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II]

NOTES OF RECENT CASES

[1975

Gokulakrishnan, J.

**Janaki Ammal v.
Muthia Thevar.**

27th February, 1975.

C.R.P. No. 2708 of 1974.

Tamil Nadu Cultivating Tenants Protection Act (XXV of 1955), section 3 (3)—Tamil Nadu Act (XXI of 1972), section 3 (i) (a)—Application by tenant depositing rent under Act (XXV of 1955)—Pending application Act (XXI of 1972) coming into force—Oral application by tenant in Court invoking Act (XXI of 1972)—Authorised officer converting the application into one filed under Act (XXI of 1972)—Whether valid.

There is absolutely nothing wrong in the order passed by the Authorised Officer converting the application filed under section 3 (3) of Act XXV of 1955 into one under Act XXI of 1972, even though it has not been so stated in such specific terms.

R. S. Ramanujam, for Petitioner.

K. Govindarajan, for Respondent.

S.J. *Petition dismissed.*

V. Ramaswami, J.

**Rasappa Gounder v.
G. N. Ramaswamy.**

21st March, 1975.

S.A. No. 2 of 1973.

Transfer of Property Act (IV of 1882), section III (e)—Joint lessees of land—Surrender of lease by one lessee—Effect—Suit for permanent injunction.

One of the lessees can surrender his interest in the leasehold in favour of the

lessor in which case the lessor will be entitled to call for partition of that interest alone. *£ 4*

S. Sethuratham and *A. S. Venkatachalapathy*, for Appellant.

D. Raju and *M. Venkatachalapathy*, for Respondent.

S. J. *Appeal allowed.*

K. Veeraswami, C.J. and
Natarajan, J.

**The State Bank of India
Kuzhithurai Branch v.
N. Sundara Money.**

24th March, 1975.

W.A. No. 231 of 1973.

Industrial Disputes Act (XIV of 1947), section 2 (oo)—Termination of appointment—Mention in appointment order—Whether retrenchment—Termination by employer—Meaning of.

It is true that the word "termination" in the definition (in the Industrial Disputes Act) is followed by the words 'by the employer'. But this is not indicative of the fact that termination should always and necessarily be by a separate order or an expression independently of the appointment order of the period of termination of employment. In either case, whether by notice or by effluxion of time, termination will be by the employer.

If there is any indication in some form or other in the same document making the appointment or in any other way, and the time at which employment is to come to an end is indicated, that will be a termination by the employer within the meaning of the definition of "retrenchment".

M. R. Narayanaswami, for Appellant.

A. Ramachandran, for Respondent.

S.J.

Appeal dismissed.

K. Veeraswami, C.J. and

Natarajan, J.

K. Yusuf Sheriff v.

K. Akbar Sheriff.

2nd April, 1975.

A.A.O. No. 73 of 1975.

*Arbitration Act (X of 1940), section 34—
Suit for partition and dissolution of partnership—
Arbitration clause in partnership deed—
Arbitrator, husband of one of the partners—
Whether adverse inference can be drawn against
arbitrator.*

It cannot be assumed from the mere relationship of the arbitrator with one of the members of the partnership that the arbitrator would act otherwise than impartially.

R. Krishnamurthy and *A. R. Lakshmanan*,
for Appellant.

O. R. Abdul Kalam, for Respondents 1 to 3.

S.J.

Appeal allowed.

Gokulakrishnan, J.

**S. Ganapathy v.
N. Kumaraswami.**

2nd May, 1975.

C.R.P. No. 3148 of 1974.

*Limitation Act (XXXVI of 1963), section 5—
Landlord and tenant—Petition for eviction—
Eviction ordered—Appeal—Delay in filing—
Application under Limitation Act to condone
delay—Appellate Authority under Rent Control
Act—Whether can condone delay.*

As far as the Rent Controller and Appellate Authority created under the Tamil Nadu Buildings (Lease and Rent Control) Act, are concerned, it is clear that such authorities are *persona designata* and the Limitation Act provisions applicable to 'Court' cannot be invoked in proceedings before such *persona designata*.

K. J. Chandran, for Petitioner.

K. Gomindarajan, for Respondent.

S.J.

Petition dismissed.

K. Veeraswami, G.J. and Natarajan, J.

Peramatha v. Ramaswami.

8th January, 1975.

L.P.A. No. 76 of 1969.

Hindu Women's Rights to Property Act (XVIII of 1937), section 3 (2)—Suit for partition—Joint family—Wife separated from husband and joint family by family settlement—Death of husband—Widow whether can claim share in joint family properties.

Sub-section (2) of section 3 of the Hindu Women's Rights to Property Act, 1937 can be applied only to an interest in the properties of a joint family of which the widow is a member.

N. Appu Rao, for Appellant.

S.J. *Appeal dismissed.*

Gokulakrishnan, J.

Shanmugha Sundaram v. Janagarajan.

11th February, 1975.

C.R.P. No. 1888 of 1974.

Civil Procedure Code (V of 1908), section 11—Suit for declaration—Cultivating tenant—Declaration as such—Plea of res judicata—Prior suit dismissed as settled out of Court—Whether constitutes res judicata.

There cannot be any *res judicata* where the former suit had been dismissed as settled out of Court.

T. Rangaswami Iyengar, for Petitioner.

S. Palaniswami, for Respondent.

S.J. *Petition dismissed.*

Sethuraman, J.

S. A. Ramiah Nadar v. Rajalakshmi Ammal.

28th February, 1975.

S.A. No. 287 of 1972.

Mortgage—Suit on—Right of redemption—Amount due on demand according to deed—When money becomes due—Limitation Act (XXXVI of 1963), Article 63.

Where a date is fixed for redemption of a mortgage on a particular date and in default of such redemption on that date,

it is agreed that the mortgagor will pay the amount whenever demanded and redeem or discharge the mortgage, the mortgage money became due at the time when the period fixed for redemption by the mortgagor expired. The agreement to pay whenever demanded did not mean that demand was a condition so that it became due only on that date.

A. Varadarajan, for Appellants

M. V. Krishnan, for Respondents.

S.J. *Appeal allowed.*

V. Ramaswami, J.

R. Chinna Boyan v. The Commissioner for Hindu Religious and Charitable Endowments, Madras.

10th March, 1975. S.A. No. 2003 of 1973.

