of criminal cases, generally but if it lays down any bar of time in respect of special cases, in special circumstances like those contemplated by Section 417 (3) and (4), read together, it will be special law contained within the general law. As the limitation Act has not defined 'special law', it is neither necessary nor expedient to attempt a definition. Thus, the Limitation Act is a general law laying down the general rules of limitation applicable to all cases dealt with by the Act but there may be instances of a special law of limitation laid down in other statutes, though not dealing generally with the law of limitation."

The learned Chief Justice then referred to several cases which dealt with special provisions in a general law.

22. If applying the reasoning of the above decision Section 48, Civil P.C., is a special or local law, then Section 15, Limitation Act, which is one of the sections specified in Section 29(2) is applicable in controlling Section 48. The decision of the Full Bench in Kandaswami Pillai's case. (FB) (supra), even on the basis is binding and does not require reconsideration. On the assumption that if S. 48 is a special law, it is equally clear that Section 19 will not apply because that is not one of the sections specified in Section 29(2).

23. We can arrive at this conclusion by a different process of reasoning, by construing Section 48, Civil P.C. and Section 19 and Articles 181 and 182 of the Limitation Act as independent and parallel provisions, different in their scope and object. It may be noticed that Section 48, Civil P.C., deals with applications to execute all decrees except decrees granting an injunction. It inhibits a Court from passing an order on any fresh applications to execute all decrees except decrees granting an injunction. It inhibits a Court from passing an order on any fresh applications for execution of the same decree presented after the expiration of 12 years. The period of 12 years' outer limit is absolute and it has to be reckoned from the date of the decree sought to be executed. Exceptions are, however made in three cases (I) if the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the period of 12 years should be reckoned from the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree. (ii) where the judgment-debtor has, by force or fraud, prevented the execution of the decree at some time within 12 years immediately before the date of the application, the Court is not precluded from ordering execution of the decree upon an application presented after the expiration of the said period of 12 years; and (iii) in cases where the judgment, decree or order has been revived, or some part of the principal money secured thereby, or some interest on such money has been paid, or some acknowledgment of the right thereto has been given in writing signed by the person liable to pay such principal or interest, or his agent, to the person entitled thereto or his agent, the twelve years shall be computed, as provided under Article 183 of the Limitation Act, from the date of such revivers, payment or acknowledgment of the latest of such revivers, payments or acknowledgments as the case may be..

24. It will be observed that Section 48, Civil P.C., not only prescribes a period of limitation, but also enumerates the contingencies under which that period could be extended. One cannot, therefore, look to other provisions in the Limitation Act for extending the period of limitation unless the Legislature has specifically intended the application of any of the provisions such as was contemplated under Section 29 (2) of the limitation Act. It is not as if the Legislature was not aware of the extension of the period of 12 years by payment, acknowledgment or reviver in relation to the period prescribed under Section 48 and where it wanted to extend the period of 12 years on that account, it specifically did so by not limiting or otherwise affecting the operation of

Art. 183 of the First Schedule to the Limitation Act, 1908, which provided, in Col. 3, for the extension of 12 years period in certain contingencies. If it was the intention of the Legislature to apply the provisions of Section 19 for extending the period of limitation under Section 48, Civil P.C., the Legislature had to specifically say so, because Section 19 provides for a fresh period of limitation from the date of the acknowledgment which, if applicable to Section 48, would have the effect of keeping alive the decree for any number of periods of 12 years, as long as the decree-holder can manage to get acknowledgments from the judgment-debtor. Explanation (III) to section 19 no doubt indicates that for the purposes of that Section, an application for the execution of a decree or order is an application in respect of a right so that the period prescribed for filing an application for the execution of a decree or order is also extended by the application of Section 19. Even if the word "prescribed" in Section 19 is construed, not as was contended in several cases as applying to the Limitation Act, but to periods of limitation prescribed in either special or local laws or for that matter, even to a period of limitation in a general law, such as in the Civil Procedure Code, it is the period prescribed for an application for execution that is extended. We may, however, note that no period for filing an application for execution of a decree or order has been fixed or prescribed under Section 48, Civil P.C. as already pointed out, and it bears a repetition, that what Section 48 (1) does is to prohibit a Court from executing a decree after the expiration of 12 years from the date of the decree. The scope and object of these two provisions is totally different. It is not for us to envisage provisions of other Acts to which section 19 can apply but it certainly applies to the period prescribed for applications for execution as specified in Arts. 181 and 182. In fact, though Art. 181 refers to Sec. 48, Civil P.C., it has not specified any application under Section 48, by way of contrast with applications for which no period of limitation is provided elsewhere in that schedule. This clearly suggests that the period of limitation is not fixed for any application under Section 48 but refers to the period of limitation itself. All that Article 181 does is to prescribe a 3 years' period for all applications other than those applications for which no period of limitation is provided elsewhere in the schedule or by Sec. 48. Civil P.C. In respect of the limitation prescribed in Section 48, Civil P.C. Article 182 again envisages the case of applications for execution of decrees or orders of any Civil Court not provided for by Art. 183 or by Section 48, Civil P.C. Both these Articles, while referring to Section 48, are providing for contingencies other than those envisaged under Section 48. The scope and object of these two Articles also, like Section 19, is different. Even Section 18, Limitation Act, does not deal with fraud as envisaged in Section 48, Civil P.C. but deals with a specific kind of fraud, namely, concealed fraud by which the right of a person to institute a suit or make an application has been kept from the knowledge of the person of such right or title on which it is founded, or where any document necessary to establish such a right has been fraudulently concealed from him. Section 48, Civil P.C. on the other hand, deals with a fraud by which the decree-holder is prevented from executing his decree which may amount to

