

[4 Mad. 172]

APPELLATE CIVIL.

The 20th September, 1881.

PRESENT :

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND
MR. JUSTICE KINDERSLEY.

Kylasa Goundan.....Petitioner
and
Ramasami Ayyan.....Respondent. *

Limitation—Application for Certificate of Sale—Act VIII of 1859, Section 259.

The provisions of the Indian Limitation Act relating to applications do not extend to an application by a purchaser of land at a Court sale under a decree to obtain a certificate.

[173] A SALE of land in execution of a decree was confirmed on July 12th, 1875, by the District Court of Salem. No certificate having been granted to the purchaser under Section 259, Act VIII of 1859, an application to the Court was made on March 3rd, 1880, to obtain a certificate.

The application was rejected by the Court on the ground that it was barred by *Limitation*, subject to the opinion of the High Court.

Devarajayyar for the Petitioner.

The Court (TURNER, C.J., and KINDERSLEY, J., delivered the following

Judgment:—The sale was confirmed on July 12th, 1875, and thereby became absolute. Thereupon it was the duty of the Court to cause a certificate of sale to be prepared and to execute it for delivery to the purchaser. The language of the Court left no discretion to the Court. It imperatively required the Court to grant the certificate, and it did not impose on the purchaser the duty of making an application as a condition precedent to the issue of the certificate. The purchaser cannot then, in our judgment, be deprived of his right to obtain a certificate, because it has not been prepared for delivery to him on application at the office of the Court, and he is constrained to set the Court in motion to discharge its duty. The provisions of the Limitation Act relating to applications, though in their terms doubtless most extensive, must be held to apply to applications for the exercise, by the authority to which the application is addressed, of powers which it would not be bound to exercise without such application, and not to applications to the Court to do what it has no discretion to refuse, nor to applications for the exercise of functions of a ministerial character.

The Judge will be informed accordingly.

NOTES.

[1. The Article remains substantially the same in the Limitation Act of 1908.

Following this case, it has been held that the Article did not apply to these applications:—

- (a) Court making a party defendant :—(1886) 12 Cal., 642 ; or respondent :—(1882) 9 Cal., 355 ; (1889) 13 All., 78.
- (b) Court amending decree :—(1887) 9 All., 364 ; (1886) 8 All., 519.
- (c) application for certificate of sale :—(1881) 4 Mad., 172 ; (1882) 6 Bom. 586.
- (d) proceeding with suit falling arbitration :—(1895) 22 Cal. 425.
- (e) ascertaining mesne profits in execution :—(1891) 19 Cal., 132, F.B.

* Case No. 6 of 1880 referred by J. C. Hannynnton, District Judge of Salem.

[q. v. *supra*, 4 Mad., 1.]

- (f) mamlatdar's order to village officers to give effect to his award of possession :—30 Bom., 415=8 Bom. L. R., 218.
 (g) Dismissal of execution-petition without notice to parties and removal of attachment :—(1907) 31 Mad., 71=18 M. L. J., 46.

But a certificate of guardianship (XI of 1858) should be applied for and would not fall within this line of cases :—(1886) 12 Cal., 542.

II. LIMITATION ACT NOT EXHAUSTIVE—

- (i) It does not apply to all applications whatever made to the Court :—(1910) 37 Cal., 796 ; (1886) 6 Cal., 60 ; (1908) 11 Oudh cases, 208 ;
 (ii) Nor to criminal applications, Art. 178 :—(1888) 10 All., 350 ; (1895) 20 Bom., 543.
 (iii) It does not apply to applications on which only ministerial orders have to be passed :—(1881) 4 Mad., 172 ; (1882) 6 Bom., 586, where the application was for certificate of sale.]

[174] APPELLATE CIVIL.

The 7th and 21st September, 1881.

PRESENT.

MR. JUSTICE MUTTUSAMI AYYAR AND MR. JUSTICE TARRANT.

Srinivasa Chetti.....(Plaintiff), Appellant

and

Nunjunda Chetti.....(Defendant), Respondent.*

Mittadar, right of—Kudivaram presumption as to.

The kudivaram (tenant-right) does not necessarily vest in a mittadar as such so as to entitle him to eject the ryots on his mitta on notice as tenants from year to year.

THE facts and arguments in this case appear sufficiently, for the purpose of this report, in the **Judgment** of the Court (MUTAUSAMI AYYAR and TARRANT, JJ.) which was delivered by MUTTUSAMI AYYAR, J.

Hon. T. Rama Rau for Appellant.

Mr. Grant for Respondent.

Judgment :—The plaintiff (appellant) is the Ijaradar † of the village of Thalihulli in Krishnagiri Taluk in the district of Salem. This village was granted by Government in 1802 (1212) to one Purna Chendu Lal under a "Yaiksala patta," and on this occasion eight items of land measuring 675½ gulies were transferred to Thalihulli from the village of Chevuthulli to which they had belonged. In 1804 (1214) the village of Thalihulli was granted as a mitta‡ to Naranappan, who thereupon granted a perpetual lease or ijara to one Narayana Rao. On the 20th December 1858 the Ijaradar's right, title, and interest in the village was sold in execution of a decree which had been passed against one Kristna Rao, the legal representative of Narayana Rao, and the appellant's father Gopala Chetti became purchaser. The land in suit consists of two plots, which together with six other plots lie close to the tank in the village of Thalihulli. From 1803 (1213) three of them have been treated as inam, and the rest, including those now in dispute, as assessed or "pattukattu"

*Second Appeal No. 232 of 1881 against the decree of J. C. Hannynghton, District Judge, of Salem, confirming the decree of E. Muttusami Ayyar, District Munsif of Dharmapuri, dated 8th November 1880.

†Farmer of public revenue, renter of village at stipulated rate—(Wilson).

‡A revenue estate created in the Madras territories under the permanent settlement—(Wilson).