Tamil Nadu Hindu Religious and Charitable Endowments Act (XXII of 1959), section 63 (a)—Constitution of India (1950), Article 26—Suit for declaration—Temple—Right to manage—Whether vested with a particular community—Whether maintainable—“In accordance with law”—Meaning of—Right vested in a particular community—Whether can be taken away—Constitution of India, Article 26.

A suit for a declaration that the right to manage and administer a temple and its properties is vested in a particular community is clearly maintainable. The jurisdiction of the Deputy Commissioner under section 63 (a) of Act XXII of 1959 was to decide whether an institution is a religious institution; but it does not confer any power on him to decide whether it exclusively belongs to a particular community.

What Article 26 (d) of the Constitution of India provides is that the administration of the property shall be “in accordance with law.” This could only mean that the administration and management could be regulated by law and there is no absolute right vested in a religious denomination in the matter of administration of the temple and its properties. But this, would not include a right to take away the entire right to management

leaving a mere husk. Though "regulation" within the meaning of Article 19 might include a total deprivation of the right, in the context of Article 26 it would be difficult to hold that the law could take away the entire right or deprive the religious denomination of any right in the management of its properties. A law which takes away the right of administration from the hands of the religious denomination altogether and vests it in any other authority would amount to a violation of the right guaranteed under Article 26.

N. Vanchinathan, for Appellant.

The Additional Government Pleader, for Respondent.

S.J. _____ *Appeal allowed.*

Gokulakrishnan, J.

K. Karuppanna Mudaliar v. Kuttianna Mudaliar.

14th March, 1975.

C.R.P. No. 703 of 1974.

Civil Procedure Code (V of 1908), Order 6, rule 17—Suit for declaration—Decreed—Appeal—Application for amendment of plaint by plaintiff—Dismissed—Revision—Discretion to be exercised by Court.

A Court cannot shirk its duties because by amendment the pleadings have to be amended and fresh evidence has to be let in. The predominant interest of the Court should be to render justice and allow amendments for such purposes in order to determine the real question in controversy between the parties.

P. S. Srisaïlam, for Petitioner.

S. Palaniswami, for Respondent.

S.J. _____ *Petition allowed.*
Ismail, J.

Rajammal v. Chinnathal alias Mariyayi.

18th March, 1975.

Appeal No. 681 of 1971 and memo. of objections.

Evidence Act (I of 1872), section 68—Suit on mortgage—Execution of document denied—No attesting witness examined—Effect.

Once the execution of a document is denied by the alleged executant, the

document cannot be admitted in evidence, unless one attesting witness at least has been called for proving the execution of the document if alive, and subject to process of the Court.

K. Raman, for Appellant.

R. Rajagopala Ayyar, for Respondent.

S.J. _____ *Appeal dismissed and memo. of Cross-objections allowed.*

V. Ramaswami, J.

Y. Abdul Mallik v. St. Francis Xavier's Church.

21st March, 1975.

S.A. No. 1173 of 1972.

Madras City Tenants Protection Act (XIX of 1955), section 2 (4)—Suit for recovery of possession—Assignee from tenant—Whether protected—Superstructure assigned—Original tenant not entitled for compensation for superstructure.

Though an assignee is now given protection under the Madras City Tenants Protection Act, it is not all assignees that will get the protection, but only those assignees of lands and buildings who got the assignment prior to 12th September, 1955 and continued in possession thereafter. They alone will be entitled to the benefit of the protection under the amended definition of the term tenant. In cases where the original tenant had assigned the leasehold rights and the superstructure put up by him, he will not be entitled to compensation for the superstructure as such.

P. V. Subramaniam, for Appellant.

S. K. Ahmed Meeran and Abdul Hedi, for Respondent.

S.J. _____ *Appeal dismissed.*

Mohan, J.

**Kothandaraman v.
Pazhamalai.**

2nd April, 1975.

S.A. No. 439 of 1973
and G.M.P. No. 4612 of 1975.

Civil Procedure Code (V of 1908), Order 41, rule 27—Suit for Partition—Additional evidence before lower appellate Court—Rejection of—Second appeal—Additional evidence allowed.

Even at the stage of second appeal, a registered document of the year 1924, to which no exception could be taken, could be admitted by way of additional evidence.

V. Sridevan, for Appellant.

P. S. Ramachandran, for Respondents.

S.J. ——— *Appeal partly allowed.*

Gokulakrishnan, J.

**G. R. Narasimha Iyer v.
Municipal Council,
Madurai.**

4th April, 1975.

S.A. No. 2007 of 1972.

Madras District Municipalities Act (V of 1920), section 354—Suit for refund of tax—Levy of tax by Municipality—Jurisdiction of civil Court—Whether can interfere—Basis of assessment questioned.

It is clear from section 354 of Act V of 1920 that unless the provision of the Act has been in substance and effect not complied with, the Civil Court cannot interfere with other matters in assessment.

When once the basis of assessment is questioned there is no difficulty in coming to the conclusion that the civil Court has jurisdiction to go into such matters.

K. Parasurama, Iyer, for Appellant.

K. Alaginiswami, for Respondent.

S.J. ——— *Appeal allowed.*

Natarajan, J.

**B. Ramaswamy Naidu v.
K. Ramaswamy.**

4th April, 1975.

C.R.P. No. 1934 of 1973.

Tamil Nadu Court-fees and Suits Valuation Act (XIV of 1955), section 52—Suit for recovery of money—Dismissal—Appeal—Court-fee to be paid on appeal—Interest pendente lite to be included.

Explanation (3) to section 52 of the Tamil Nadu Court-fees and Suits Valuation Act, 1955, enlarges the ambit of the section by bringing within the fold of the subject-matter of the appeal the interest accrued on the money sought to be recovered during the pendency of the suit till the date of the decree.

G. Lakshminarayunan, for Petitioner.

S. Gopalanathan, for Respondent 1 and 2.
Thyagarajan, for Additional Government Pleader.

S.J. ——— *Petition dismissed.*

V. Ramaswami, J.

**Palaniswami v.
Subbaraya Gounder.**

15th April, 1975.

C.R.P. No. 69 of 1974.

Tamil Nadu Court-fees and Suits Valuation Act (XIV of 1955), sections 12, 18—Suit for partition—Creditors of father impleaded—Court-fee payable—Declaration by Court—Subsequent decision of Supreme Court—Application for review—Whether maintainable.

