

It remains to mention the argument that the latter part of section 156 applies and that the suit is brought too late, being instituted more than six months after the date of the accrual of the cause of action. In order to make that provision apply it would be necessary to show that the act complained of was done within the scope of their authority as servants of the Board and also that the act was done or purported to be done under the Act. We cannot at present deal decisively with these questions, the facts not being fully before us, but we may observe that it appears to us extremely doubtful whether such a prosecution as that which is the subject of the suit can be said to be an act done under the Act.

ANNAJI  
v.  
SUBRAMANYA.

We must reverse the decrees of both Courts and remand the suit to the Court of First Instance.

The appellant is entitled to costs of this appeal: costs in the Courts below to be provided for in the revised decree.

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## APPELLATE CIVIL.

*Before Mr. Justice Handley and Mr. Justice Weir.*

KANAKASABAI AND ANOTHER (PLAINTIFFS NOS. 1 AND 2),  
APPELLANTS,

1890.  
July 21.

v.

MUTTU AND ANOTHER (DEFENDANTS), RESPONDENTS.\*

*Limitation Act—Act XV of 1877, sch. II, art. 120—Suit for perpetual injunction—Claim of possession.*

In a suit for a perpetual injunction to restrain the defendant from preventing the plaintiff from entering a certain house it was alleged that the defendant had been in exclusive possession for more than six years before suit:

*Held*, that Limitation Act, sch. II, art. 120, applied to the suit which was therefore barred by limitation.

*Per cur*: It was open to the plaintiff to sue for such possession other than exclusive possession (the right to which had already been negatived by suit) as he might be entitled to.

SECOND APPEAL against the decree of T. Ganapati Ayyar, Subordinate Judge of Kumbakonam, in appeal suit No. 769 of 1888, reversing the decree of A. Kuppusami Ayyangar, District Munsif of Kumbakonam, in original suit No. 100 of 1888.

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\* Second Appeal No. 969 of 1889.

KANAKASABAI  
v.  
MUTTU.

Suit filed on 6th March 1888 for a perpetual injunction restraining defendant No. 1 from preventing the plaintiffs from entering a house attached to a certain temple. It was alleged that defendant No. 1 had been in exclusive possession of the house since 2nd March 1888 and it appeared that the father of the plaintiff had brought a suit for the declaration of his right over the house now in question in 1885 and had failed to establish his right to exclusive possession.

The further facts of the case appear sufficiently for the purposes of this report from the judgment.

*Ramachandra Rau Sahab* for appellants.

*Pattabhirama Ayyar* for respondent No. 1.

JUDGMENT.—A preliminary objection is urged on behalf of the first respondent, viz., that on the statement of the plaintiffs in the plaint to the effect that the first defendant has been wrongfully enjoying the property exclusively since 2nd March 1882 the suit is barred, inasmuch as the suit, not being otherwise provided for, must be taken to be governed by article 120 of the Limitation Act and more than six years had passed since the right to sue accrued the plaint not having been filed until the 6th March 1888.

The suit is one of a special character, viz., a suit for a perpetual injunction and no specific provision is made for such suits in the schedule to the Limitation Act.

For the appellants, it is argued that article 127 of the schedule applies, and if not article 144 of the schedule. It appears to us, however, that neither of these last-mentioned articles applies to a suit such as the present which, as already observed, is a suit of a special character specially defined by statute, *i.e.*, section 54, Specific Relief Act; the Limitation Act and the Specific Relief Act are both enactments of the year 1877, and if the Legislature had intended to provide any special period of limitation for suits under section 54 of the latter Act, it may be presumed they would have done so.

We think, therefore, article 120 of the schedule applies and we hold accordingly that the suit as brought is barred, and on this ground, we must support the decision arrived at by the Lower Court.

Adverting to the question, which has been raised in connection with the frame of the suit, we think it right, although it is not necessary to our decision, to state our opinion that as the plaintiff

was out of possession, it was open to him to sue for such possession (other than *exclusive* possession the right to which had already been negatived by suit) as he might be entitled to. And this being so, we are of opinion that the subordinate court rightly decided that the exceptional form of relief by way of perpetual injunction was not open to the plaintiffs and that such relief was rightly refused to them.

For the reasons already stated, however, we dismiss the appeal with costs.

KANAKASABAI  
v.  
MUTTU.

## APPELLATE CIVIL.

*Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.*

PARVATHEESAM (PLAINTIFF), APPELLANT,

v.

BAPANNA AND OTHERS (DEFENDANTS), RESPONDENTS.\*

1890.  
Mar. 27, 31.

*Civil Procedure Code, s. 266—Unascertained interest in a partnership.*

The plaintiff having purchased at an execution sale the interest of the judgment-debtor in a partnership, of which the undivided father (deceased) of the judgment-debtor had been a member, now sued the other partners praying that an account be taken and that the share of the judgment-debtor be paid to him :

*Held*, that the execution sale was not bad in law and that the present suit was accordingly maintainable. *Dwarika Mohun Das v. Luchhmoni Dasi* (I.L.R., 14 Cal., 384) dissented from.

APPEAL against the decree of J. Kelsall, District Judge of Vizagapatam, in original suit No. 15 of 1888.

One Ramamurti, who died on 23rd April 1885, and the first three defendants, carried on business in partnership. In February 1887, in execution of the decree passed in original suit No. 386 of 1885 against an undivided son of Ramamurti, the present plaintiff became the purchaser of Ramamurti's interest in the partnership. The plaintiff in this suit prayed that an account of the late partnership be taken and that he be declared entitled to receive such sum as may be found due by the other partners to Ramamurti.

The District Judge held that "an uncertain sum of money which may or may not be payable by one member of a partner-

\* Appeal No. 41 of 1889.