

RULES OF LIMITATION ARE NOT MEANT TO DESTROY THE RIGHTS OF PARTIES — KEEN STUDY ON LIMITATION FOR DECLARATION OF TITLE HELD BY HONOURABLE APEX COURT VIDE ITS JUDGMENT L.C. HANUMANTHAPPA V. H.P. SHIVA KUMAR, DATED 26.08.2015

By

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1. With High regards to the Hon'ble Apex Court's Decision *vide* L.C. *Hanumanthappa v. H.B. Shiva Kumar*, 2015 (6) CTC 562, the focus on limitation needs special study.

2. The Honorable Apex Court held that the right to seek declaration off title falls under Article 58 of Limitation Act 1963 *vide* its judgment reported in 2015 (6) CTC 562 (*L.C. Hanumanthappa v. H.B. Shiva Kumar*).

3. Article 58 is the residuary article for matters not falling within the Articles 56 and 57 of the Limitation Act. Article 58 will apply only to a suit for declaration simpliciter.

4. The Part-V of the Schedule 1 of Limitation Act – 1963, alone is very much concern and relevant now as it deals with immovable property.

5. The aforesaid Honourable Apex Court decision came up before the Honourable Madras High Court *vide* *Hemanth Kumar v. D. Melvin Kumar* dated 18.09.2018. The said Honourable High Court considered and made its own observation deviating the Law laid by Honourable Apex Court.

6. In the light of Honourable Apex Court decision a party who is in possession to be in a more disadvantages possession than the party who is not in possession. This would not have been the intention of the Legislature.

7. It was laid down way back in the year 1934 by a Full Bench of Allahabad High Court in the decision reported in AIR 1934 – Allahabad 661 (*Jawaharlal v. Mathura Prasad*) that each article has to be interpreted according to the particular language employed in that article and ordinarily irrespective of somewhat similar language employed in the other articles.

8. The plaintiff who is in need of declaration of title is already in possession of the immovable property. So, the Article 65 cannot have any application. It is established principal of Law that the Rules of Limitation are not meant to destroy the rights of parties.

9. It is pertinent to note the above said Honourable Apex Court Decision lies outside the ambit of Section 27 of Limitation Act and Article 65 of Schedule 1 of Limitation Act, 1963.

10. The Honourable Madras High Court in the aforesaid decision found a way out. It asserted that CPC enable the plaintiff to couch his prayers in the alternative also. He can seek the relief of possession in the alternative. In which case the amendment cannot be said as time barred as Article 65 will come into play. The plaintiff who initially filed the suit for injunction and who omit to seek amendment for incorporating the prayer for declaration within three years from the date denial of his title, can overcome the limitation bar by seeking the

alternative prayer for recovery of possession by paying Court fee on half of market value under Section 27 of Tamil Nadu Court fee and S.V. Act 1955. That is a penalty that a plaintiff in possession will have to pay for not having be in diligent.

11. The Author reiterates that he submitted his opinion with high regards to the decision of the Honourable Apex Court. So, the decision of the Honourable Apex Court needs study by legal luminary.