An application for review by a defendant relating to a Court-fee matter is governed by the provisions of section 12 of the Court-fees Act and he could not invoke the provisions of Order 47, rule 1, Civil Procedure Code.

When a subsequent decision of the Supreme Court was brought to its notice the Court was entitled though it had no power to review its earlier order, to take up the matter as if it had come to it under section 18 of the Court-fees Act.

V. Narayanaswami, for Petitioner.

N. Thyagarajan, for the Additional,
Government Pleader No. II for State.

S.J. ————— *Petition dismissed.*

Ramaprasada Rao and
Ratnavel Pandian, JJ.

**Panduranga Naicker v.
Thirugnana Mudaliar.**

16th April, 1975.

A.A.A' No. 158 of 1974.

Tamil Nadu Agriculturists Relief Act (IV of 1938) as Amended by Act (VIII of 1973), section 23-C—Application to set aside sale—Execution—Court sale — Application to set aside sale after 90 days but before confirmation—Whether within time—“Which-ever in later”—Meaning of.

If a person who is entitled to the benefits under the Act (VIII of 1973) comes for-

ward and seeks to set aside the sale or fore-closure of his property, then he has 90 days time to do so from the date of the publication of the Act in the local Gazette or from the date of confirmation of the sale, whichever is later. It is in this con-text that the expression “whichever is later” has to be understood.

D. Raju, for Appellant.

T. R. Rajagopalan, for Respondents.

S.J.

Appeal allowed.

K. Veeraswami, Cj. and Natarajan, J.

R. Valliammal v. The Commissioner, Hindu Religious and Charitable Endowments (Administration) Department Madras-34.

29th January, 1975.

W.A. No. 395 of 1972.

Tamil Nadu Hindu Religious and Charitable Endowments Act (XXII of 1959), section 45—Temple—Executive Officer appointed by Commissioner—Validity—“Subject to such conditions as may be prescribed”—Meaning of.

The expression “subject to such conditions as may be prescribed” in section 45 (1) of the Tamil Nadu Hindu Religious and Charitable Endowments Act only means that if and when any conditions are prescribed, the power of appointment of an Executive Officer can be exercised only subject to those conditions. The section does not say that the power is not available if no conditions have been prescribed. It is open to the prescribing authority to restrict the scope of the power. But where it has not chosen to do so, it does not mean that the power itself is not available to the Commissioner.

A. K. Sreeraman and A. S. Kailasam for Appellant.

The Government Pleader, for Respondent.

S.J. *Appeal dismissed.*

Sethuraman, J.

Palani Gounder v. Sri Sri Sathyanidhiswamigal Madathpathi of Sri Sri Mulubagal Mutt at Mulubagal, Kolar Dist.

26th February, 1975.

S.A. No. 490 of 1972.

Madras Hindu Religious and Charitable Endowments Act (XXI of 1959), section 41—Minor Inam—Lease of land for five years with option for renewal—Whether void—Interpretation of statutes.

Section 41 (1) of the Madras Hindu Religious and Charitable Endowments

M—N R O

Act, 1959 does not say, either in the substantive part or in any other part, that an option for renewal would render the lease as one for a period exceeding five years. The lands were minor inam lands. The lease in the instant case was only for a fixed term of five years with an option for renewal. On the question of the validity of the lease,

Held:

In the absence of a similar *Explanation* as in section 34 of the Act the provision has to be construed in its plain terms and so construed it would only apply where the lease exceeds a term of five years. As, in the present case, the lease did not exceed a period of five years, there is nothing invalid about the lease as such.

P. S. Srisailam and K. Venugopal, for Appellant.

T. Rangaswami Ayyangar, for Respondent.

S.J. *Appeal dismissed.*

Gokulakrishnan, J.

A. Ramaswamy Thevar v. M/s. Madura Mills Ltd. Co., Tuticorin Branch.

4th March, 1975.

S.A. No. 1311 of 1974.

Industrial Disputes Act (XIV of 1947), section 2-K—Dispute between employer and employee—Date of birth of employee—Jurisdiction of civil Court.

The civil Court has no jurisdiction to entertain a dispute between the employer and the employee coming within the definition in section 2-k of the Industrial Disputes Act wherein it has been specifically made clear that certain disputes have to be referred only to the Labour Court constituted under the Act.

R. Nadanasabapathy, for Appellant.

King and Partridge, for Respondent.

S.J. *Appeal dismissed.*

Mohan, J.

**K. Shanmugham v.
Desai Gounder.**

19th March, 1975.

A.A.A.O. No. 154 of 1974.

Succession Act (XXXIX of 1925), section 214 (1)—Execution proceedings—Death of decree-holder—Succession certificate whether necessary to continue proceedings.

To continue the execution proceedings on the death of a decree-holder, the legal representatives on record were allowed to maintain the proceedings by the Courts below relying on the decision in *Narayanaswami Naidu v. Chellammal*, 83 L.W. 791, that no succession certificate was necessary. On the question whether this view was correct,

Held:

The Courts below were fully justified in relying on the decision in *Narayanaswami Naidu v. Chellammal*, 83 L.W. 791.

G. M. Nathan, for Appellant.

S. Nainarsundaram, for Respondents Nos. 1 to 5.

T. R. Rajagopalan, for Respondent No. 7.

S.J.

Appeal dismissed.

Mohan, J.

**Lalitha v.
K. Balu.**

25th July, 1975.

C.M.S.A. No. 166 of 1974.

Hindu Marriage Act (XXV of 1955), section 10—Judicial separation—Petition by wife—Desertion—No attempt by husband to recall wife—Constructive desertion made out.

The case of desertion pleaded by the wife is true, because no attempt had been made by the husband to recall the wife. At any rate, he has not positively stated before the Court, nor is there any documentary evidence in this direction. The case of constructive desertion as pleaded by the wife has been made out.

O. K. Sridevi, for Appellant.

P. G. Parthasarathy Iyengar, for Respondent.

S.J.

Appeal allowed.

Gokulakrishnan, J.

**Mahalingam Pillai v.
Krishnamurthi Chettiar.**

29th July, 1975. C.R.P. No. 1550 of 1974.

Tamil Nadu Cultivating Tenants Arrears of Rent (Relief) Act (XXI of 1972), section 3—Application by tenant for benefits under the Act—Tenant in arrears—Period for filing application already expired—Court whether has power to extend the time for payment of arrears—Tenant whether entitled to benefits under the Act.

