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of April 1885 reversed the order to restore the suit, the effect of which was that the suit was no longer in Court and the decree of the Múnsif was wrong.

The present District Judge expressed an opinion in favor of the plaintiff on the merits, in order that the Court might, if it felt justified, act on that opinion. But we cannot do so, as the District Judge had no jurisdiction to pronounce such an opinion as long as the decree of his predecessor stood.

We have reversed the decree of 18th April 1885. Therefore the order of restoration stands and the decree of the Múnsif made before the decree of 18th April 1885 stands.

We reverse the decree of 1st September 1886 and direct the District Judge to rehear the appeal on the merits, but not on the first ground of appeal which we have already decided. Costs of this Appeal to be paid by the respondents to the appellants and the costs of the appeal to the Lower Appellate Court and of the original suit are to abide the result of the suit.

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## APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Muttusámi Ayyar.*

1887. March 28, 29.

GANAPATI (DEFENDANT), APPELLANT,

and

SÍTHÁRÁMÁ (PLAINTIFF), RESPONDENT.*

*Civil Procedure Code, s. 561—Appeal from appellate decree disallowing memorandum of objections—Limitation Act—Act XV of 1877, s. 12—Karnam—Rights of de facto karnam.*

A filed a plaint on 28th June 1882 for a declaration of his title as karnam of a village and for arrears of dues payable to him as such, including those for fasli 1288, which accrued due on 1st July 1879. His family had held the office and discharged its duties for three generations, but there was no evidence of any formal appointment of A or his ancestors:

*Held*, that the plaintiff was entitled to the dues as *de facto* karnam, and his claim was not barred in respect of any of the arrears claimed.

*Per cur.*—The preliminary objection taken by the respondent that no second appeal lies from so much of the decree of the Subordinate Judge as disallowed the objections filed by the appellant under s. 561 of the Code of Civil Procedure is without weight.

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* Second Appeal No. 361 of 1886.

APPEAL against the decree of S. Gopaláchári, Acting Subordinate Judge of Madura (East), modifying the decree of P. S. Gurumúrthi Ayyar, District Múnsif of Tirumangalam, in Original Suit No. 584 of 1883.

This was a suit to declare the plaintiff's right to, and to recover arrears of, certain dues alleged to be payable to the plaintiff as karnam of a certain village. The arrears sued for were for faslis 1288—1290. The plaint stated that the karnam mirasi of the village of Pattam belonged to the plaintiff, and that he and his ancestors since the faisal, had performed the duties of the office and enjoyed the emoluments (mánnihams and swatantrams) appertaining to it; and that the defendant did not pay the swatantrams assessed on the land cultivated by him. The plaint was filed on 28th June 1882.

The defendant pleaded that the plaintiff was not the karnam of the village and had no right to the dues in question.

The District Múnsif held that the plaintiff was the mirasi karnam of the village in question and made a decree for the payment to him of the dues of faslis 1289 and 1290, but held that the claim for the dues of fasli 1288 was barred by limitation.

The plaintiff appealed to the Subordinate Court in respect of that part of the decree which refused part of his claim, and the defendant filed a memorandum of objections.

The defendant preferred this second appeal.

*Kaliánárámayyar* for appellant argued that the plaintiff had no mirasi right to the office, as he was not appointed by the zamindár, and referred to Regulations XXV and XXIX of 1802 and Regulation VI of 1831; that the formal requisites of the appointment of a karnam cannot be dispensed with, and that as *de facto* karnam he was not entitled to the dues claimed. It was further argued that in any case a claim for the arrear of fasli 1288 was time-barred.

*Kistnasámi Ayyar* for respondent objected that no second appeal lies from so much of the decree of the Lower Appellate Court as disallowed the defendant's objections. This contention was overruled.

The further arguments adduced on this second appeal appear sufficiently for the purpose of this report from the judgment of the Court (Collins, C.J., and Muttusámi Ayyar, J.).

JUDGMENT.—This was a suit brought by the respondent to

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recover the swatantram (emolument) payable by the appellant for faslis 1288—1290 to the karnam of the village in question. It was not shown by the appellant that he ever held the office, or that he was entitled to it, or that he was under no obligation to pay. It has been found that the respondent has been serving as karnam for the last five or six years; that his grandfather held the office during his lifetime, and that one Subramanyam served as their gumastah during the minority of the respondent, and during the lifetime of his father. It was also in evidence that the respondent was described as karnam in the Inam Register of 1864, and that the appellant, his father and his guardian paid the swatantram to the gumastah (agent) Kuppu Subramanyam, until fasli 1287.

Upon these facts, we are of opinion that the Subordinate Judge properly decreed the respondent's claim. It is true that one Picha Pillai was the karnam at the time of the permanent settlement, and that the respondent is in no way related to him. Nor is it proved when, by whom, and in what circumstances the respondent's grandfather was appointed to the office, or whether there was a formal appointment at all. But the recognition of the respondent's claim contained in the Inam Register of 1864 and the fact of his family having held the office for three generations are sufficient to raise the presumption that there has been a valid appointment.

Another contention is that the claim to the emolument due for fasli 1288 was barred by limitation. It is conceded that it accrued due on the 1st July 1879, and the period of limitation began therefore to run only from that date, which must be excluded from computation under s. 12 of Act XV of 1877. The decision of the Subordinate Judge that the claim was not barred is right.

The preliminary objection taken by the respondent that no second appeal lies from so much of the decree of the Subordinate Judge as disallowed the objections filed by the appellant under s. 561 of the Code of Civil Procedure is without weight, and the decree appealed against was a decree passed in appeal within the meaning of s. 584, whether it dealt with the grounds of appeal urged by the appellant or the objections taken by the respondent under s. 561.

This second appeal fails, and we dismiss it with costs.