

SRI NIVĀSA
A'YYANGAR
v.
RENGASĀMI
A'YYANGAR.

Committee after argument receives support from the more recent expressions of opinion of the learned Mr. Justice Devarkanath Mitter in the cases of *Girdari Lal v. The Government of Bengal*(1) and *Anrita Kumari v. Lalshi Narain*,(2) already referred to, that though he is a Sapinda for certain special purposes, he does not succeed as a Sapinda. We must treat the question, therefore, as one which is already concluded by authority and must hold that plaintiffs are the nearer heirs according to Hindú law, and must therefore affirm the decision of the Lower Appellate Court and dismiss the appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Innes and Mr. Justice Forbes.

1879.
November 7.

KRISHNAMMA (PLAINTIFF), APPELLANT, v. ACHAYYA AND ANOTHER (DEFENDANTS), RESPONDENTS.*

Suit for land—Order of Demarcation Officer—Grant of pattá by Collector—Limitation.

Plaintiff in 1877 claimed possession of land which had been demarcated as poramboke in 1860, and of which a pattá had been granted to defendant in 1875 by the Collector.

Held, that this suit was not governed by Article 16, Schedule II of Act IX of 1871, as it was not necessarily a suit to set aside an official act.

In this case plaintiff sued in 1877 to establish his title to 1·82 acres of land, which fell to his share on partition with his uncle Vencata Reddi, and to recover possession thereof.

The defendant contended that the land sued for was not included in Vencata Reddi's pattá, but was classed as poramboke at the time of demarcation in 1860, and in 1875 was assigned by the Collector to the defendant.

The Collector was made second defendant in the suit.

The Munsif decreed for the plaintiff.

The first defendant appealed.

(1) 12 M.I.A., 448.

(2) 2 B.L.R.F.B., 28.

* S.A. No. 99 of 1879 against the decree of J. Kelsall, District Judge of Kistna, reversing the decree of the District Munsif of Guntur, dated 23rd October 1878.

The District Judge held that the suit was barred by limitation on the ground that it was virtually a suit to set aside an act of an officer of Government in his official capacity, in which case the limitation period was one year under Article 16, Schedule II of Act IX of 1871; and that even if the date of the cause of action was the date on which the poramboke survey number was assigned to defendant by the Collector, *i.e.*, 1875, the suit was barred by the same article.

KRISHNAMMA
v.
ACHAYYA.

Plaintiff appealed to the High Court on the ground that his suit was not barred by limitation.

The Advocate-General (Hon. *P. O'Sullivan*), for Appellant.

The Government Pleader (Mr. *Handley*), for the second Respondent.

The Court (INNES and FORBES, JJ.) delivered the following

JUDGMENT.—The ground of second appeal is that the suit is not barred.

It was a suit for the recovery of a piece of ground said to have belonged to, and formed a part of, plaintiff's holding, and to have been wrongly included by the Demarcation Officer in some poramboke ground forming a *vagu* or channel which was afterwards allotted to defendant.

The District Munsif held that the plaintiff had established his claim.

On appeal by defendant the District Judge dismissed the suit as barred by Article 16, Schedule II of the Limitation Act of 1871, as it was not instituted within one year of the date of the official act of the Demarcation Officer, who marked off the land in 1860, and as, even if the starting-point for the period of limitation be the date of the act of the Collector in assigning to defendant the poramboke in which the piece of ground claimed is said to be included, that date is still more than one year prior to that of the suit.

We think the decision is wrong. The suit is not necessarily a suit to set aside an official act, but one to recover immovable property, and the plaintiff has therefore only to show that he has had possession within twelve years prior to the date of suit. *Raj Bahadoor Singh v. Achambit Lal*. (1) It is not shown that the demarcation interfered with his possession so as to give rise to

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.