Act XXI of 1972 was published on 11th August, 1972. The time given to the tenant to file an application to get the benefit of the Act expired on 10th February, 1973. The tenant filed an application only on 13th June, 1973. Even at that time, the tenant was in arrears. The tenant contended relying on the decision in *S. Subramania Thevar v. Angammal*, (1973) T.L.N.J. 516, that the Court had power to extend the time to pay the arrears for the current fasli contemplated under Act XXI of 1972.

On the question of the validity of the tenant's application,

Held, Even accepting the said decision, the cultivating tenant ought to approach the Court within the period of six months contemplated under the Act. Since the cultivating tenant had approached the Court on 13th June, 1973, he cannot get the benefits of the decision rendered in *S. Subramania Thevar v. Angammal*, (1973) T.L.N.J. 516. Taking into consideration the facts of the present case, the petitioner is not entitled to the benefits of Act XXI of 1972.

K. Raman and C. L. Vijayaraghavan, for Petitioner.

R. Sundaralingam, for Respondent.

S.J. Petition dismissed.

Ramaprasada Rao, J.

**Ashokraj Kandaswamy v.
R. Thiruvengadaswamy.**

5th August, 1975.

C.R.P.Nos. 249 and 250 of 1974.

Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960), sections 14, 18-A—Application by landlord—Repairs to be carried out—Whether vacation by tenant necessary—Appellate Authority—Whether can appoint a Commissioner for purpose.

An appeal is a continuation of the original proceedings and the appellate authority would, therefore, have all the powers which the Rent Controller had when he was hearing the petition originally as an original authority.

Once the authority is vested by statute in the original authority, such as the Rent Controller, to appoint a Commissioner in any proceeding before him, it follows that such report of the Commissioner also forms part of the record of the Appellate Court and is bound to be scrutinised by him when the appeal is heard. This and other normal circumstances pertaining to the hearing of civil proceedings leads to the interpretation that the appellate authority under the Act XVIII of 1960 has authority to appoint a Commissioner in any proceeding before him.

K. Shanmugham and P. Murugaiyan, for Petitioner.

S.J. Petition allowed.

Ramaprasada Rao, J.

**N. V. Pancha pakesan v.
K. Swaminathan.**

6th August, 1975.

C.R.P. No. 2954 of 1974.

Tamil Nadu City Tenants Protection Act (III of 1921), section 9—Application by tenant—Tenant's entitlement recognised—Date for fixation of price of land—Date when the tenant's entitlement to compensation is first recognised.

The date for fixation of the price would reasonably be the date on which the tenant's entitlement to compensation is first recognised by a competent Court

which hears the matter and decides on it.

If the judgments of the higher Courts are judgments of affirmation then such orders or judgments obviously relate back to the date of the order of the first competent Court which decided on the entitlement of the tenant under the Act (III of 1921).

K. N. Balasubramanian, for Petitioner.

A. Sundaram Iyer, for Respondent.

S.J. ———— *Petition partly allowed.*

Krishnaswamy Reddy, J.

**Basheer Khan v.
The State of Tamil Nadu.**

13th August, 1975.

CrI.M.P. No. 1941 of 1975.

Madras City Police Act (III of 1888) section 63—Employees of State Bank—Present in the premises after office-hours—Permitted by watchman—Entry lawful and cannot be said to be an offence.

According to the rules framed by the department (State Bank of India), the watchman can permit strangers beyond office-hours only with the permission of the higher authorities. In the present case the petitioners were employees of the State Bank and were found inside the

office premises beyond office hours and the watchman admitted that he had permitted them. But the watchman had not obtained the permission of the higher authorities. The petitioners were convicted under section 63 of the Madras City Police Act. On the question whether the petitioners have committed an offence,

Held, If the petitioners were permitted by the watchman, their entry cannot be an unlawful entry, though the watchman may be technically or even lawfully prosecuted for having permitted the petitioners without obtaining the sanction of the higher authorities of the Bank. But so far as these petitioners are concerned, their entry being lawful as they got permission from the watchman, they cannot be convicted of the offence under section 63 of the Madras City Police Act. It is also significant to note that the petitioners were the employees of the very Bank and their having stayed beyond office-hours, in the circumstances of the case, cannot be said to be an offence within the purview of section 63.

B. R. Dolia and S. Sunder, for Petitioner.

IIIrd Public Prosecutor, for State.

S.J. ———— *Conviction set aside.*

Maharajan, J.

**Adaikappa Chettiar v.
Ayesha Natchiar.**

20th February, 1975.

A. No. 12 of 1972.

Civil Procedure Code (V of 1908), section 9—Mortgage under French law—Holder enjoying a privilege—Suit filed under Indian law—Whether correct.

A holder of a mortgage, although it has been granted under the French law and procedure, is certainly entitled under the Civil Procedure Code to file a suit in accordance with the procedure thereof.

When a person, who enjoyed a privilege filed a suit in the ordinary civil Court on foot of a notarial mortgage deed, it is the plain duty of the Court to entertain it under section 9 of the Indian Civil Procedure Code.

Even though the plaintiff might have had the alternative relief of enforcing the mortgage as if it were a decree without resorting to an action in a civil Court undoubtedly the plaintiff shared with the other Indian citizens the right to file a suit on the mortgage deed in a civil Court, obtain a decree and then proceed to execute it.

S.J.

—————
*Appeal
dismissed.*

*Ramaprasada Rao and
Ratnavel Pandian, JJ.*

**Thanumalaya Perumal
Mudaliar v.
The Commissioner,
H.R. & C.E., Depart-
ment, Madras.**

28th February, 1975.

A.S. No. 787 of 1969.

Temple—Suit for declaration—Whether private or public—Characteristics of private temple—Grant of two acres of land by stranger—Whether alters the Character of endowment—Presence of worshippers on certain occasions—Not conclusive that public had ingress.

The inspection report of the Commissioner (H.R. & C.E.), which is to the effect that there is no gopuram, no dwajasthambam, no procession of the

utsava idols, no hundi no vahanam and no bell, cumulatively taken, give the impression that the temple is a private one.

The fact that at one particular point of time a small extent of two acres odd was additionally granted to the deity by some strangers cannot alter the nature of the initial grant or the character of the institution from a private one to a public one.

No independent witness or member of the public has come to say that he was visiting the temple as of right and performing the poojas pursuant thereto. The mere presence of the worshippers on certain occasions by itself is not conclusive to show that the generality of the public were having ingress into the temples as of right.

