

(1881) 01 CAL CK 0012

Calcutta High Court

Case No: None

Zomurrudonnissa
Khatoon

APPELLANT

Vs

Kangali Churn Sha
and Another

RESPONDENT

Date of Decision: Jan. 28, 1881

Acts Referred:

- Limitation Act, 1963 - Article 47

Citation: (1881) ILR (Cal) 709

Hon'ble Judges: Tottenham, J; Morris, J

Bench: Division Bench

Judgement

Morris, J.

We think that the Subordinate Judge is wrong, and the first Court is right in holding that, so far as this suit is brought to recover property comprised in the order of the Magistrate made under chap. xl of the present Code of Criminal Procedure, it is barred under Article 47, sched. ii, Act XV of 1877. No doubt the order, being passed on the 30th June 1865, comes under the operation of the former Limitation Act, IX of 1871. But by Section 2 and sched. v of Act X of 1872, chap. Clause of that Act (X of 1872) has been substituted for chap. xxii of Act XXV of 1861; consequently the order of the Magistrate, which is the cause of action in this suit, is governed by the provisions of Act XV of 1877. We are unable to assent to the argument that the property, to recover which a suit may be brought under Article 47, is moveable property only. It seems to us to have reference to Immovable as well as moveable property. This view is in accordance with that of the Madras Court in the case of Akilandammal v. Periasami Pillai (I. L. R. Mad. 309).

2. The rest of the judgment is not material for the purposes of this report.