

**(1912) 08 CAL CK 0052****Calcutta High Court****Case No:** None

Nasir Ali Sheikh

APPELLANT

Vs

Adeluddi Shana

RESPONDENT

**Date of Decision:** Aug. 21, 1912**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 145, 146
- Limitation Act, 1963 - Article 120, 142, 144

**Citation:** 16 Ind. Cas. 620**Hon'ble Judges:** Chapman, J; Cecil Brett, J**Bench:** Division Bench**Judgement**

S.A. No. 1155 of 1908.

1. In support of this appeal, the only point which has been urged on behalf of the appellant is that the lower Appellate Court erred in law in the view which it took that the suit of the plaintiff was not barred by limitation. It appears that the property, the subject of the suit, was attached u/s 146, Criminal Procedure Code, on the 7th March 1899 in consequence of proceedings u/s 145, Criminal Procedure Code. The property remained under attachment and in charge of the Magistrate till the 26th February 1903. Then the present appellant, the defendant No. 18, applied to the Magistrate to be put in possession of the property on the ground that he had purchased the holding of the defendant No. 1, who was the opponent of the plaintiff in the proceedings u/s 145, Criminal Procedure Code, and had been put in symbolical possession by the Civil Court. The Magistrate passed an order in the following terms: "The paddy having been grown before the petitioner obtained symbolical possession through Civil Court, he cannot get the paddy this year. As regards the prayer for withdrawing the order u/s 146, Criminal Procedure Code, this is allowed in view of the report of Babu P.K. Karpurna, Deputy Magistrate." The result of the order seems to have been that the defendant No. 18 was afterwards in

possession of the disputed land. The present suit was instituted on the 28th February 1906 and was contested by the defendant No. 18 alone who is the appellant before this Court. He then set up the plea that the suit was barred by Limitation Act, inasmuch as it has not been brought within three years from the 26th February 1903, when the order had been passed by the Magistrate. The Court of first instance held that the plea was not maintainable having regard to the decision of the Madras High Court in the case of Raja of Venkatagiri v. Isakapalli Subbiah 26 M. 410 and of the Allahabad High Court in the case of Goswami Ranchor v. Sri Girdhariji 20 A. 120 : A.W.N.(1897) 214. There was an appeal to the lower Appellate Court and before that Court, another point of limitation was raised, namely, that the suit was barred under the provisions of the Article 3 of Schedule VII, Part I, of the Bengal Tenancy Act. The lower Appellate Court held that the plea could not be maintained and confirmed the judgment and decree of the Court of first instance.

2. The defendant No. 18 appealed to this Court and, on his behalf, the only point raised is that the lower Courts should have held that the suit was barred by limitation if not having been brought within six years from the 7th March 1899--the date when the property was attached by the Magistrate. The learned Pleader for the appellant argues that the provisions of Article 120 of Schedule II of the Limitation Act would apply as held by the Madras High Court, and that the limitation would not be governed by Article 142 or 144 of the same Act. In our opinion, the contention advanced on behalf of the appellant is not sound. The meaning of the decision of the learned Judges of the Madras High Court is not very clear to us and we are unable to agree in the view taken by them that Article 120 had any application. In the present case, the plaintiff brought the suit to recover possession not from his original adversary in the proceedings u/s 145, Criminal Procedure Code, but from a person who had been placed in possession by the Magistrate by an order passed apparently not in accordance with the provisions of Section 146, Code of Criminal Procedure. At all events, the effect of that order was to deprive the plaintiff of possession, and from the date of that order, the plaintiff had a cause of action to recover possession from the defendant. The limitation applicable in such a case would be that provided by Article 142 or Article 144 of Schedule II of the Limitation Act and this is the view which was taken by the Allahabad High Court in the case on which the learned Munsif relied. We must, therefore, hold that the lower Courts were right in the view which they took on the question of limitation. The result, therefore, is that the appeal is dismissed with costs. We assess the hearing fee at one gold mohur.

S.A. Nos. 1411-1414 of 1908.

3 The judgment that we have just delivered in Appeal No. 1155 of 1908 will equally apply to these cases. These appeals are also, therefore, dismissed with costs. We assess the hearing fee in each case at one gold mohur.