S. Padmanabhan, for Appellants.

T. R. Ramachandran, for Respondents.

S.J.

—————
*Appeal
allowed.*

Ramanujam, J.

**Gobald Motor Service
(Private) Ltd., Mettupalayam v.
Regional Transport Officer,
Coimbatore.**

13th August, 1975.

W.P. No. 3506 of 1974.

Tamil Nadu Motor Vehicles (Taxation) Act (XIII of 1974), section 3, Item 7 of the Schedule—Stage carriage operator—Vehicle lying idle—Not covered by permit—Issue of demand for tax by R. T. O.—Whether valid.

The charging section 3 of Act XIII of 1974 says that only motor vehicles which are 'kept or used' in the State of Tamil Nadu are liable to tax at the rates specified for such vehicle in the Schedule. If the vehicle has not been 'kept or used' in the State of Tamil Nadu, taxability does not arise and there is no question of application of the rates mentioned under item 7 of the Schedule.

*A. R. Ramanathan and P. Sukumar, for
Petitioner.*

S.J.

—————
Petition allowed.

M. M. Ismail, J.

**The Velvaveli Weavers
Co-operative Production
and Sales Society Ltd.,
Velvaveli Village, Erode
Taluk by its President v.
R. Perumal Naidu.**

18th August, 1975.

A.S. No. 32 of 1972.

*Limitation Act (XXXVI of 1963), section 14
—Time spent in prosecuting previous proceedings
bona fide—Exclusion.*

In a suit for reinstatement and arrears of pay upto the date of the suit and salary from the date of the suit till reinstatement, the termination of service was held to be illegal and reinstatement was ordered; but the plaintiff was directed to file a fresh suit for future salary. In the second suit for arrears of future salary the plaintiff is entitled to the benefits of section 14 of the Limitation Act and no portion of his claim is barred by limitation because he was *bona fide* prosecuting his claim in a previous proceeding.

N. Sivamani, N. Krishnamurti and V. Narayana Servai, for Appellant.

K. Sarabhauman and T. R. Mari, for Respondent.

R.S. *Appeal dismissed.*

Ramanujam, J.

**S. Ramani v.
The State of Tamil Nadu.**

20th August, 1975.

W.P. No. 5413 of 1975.

Criminal Procedure Code, 1973 (II of 1974), section 197—I. P. S. Officer—Prosecution against—Sanction by State Government—Whether valid—Proceedings under section 197—Administrative—Service of order on public servant—Not contemplated by section.

So far as a State Government is concerned, it is entitled under clause (b) of section 197 (1) of the Code of Criminal Procedure to grant sanction in respect of persons employed by them or in respect of persons who are employed in connection with the affairs of the State at the time of the Commission of the offence. Even I. P. S. officers who at the time

of commission of offence were employed with the affairs of the State, will stand covered by the said clause (b) of section 197 (1) of the Code of Criminal Procedure. A proceeding under section 197 for the grant of sanction does not partake the character of quasi-judicial proceedings. It is purely administrative. So long as statutory provision under section 197 does not provide for any notice being given to the public servant before granting sanction, the actual sanction cannot be questioned on the ground that no such notice had been given.

Section 197 of the Code of Criminal Procedure does not contemplate the service of the order on the public servant. Non-service of notice cannot invalidate the order.

V. P. Ramat, for Petitioner.

S.J. ——— *Petition dismissed.*

Sethuraman, J.

**Doraisamy Gounder v.
Pavayammal.**

26th August, 1975.

C.R.P. No. 575 of 1974.

Negotiable Instrument—Promissory note—Endorsement in—Impugned as not genuine—Application to send the document to handwriting expert—Dismissed by trial Court—Whether correct.

The question for consideration was whether a promissory note could be parted with (by the trial Court) in favour of a finger print expert, whether a private or a Government one to find out whether an endorsement thereon was a genuine one.

Held, As far as Government expert is concerned unless it is not possible for the expert to examine the genuineness or otherwise of the endorsements without taking it from the custody of the Court, it would not be desirable to allow the document to be handled by him outside the Court. In the circumstances, it is proper and desirable to have the endorsement examined by the Government expert, but he must do it in the presence of a Court official.

S. Palaniswamy and P. Navaneetham, for Petitioner.

S.J. ——— *Petition allowed.*

Varadarajan, J.

**M. A. Rathinam v.
Thangammal.**

4th March, 1975.

C.R.P. No. 3428 of 1974.

Tamil Nadu Agriculturists Relief Act (IV of 1938), section 20—Execution of decree—Application for stay under section 20 of Act IV of 1938—Applicant whether agriculturist entitled to benefits—Decided by the executing Court against the applicant—Revision—Scope of enquiry under section 20.

Section 20 of Act IV of 1938 does not say that execution must be stayed in all cases where it is represented that an application under section 19 of the Act would be filed. Therefore, when an application under section 20 is filed and it is opposed on the ground that the petitioner is not a person entitled to the benefits of the Act, that question has to be gone into and considered before, the stay can be granted under this section. There would be no question of any hardship in such a case, for, the parties are at liberty to adduce oral and documentary evidence with respect to their contentions and any finding regarding the question whether the petitioner is an agriculturist entitled to the benefits of the Act or not will be binding on both the parties and it cannot be stated that any hardship is caused to one party or the other by an enquiry under section 20 of the Act. The lower Court was right in going into the question whether the petitioner was an agriculturist entitled to the benefits of the Act in the petition filed under section 20 (of the Act.)

S. Nainarsundaram, for Petitioner.

S. Palaniswamy, for Respondent.

S.J.

Petition dismissed.

—————

Suryamurthy, J.

In re, **Govinda Naicker.**

4th June, 1975.

CrI.R.C. S.R. No. 6156 of 1975.

Constitution of India (1950), Article 227, Criminal Procedure Code, 1973 (II of 1974), section 397 (3)—Application to Sessions Judge under section 397 dismissed—Application to High Court under Article 227 of the Constitution—Whether lies—Scope of Article 227.

