

KRISHNAMMA a cause of action in 1860, nor is plaintiff found to have been
 v. dispossessed at any date prior to that at which the Collector
 ACHAYYA. formally assigned the ground in question with other ground to
 defendant, and the date of the assignment by the Collector is
 far within twelve years of the date of suit.

We must hold, therefore, that the suit is not barred, and must reverse the decree and remand the appeal suit to the District Court for a decision on the merits.

The costs of this appeal will be costs in the cause.

APPELLATE CIVIL.

Before Mr. Justice Innes and Mr. Justice Kindersley.

1880.
 February 9.

VALIYA KE'SAVA VÁDHYAR AND OTHERS (PLAINTIFFS), APPELLANTS, v. SUPPANAIR AND OTHERS (DEFENDANTS), RESPONDENTS.*

Under valuation of the relief sought, Section 10 of Act VII of 1870—Section 54, Clause (a) of Act X of 1877.

Section 54 of Act X of 1877, which directs that a plaint shall be rejected in certain cases, applies only to the initial stages of a suit before a plaint has been registered, whereas the application of Section 10 of the Court Fees' Act, which directs that a suit shall be dismissed in a certain case, is not susceptible of restriction to any particular stage.

THIS was a second appeal against the decree of V. P. D. Rozario, Subordinate Judge of North Malabar, in Appeal No. 270 of 1878, confirming the decree of the District Munsif of Kadri, in Original Suit No. 568 of 1877.

The plaintiffs sought to recover from the defendants possession of certain parcels of land with the buildings standing thereon. They stated that the value of the property was Rs. 133-5-5 only. The defendants in their written statement denied the correctness of the valuation. The Munsif appointed a commissioner to ascertain the value. It was found that the property was worth more than the sum stated in the plaint. The Munsif ordered the plaintiffs to pay additional Court Fee, and allowed them a certain

* Second Appeal 329 of 1879 against the decree of V. P. D. Rozario, Subordinate Judge of North Malabar, dated 19th December 1879, confirming the decree of the District Munsif of Kadri, dated 4th March 1878.

time for that purpose. The amount was not paid within the time and the suit was dismissed. The plaintiffs unsuccessfully appealed to the Subordinate Judge, and made a second appeal to the High Court.

VALIYA
KE'SAVA
VADHYAR
v.
SUTPANNAIR.

The Advocate-General (Hon. *P. O'Sullivan*), for the Appellants.
Mr. *Mitchell*, for the Respondents.

The Court (INNES and KINDERSLEY, JJ.) delivered the following JUDGMENT.—At the hearing of this appeal the Advocate-General did not rely upon the grounds of appeal contained in the memorandum of the appeal, but contended that in place of dismissing the suit under Section 10 of the Court Fees' Act, the Courts below ought to have followed the provisions of Section 54 of the Code of Civil Procedure, Clause *a*.

Section 54 applies only to the initial stages of a suit before a plaint has been registered, whereas the application of Section 10 of the Court Fees' Act is not susceptible of restriction to any particular stage. The investigation contemplated by Section 9 upon which Section 10 is dependent is to be set on foot if the Court sees reason to think there has been a wrong estimate of the value of the object-matter of the suit referred to in those sections. As such an error might be detected by the Court at any stage of the proceedings, the language is large enough to admit of the application of its provisions to any stage at which the discovery is made. No doubt the provisions of Section 54 (*a*) of the Civil Procedure Code relating to what is to be done in the initial stage of a suit and before registration are in conflict with the provisions of Section 10 of the Court Fees' Act in its application to those earlier proceedings, and as the Civil Procedure Code is the later enactment, it necessarily in so far implied by repeals the provisions of Section 10 of the Court Fees' Act. But in the suit out of which this appeal arises the proceedings had passed the initial stage and Section 54 of the Civil Procedure Code was no longer applicable. The Court, we think, rightly applied the provisions of the Court Fees' Act and dismissed the suit on the non-payment of the required additional stamp fee.

This provision need entail no hardship, as the Court, before dismissing the suit, is bound to fix a period within which the fee might be paid and the provision was conformed to in the present case.

The appeal should be dismissed with costs.