suppression of properties.

25. At this stage it may be pertinent to refer to the case of Yeshwant v. Walchand, , where their Lordships of the Supreme Court were considering the scope and object of Section 18 and Articles 181 and 182 of the Limitation Act. In that case, the decree-holder admittedly had not filed the last applications for execution either within 3 years from the presentation of the previous application or within 12 years from the date of the decree. It was held by the Subordinate Judge's Court, as well as the High Court, a finding with which their Lordships agreed, that the judgment-debtor prevented the execution of the decree against Prabhat newspaper by suppressing his ownership of the same. On this finding of fraud, it was sought to be contended, firstly, that the decree-holder would get a fresh period of 12 years from the date of the discovery of the fraud, and, secondly, that the fraud was sufficient for the purposes of Section 18 to extend the period of limitation prescribed in Arts. 181 and 182. While the first contention was accepted by the Supreme Court, the second was negatived. Chandrasekhara Aiyar J., delivering the judgment of their Lordships, observed at p. 21:

"In our opinion, the facts necessary to establish fraud under Section 18, Limitation Act, are neither admitted nor proved in the present case. Concealing from a person the knowledge of his right to apply for execution of a decree is undoubtedly different from preventing him from exercising his right of which he has knowledge. Section 18, Limitation Act, postulates the former alternative. To read it as referring to an application for execution to proceed against a particular property would be destructive of the oneness of the decree and would lead to multiplicity of periods of limitation. It is true that Arts. 181 and 182, Limitation Act and S. 48, Civil P.C. should be read together. The Articles expressly refer to the section. But they are independent or parallel provisions, different in their scope and object. As held in *Kalyanasundaram Pillai v. Vaithilinga Vannias*[10], Section 48(2) extends the 12 years' period of closure by a further period of similar duration but the necessity of resort to Art. 182 is not thereby obviated. The decree-holder must have been taking steps to keep the decree alive and the only circumstances that could relieve him of this obligation is the existence of fraud under Section 18, Limitation Act."The observations cited above clearly support our view even though they were not dealing with the question whether Sec. 19, Limitation Act, controls Section 48, Civil P.C. As we have already pointed out, S. 19 also deals with a special case and cannot, therefore, control Section 48, Civil P.C.

26. In either view, namely, whether on the basis that Section 48, Civil P.C., is a special law or on the basis that Section 19, Limitation Act and Section 48, Civil P.C., are independent and parallel provisions, the scope and object of which are different. Section 19 of the Limitation Act cannot be held to control Section 48, Civil P.C. and the acknowledgment in Ext. A-10 will not give a fresh period of 12 years fixed as the outer limit for filing a fresh application for execution of the

decree. E. P. No. 83 of 1952 is accordingly barred by limitation.

27. On the view we have taken, it would be unnecessary to consider the further question whether E. P. No. 83 of 1952 is barred by res judicata by reason of the dismissal of E. P. No. 38 of 1949 (Ext. A-7).

28. In the result, the appeal fails and is accordingly dismissed with costs.

Cases Referred.

1AIR 1955 AP 229
268 Mad LJ 12 = (AIR 1935 Mad 64) (FB)
31875 ILR 1 Cal 226 (PC)
4ILR (1944) Nag 250 = (AIR 1944 Nag 155)
5(1916) 20 Cal WN 952 = (AIR 1916 Pat 300)
61907, ILR 30 mad 426 (PC)
7 1902 ILR 25 Mad 220 FB
8(1930) 59 Mad LJ 881 = (AIR 1930 Mad 991)
9ILR (1939) All 647 = (AIR 1939 All 403)
10ILR (1939) Mad 611 = (AIR 1939 Mad 270)