There is in fact no conflict between the provisions of Article 227 of the Constitution of India and sub-section (3) of section 397, Criminal Procedure Code. Under Article 227 of the Constitution, the High Court exercises superintendence over all Courts and Tribunals and has the power to interfere and to see that the Courts and Tribunals exercise their functions within the limits of their authority. Under Article 227 of the Constitution, the High Court exercises a supervisory and an appellate jurisdiction, and considers the area of the inferior jurisdiction and the qualifications and conditions of its exercise. An error of law apparent on the face of the record is also subject to correction by the High Court exercising its powers under Article 227 of the Constitution. However, this power does not justify, an interference with concurrent findings of fact. When exercising its powers under section 397, Criminal Procedure Code, the High Court can consider the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and the regularity of any proceedings of such inferior Court. There is, thus, no conflict, real or apparent between the provisions of section 397, Criminal Procedure Code and Article 227 of the Constitution.

K. N. Balasubramanian, for Petitioner.

4th Public Prosecutor for, State.

S.J.

Petition dismissed.

—————

Mohan, J.

**S. Sundaresa Mudaliar v.
Mayavaram Financial Cor-
poration Ltd.**

16th July, 1975.

C.R.P. No. 3052 of 1974.

Civil Procedure Code (V of 1908), Order 6, rule 17—Suit for money—Chit fund—Suit against debtor and surety—Consent decree passed with the consent of debtor—Death of surety before the consent decree—Legal representatives of surety brought on record after consent decree—Whether correct.

The chit fund brought a suit against the borrower, the first defendant and the surety, the second defendant. A consent decree was passed on 10th February, 1971. But earlier to this decree, on 12th January, 1971 itself the surety had died. Subsequent to the consent decree the legal representatives of the surety were brought on record by an interlocutory application and the consent decree was made binding on them. This was challenged by the legal representatives.

Held: The proper procedure would be to implead the legal representatives and to afford them an opportunity to contest the suit. But the Court below has not adopted that procedure. Therefore, the order of the Court is set aside and the matter will be remanded.

G. Masilamani, for Petitioner.

T. R. Rajaraman, for 1st Respondent.

S.J. ————— *Petition allowed.*

Gokulakrishnan, J.

**Mathi Ammal v.
Ajjan.**

18th July, 1975.

C.R.Ps. Nos. 3004 to 3006 of 1973.

Limitation Act (XXXVI of 1963), section 5—Appeal—Death of one of the appellants—Abatement—Applications to excuse delay, set aside abatement and bring on record the L.Rs. of the deceased—Delay of more than 2 years—Application allowed—Whether valid—“Sufficient cause”—To be liberally construed—High Court not to interfere with the discretion exercised by lower appellate Court.

An appeal was pending before the District Judge, Coimbatore. One of the appel-

lants died. After a delay of two years the legal representatives of the deceased appellant filed interlocutory applications to set aside abatement, to excuse delay and to come on record as legal representatives. These applications were allowed by the lower appellate Court. This is challenged in these revisions.

Held, “sufficient cause” in section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice where no negligence or inaction or want of *bona fides* is imputable to the appellant. What constitutes sufficient cause cannot be laid down by hard and fast rules. It must be determined by a reference to the circumstances of each particular case. The discretion given by the Limitation Act should not be defined and crystallised so as to convert a discretionary matter into a rigid rule of law. Apart from this aspect of the case, the appellate Court had used its discretion and had come to the conclusion that the delay had to be excused. When once the Court before which such an application was filed was satisfied that there was sufficient cause for the delay the decision of that authority in such a discretionary matter should not be questioned before the High Court.

The discretion exercised by the Court below could not be interfered with in the revisional jurisdiction.

R. Ramalinga Pillai, for Petitioners.

A. K. Sreeraman, for Respondents in C.R.P. No. 3004 of 1973.

S.J. ————— *Petitions dismissed.*

Ramaprasada Rao, J.

**Chandra Valli v.
Sha Poonam Chand.**

26th August, 1975.

C.R.P. No. 3827 of 1974.

Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960), sections 2 (2), 14 (1) (b)—Petition for eviction—Tenant occupying a portion—Demolition and reconstruction.—Whether can be applied to a portion of a building—Petition whether maintainable—Part of a building is also building.

The petitioner-landlord wanted the tenant-respondent to vacate that portion of the building occupied by him for the purpose of demolition and reconstruction under section 14 (1) (b) of Act XVIII of 1960. There were other tenants and no petition was filed against them. The eviction was ordered by the Controller. On appeal, the appellate authority remanded the matter on the ground that the application was not *bona fide*. On revision,

Held, the lower Appellate Authority did not bear in mind the definition of a building in the Act as given out in section 2 (2) of the Act. The statute recognises a part of a building as a building. If this unit which has been given out as a measure in the statute itself is borne in mind, then the question whether the landlord is inclined to demolish the other portions of the building and whether he is going to file eviction petitions against the other tenants in the buildings is outside the purview of enquiry. In so far as the respondent is concerned he is occupying a "building" within the meaning of the Act and the petitioner as landlord can under section 14 (1) (b) file an application seeking for eviction of the tenant in occupation of that "building" for purposes of demolition and reconstruction. This is so because a part of a building is also a building.

V. R. Nagarajan, for Petitioner.

Himmatlal Mardia, for Respondent.

S.J.

Petition allowed.

Ramaprasada Rao, J.

**The Madras Motor and
General Insurance Co.,**

Ltd. v.

V. Balarama Naidu.

27th August, 1975.

C.R.P. Nos. 1999 to 2002 of
1973.

Motor Vehicles Act (IV of 1939), section 96 (2) (b) (i)—Motor Accident—Vehicle Insured—Used for hire—Insurance Company—Not liable for compensation.

The first respondent in each of the four civil revision petitions was injured in the course of an accident in which the insured vehicle plied for hire. On the question whether the Insurance company would be liable to pay the compensation in the teeth of section 96 (2) (b) (i) of the Motor Vehicles Act,

Held: The vehicle which was involved in the accident was running for hire. The insurance company therefore would not be liable to pay the compensation.

K. C. Srinivasan, for Petitioner.

S.J.

*Petitions
allowed.*

N. S. Ramaswami, J.

**C. Balasundaram v.
Indian Overseas Bank.
Kancheepuram.**

27th August, 1975.

C.M.A. No. 133 of 1975.

Tamil Nadu Agriculturists Relief Act (IV of 1938) as amended by Act (VIII of 1973), sections 4, 20—Amount borrowed from bank prior to 1st March, 1972—Decree in favour of Bank—Execution—Application under section 20 by debtor for stay of execution—Dismissed—Provisions of the Act not applicable to debts due to Bank—Contention by debtor that Act VIII of 1973 did not apply to the case—Whether correct.

