

**(1912) 03 MAD CK 0003**

**Madras High Court**

**Case No:** Second Appeals No"s. 838 to 844 of 1910 and 240 to 244 of 1911 in Second Appeal No. 838 of 2010

Puchalapalli Pichi Reddi

APPELLANT

Vs

The Secretary of State for India  
in Council

RESPONDENT

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**Date of Decision:** March 2, 1912

**Acts Referred:**

- Madras Revenue Recovery Act, 1864 - Section 59

**Hon'ble Judges:** Sundara Ayyar, J; Abdur Rahim, J

**Bench:** Division Bench

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**Judgement**

1. This Second Appeal has arisen out of a suit instituted by the Appellant to establish the right of the shrotriyamdars of a certain village (Plaintiff

and Defendants Nos. 2 to 9) to a tenth share of the water of a tank and to recover a certain sum of money which the Plaintiff paid under protest to

the Government as water cess levied from him.

2. Two principal questions arise in the suit. One was whether the suit was barred by limitation and the other whether the Plaintiff has made out his

right to the water as claimed by him. The District Munsif found both the points in favour of the Plaintiff, but the District Judge reversed the

judgment of the District Munsif on tire question of limitation and also on the merits. As regards limitation he held that Section 59 of the Madras

Revenue Recovery Act applied to the suit. That section says:

Nothing contained in this Act shall be held to prevent parties deeming themselves aggrieved by any proceedings under this Act, except as

hereinbefore provided, from applying to the Civil Courts for redress; provided that Civil Courts shall not take cognizance of any suit instituted by

such parties for any such cause of action, unless such suit shall be instituted within six months from the time at which the cause of action arose.

3. It is contended On behalf of the Appellant that the proper period of limitation is that provided by Article 16 of the Limitation Act and that

Section 59 of the Revenue Recovery Act has no application. We think that this contention must prevail. In this case there was only a demand by

the Government and the Appellant paid the cess demanded from him under protest. There is nothing to show that there was any proceeding as

contemplated by the Revenue Recovery Act, such as attachment of any moveable or immoveable property or arrest of the person of the

Appellant. It is contended in support of the view of the learned District Judge that a mere demand would be a proceeding within the meaning of

Section 59 of the Revenue Recovery Act. We do not think that that can be the meaning. It can hardly be said that a person is aggrieved by a mere

demand. The Plaintiff is aggrieved in this case by the receipt by the Government of the money to which the Government was not entitled. The mere

receipt of the money could not be said to be a proceeding. A proceeding must refer to such actions of the Government as are mentioned in the

various parts of the Act, for example seizure of the property or of the person. The question does not appear to have been fully discussed in any of

the previous rulings. We find that, in a case reported in *Suryaprakasa Row v. The Secretary of State for India* (1908) 13 M.L.J. 380 Section 59

of the Revenue Recovery Act was applied but Article 16 of the Limitation Act was not considered and further there was as a matter of fact a

proceeding taken by the Government in that case by way of distraint of the Plaintiff's property. The same observation applies to the case

reported in *Orr v. Secretary of State for India* in Council I.L.R.(1900) Mad. 571. On the other hand in the case reported in *Mahammad Meera*

*Mohiden v. The Secretary of State for India* (1903) 18 M.L.J. 269, the period of one year's limitation was applied to a suit for recovery of

money paid under protest. In *Sankarappa Naiken Vs. The Secretary of State for India* in Council, a prohibitive assessment was levied and the

ground on which Section 59 was applied was that a proceeding had apparently been taken under the Act. If there has been no proceedings in this case within the meaning of Section 59, Revenue Recovery Act, Article 16 of the Limitation Act would no doubt apply in terms. It applies to suits for the recovery of money paid under protest in satisfaction of a claim made by the revenue authorities on account of arrears of revenue or on account of demands recoverable as such arrears. Of course if Section 59 of the Revenue Recovery Act applied that would exclude the application of Article 16 of the Limitation Act; but as we have said there was no proceeding in this case such as is contemplated by Section 59 of the Revenue Recovery Act. In that view we do not think it necessary to consider whether Section 59 is not meant to be applicable only to suits for damages arising out of proceedings taken under the Act or whether that section would apply to cases where no money was at all due to the Government as revenue. The finding of the District Judge is wrong on the question of limitation and we hold that the suit is not barred. The District Judge's finding on the merits can be said to be satisfactory. He has not tried to deal with the various questions that arose in connexion with that point, nor has he met the various grounds on which the District Munsif found for the Plaintiff. We reverse the judgment of the District Judge and remand the appeal for fresh disposal on the merits. Costs will abide the result. Second Appeal Nos. 839 to 844 of 1910 and Second Appeal Nos. 240 to 244 of 1911 will follow.