While the Amending Act VIII of 1973 amended section 8 of Act IV of 1938 so as to make the scaling down provision applicable to debts incurred before 1st March, 1972, it also provided that the Act is not applicable to debts due to a banking company. Section 4 of the parent Act has now been substituted by the amending Act and as per the new

section (clause (h)) debts due to a banking company are exempt from the provisions of the Act.

In the instant case, Held that the judgment-debtor was not entitled to have the decree debt due to the Indian Overseas Bank scaled down.

B. Ramamoorthy and G. K. Vijayakumar,
for Appellant.

R. Vijayan and P. Sreenivasulu, for
Respondent.

S.J.

—————
*Appeal
dismissed.*

Sethuraman, J.

**Jothi Gowder v.
Nandi Gowder.**

12th September, 1975.

S.A. No. 106 of 1973.

*Partnership—Settled account—When can be
reopened.*

The ordinary rule is that in a suit for partnership accounts unless it is shown that there has been an adjusted account at a later date the account of the dealings and transactions of the firm begin from the date of the commencement of the

partnership. However account settled between the parties will not as a general rule be permitted to be taken up again. Settled accounts are those which have been agreed between the parties either expressly or by conduct as correct. They are not subsequently permitted to be reopened without special reason. The right to have an account taken from the firm may also be lost in case there has been an acquiescence on the part of a partner. A partner may be deemed to have acquiesced in a particular account as being correct or in a particular item as being chargeable or not chargeable to the firm if from his act or conduct he must be regarded to have accepted the same to be so treated.

Settled accounts can be reopened *in toto* even after a lapse of considerable time in case of fraud.

N. Varadarajan, for Appellant.

A. K. Sriraman and A. S. Kailasam, for
Respondent.

R.S.

—————
Order accordingly.

Ramaprasada Rao, J.

**Minor Jayachandran by
Guardian mother Delvanai
Ammal v.**

**The Authorised Officer, Land
Reforms, Tiruchirapalli.**

12th September, 1975.

C. R. P. Nos. 3136 & 3137 of
1972.

Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act (LVIII of 1961), section 74 as amended by Tamil Nadu Act XLI of 1971—Land holding—Fixation of ceiling limit—Pasture land—Originally exempted—Landlord filing return—Exemption taken away by Act XLI of 1971—Authorised Officer applying provisions of the amending Act—Whether correct.

A landlord filed a return when Act XVII of 1970 enabled him not to include in his holding the extent of pasture land held by him, and claimed the appropriate relief. But before the Authorised Officer could fix the ceiling limit, Tamil Nadu Act XLI of '971 was passed under which the extent of pasture land could be taken into consideration in arriving at the net available surplus under the Ceiling Act. The Authorised Officer took note of it and fixed the ceiling limit after the Amending Act came into force on 27th December, 1971. The landlord questioned the right of the Authorised Officer to take into consideration the Amending Act in fixing the ceiling limit.

Held, The general principle of law is that supervening facts and for a greater reason the supervening law can also, under certain circumstances be applied to arrive at a decision. On the date when the Authorised Officer took up the matter for consideration he had to apply the amended law. Once the subject-matter is dealt with under the Amended Act, then the provisions therein have to be invoked and applied. The Authorised Officer was right in having applied the amending Act and determined the surplus.

K. Sarvabhauman and S. Narayanan, for Petitioners.

S.J. ————— *Petition dismissed.*

M - N R O

*K. Kuppaswami, C.J. and
Natarajan, J.*

**Corporation of Madras v.
C. Kuppaswamy.**

22nd September, 1975.

W.A. No. 143 of 1974.

Madras City Municipal Corporation Act (IV of 1919), sections 86, 91—Order of Commissioner of Corporation—Recovery of tax from employee who failed to collect the arrears of tax—Whether valid.

The Commissioner of the Corporation of Madras passed an order directing the recovery of a sum of money from a Tax Collector which represented his share of property tax which he neglected according to the Commissioner, to collect in spite of instructions and indeed allowed the same to become time-barred. The counsel for the Commissioner relied on sections 86 and 91 of the Madras City Municipal Corporation Act, 1919. On the validity of the Commissioner's order,

Held, When legislative provision vests power in a public authority and directs that it should be exercised, in the particular manner prescribed in this case through by-laws, the power cannot be exercised in any other way unless the particular instance falls within the opening words of section 86 (1). There is no power for the Commissioner to impose the punishment which he has done.

R. Thillai Villalan, for Appellant.

R. Krishnamoorthy, for Respondent.

S.J. ————— *Appeal dismissed.*

Sethuraman, J.

**Janagananjani Ammal v.
Vadivelu Chettiar.**

24th September, 1975.

S.A. No. 1109 of 1972.

Adverse possession—Co-owner—Requisites.

In the case of co-owners, the possession of one co-owner is considered in law as possession of all the co-owners. An intention to exclude is an essential element and the Court must be satisfied that there was an intention on the part of those in control and possession of the joint family property to exclude the person and the exclusion was to his knowledge. In order to establish adverse possession against a co-heir, ouster of the non-possessing co-heir should be made out and as between them there must be evidence of open hostile title coupled with exclusive possession and enjoyment by one of them to the knowledge of the other as to constitute ouster.

Mere non-participation in the benefit will not amount to exclusion. The exclusion contemplated under law is the conscious and deliberate act amounting to denial of the right of a particular member to have the benefits of the property.

S. K. Ahmed Meeran and Abdul Hadi,
for Appellant.

R. Sitaraman and K. Raman, for Res-
pondent.

R.S. ——— *Appeal dismissed.*

Ramanujam, J.

**N. VEDIAPPAN v.
T. YUVARAJ.**

26th September, 1975.

W.P. No. 6209 of 1975.

Tamil Nadu Co-operative Societies Act (LIII of 1961), section 73—Election of Panchayatdars—Dispute—Estoppel—Conduct of first respondent whether can be pleaded against statute—Limitation—Rule cannot prescribe when the Act does not prescribe—Tamil Nadu Co-operative Societies Rules (1963), Rule 30 (15).

There cannot be any estoppel against the statute and if, as per the statute, the petitioner's election is invalid, it cannot be taken to have been cured by the conduct of the first respondent in not raising the question of disqualification at the stage of scrutiny of the nomination. The rules cannot prescribe any period of limitation for a proceeding under section 93 of the Tamil Nadu Co-operative Societies Act when the Act itself does not contain or prescribe any period of limitation. Besides rule 30 (15) of the Tamil Nadu Co-operative Societies Rules (1963) cannot be construed as providing any period of limitation for filing an election petition under section 73 of the Act.

R. Nadamasabapathy and M. Liaqat Ali,
for Petitioner.

S.J. ——— *Petition dismissed.*

Natarajan, J.

**Kaliappa Konar v.
Thirumalai Kumaraswami
Thevar.**

18th July, 1975.

S.A. No. 60g of 1972.

Co-owners—Well—Taking water in turns to particular items of lands—Rights of parties in the well—Inseparably connected with the lands—Co-owner taking water from well not entitled to use it for irrigating other lands.

The exercise of the rights by co-owners to take water from a well can only have reference to the respective items of lands to which they are entitled to take water. The fact that the well has a copious supply of water or that the extended user of water in the well to other items of lands would not cause detriment to the other co-owner has no relevance or significance. It is needless to say that the rights of the parties in the well are inseparably connected with the lands and the rights cannot be enjoyed in vacuum or in abstract. A permissive user in the past or convenient utilisation of water in the well by the original owner cannot alter the situation.

Held that one co-owner cannot be heard to say that he has unfettered or unrestricted right of user in the well during his turn.

V. Ratnam, for Appellant.

P. S. Ramachandran, for Respondent.

R.S. ———— *Appeal dismissed.*

Mohan, J.

**Adinarayana Chetti v.
Ayothi Chetti.**

S.A. No. 1035 of 1972.

31st July, 1975.

Adverse possession—Symbolical delivery—Adverse possession by third parties—Not interrupted.

It has been held by a series of decisions that symbolical delivery of possession will not affect the adverse possession of a stranger. Hence the symbolical delivery will not interrupt the adverse possession of third parties like the defendants.

M—N R C

S. Rajaram, for Appellant.

S. Nainar Sundaram, for Respondent.

R.S. ———— *Appeal dismissed.*

Veeraswami, Cj. and
Natarajan, J.

**J. Viswanathan Chettiar v.
The Official Assignee, Madras.**

1st September, 1975.

O.S.A. No. 90 of 1974.

Presidency Towns Insolvency Act (III of 1909), section 17—Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960), section 2 (8)—Lease of premises for twelve years—Tenant adjudicated insolvent—Lease period not expired—Official Assignee appointed interim receiver—Possession continuing with tenant after expiry of term—Right of tenant—Protection personal to him—Not vested with Official Assignee.

The statutory protection of a tenant, who continues, to be in possession of the leased premises after the expiry of the term of lease is not such property as would vest in the official assignee. Since the tenant had not been deprived of his physical possession of the premises at any time and he continued to have such possession after the termination of the period of lease, he should be regarded as a tenant within the extended definition of the term under the Tamil Nadu Buildings (Lease and Rent Control) Act and that being a personal protection to him as a statutory tenant, it did not vest in the official assignee.

G. Ramaswamy, for Appellant.

R. Krishnamurthy, for Respondent.

R.S. ———— *Appeal dismissed.*

Sethuraman, J.

**Rakku v.
Vasanthalakshmi.**

21st October, 1975.

C.M.P. No. 3128 of 1975.

C.R.P.S.R. No. 826 of 1975.

Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960) (as amended by Act XXIII of 1973), section 25 (2), Proviso—Revision to High Court—Delay of 58 days—Whether can be condoned.

Section 25 of the Act XVIII of 1960 provides for revision against the orders of

the appellate authority specified in section 23. The proviso to section 25 (2) in specific terms says that the High Court may, in its discretion allow further time not exceeding one month for the filing of any application under section 25 (1). Section 25 (1) provides for a period of one month for filing a revision to the High Court and the maximum period which is liable to be condoned is one month under the proviso to section 25 (2). This provision has to be given effect to and the period of delay exceeding the period of one month is not liable to be excused under the Act.

B. Soundarapandian, for Petitioners.

T. S. Subramanian, for Respondent.

R.S.

————— *Appeal dismissed.*

Ismail, J.

**Kamalammal v.
Shanmugham (alias)
Gurunathan.**

A.S. No. 591 of 1972.

30th October, 1975.

Civil Procedure Code (V of 1908), Order XXXII, rule 2—Minor—Maternal grandfather appointed as guardian—Alienation by the guardian to discharge mortgage debt—Death of guardian—Minor completing 18 and not 21 years—Suit by the quandom minor against the legal representatives of the erstwhile guardian—Suit not with full knowledge he is still minor—Suit without next friend—Maintainability—Continuation of suit after attaining majority—Effect—Guardians and Wards Act (VIII of 1890), section 36—Suit by quandom minor against erstwhile guardian—Statutory provision not applicable.

There is a difference between a suit being dismissed and a plaint being taken off the file, and all that Order 32, rule 2 (i), Civil Procedure Code, contemplates is a plaint being taken off the file on an application for the said purpose being made by the defendant. The Courts have made a distinction between two classes of suits instituted by a minor one knowing that he was a minor and he was incompetent to institute a suit without a next friend and yet filing the suit with a view to deceive the Court and the other filing suit without

knowing or realising his minority and in the former case the suit being dismissed and in the latter case, the plaint being taken off the file.

In the instant case the minor completed the age of 18 and the period of minority got enlarged only under the special provisions of the Indian Majority Act in a case where a guardian has been appointed by the Court. The present suit was not a suit where the plaintiff instituted the same with the full knowledge that he was a minor and he was incompetent to institute the same without a next friend and he instituted the same with ulterior motive. Since the suit was continued by the plaintiff after he attained majority there was no difficulty in treating the proceedings before the trial Court as if the plaint was taken off the file, but subsequently represented after the first plaintiff attained majority and the suit was continued thereafter and there was no impediment to do so treating the proceedings since the question of limitation does not arise.

The statutory provision under section 36 of the Guardians and Wards Act had no application. In the first place the provision itself contemplates a person or a next friend filing a suit on behalf of the minor against the guardian or his legal representatives for an account and it does not actually deal with a suit filed by a quandom minor against his erstwhile guardian or his legal representative.

S. Balasubramaniam, for Appellant.

R. Balasubramanian, for Respondent.

R.S.

————— *Appeal dismissed.*

[END OF VOLUME (1975) II
M.L.J. (N.R.C.)]