

was so under the old Presidency Small Cause Court Act IX of 1850.

POKALA
v.
MURUGAPPA.

The Presidency Small Cause Court Act XV of 1882, section 18, authorizes the Court to entertain all suits of a civil nature, except those specially set out, and a suit for maintenance is not one of the latter.

The practice of the Small Cause Court before the Act of 1882 to entertain such suits was justified by the jurisdiction given by the words of the Act 26 of 1864, viz., "debt, damage or demand." The words used in Act IX of 1850 were "debt or damage."

We answer the question referred in the affirmative.

APPELLATE CIVIL.

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

ALUBI (PLAINTIFF), APPELLANT,

and

KUNHI BI AND OTHERS (DEFENDANTS), RESPONDENTS.*

1886.
Sept. 14.
Oct. 21.

Limitation Act, Sch. II, arts. 131, 132, 140, 144—Claim for arrears of revenue by grantee from Government.

The right to the revenue on certain land having been granted to the trustees of a mosque, the said grant was confirmed by Government in 1866.

In 1883, a suit was brought to recover arrears of revenue from the owners of the land. It was found that no payment of revenue had ever been made by the defendants to the trustees, and the suit was dismissed as barred by limitation under art. 144, sch. II of the Limitation Act:

Held, that the suit was not barred and that the plaintiff was entitled to recover 12 years' arrears of revenue.

APPEAL from the decree of L. Moore, Acting District Judge of North Malabar, confirming the decree of B. D'Rozario, District Munsif of Pynád, in suit 19 of 1883.

The facts necessary for the purpose of this report are set out in the judgment.

Bhášhyam Ayyangár and Anantan Náyar for appellant.

Jaga Ráu Pillai for respondents.

The Court (Collins, C.J., and Kernan, J.) delivered the following

ALUBI
v.
KUNHI BI.

JUDGMENT:—This is a suit by the plaintiff (Valagath Syed Alubi bin Hassan Hydros Koya Thangal) as inám-holder and manager of a mosque to recover revenue of Rs. 8 per annum charged on the plaint paramba. It is admitted by the defendants (Kunhi Bi and two others) who are the jenmis of the paramba, that it is charged perpetually with Rs. 8 per annum in favor of Government. It is also admitted that the Government transferred the revenue of the paramba very many years ago in the time of Tippu Sultan to the trustees of the mosque. The inám Commission deed is dated the 23rd April 1866. The trustees of the mosque therefore became, on the transfer by Government, entitled to recover from the jenmis of the paramba the revenue which thereafter became due and payable. It has been found that the rent or revenue of Rs. 8 per annum has not been paid by the jenmis to the trustees of the mosque at any time, although payment was demanded more than 12 years before suit. The question raised in the Courts below and here is whether the right of the trustees of the mosque is barred by limitation.

The District Judge has decided that the relation of landlord and tenant never subsisted between the plaintiff and the trustees of the mosque and the jenmis, and that the plaintiff's suit is barred by adverse possession under art. 144 of the Limitation Act. But it is clear that there has been no adverse possession of the land by the defendants, inasmuch as the defendants are entitled to hold the land, and plaintiff does not seek to recover possession.

The possession of the land by defendants is not adverse to plaintiff, as defendants admit they hold the land subject to the payment of the revenue to the party entitled. The plaintiff is the person entitled to the revenue which defendants are bound to pay. Article 140 of the Limitation Act does not apply. The plaintiff does not seek to recover the possession of immovable property or any interest therein within the meaning of art. 140.

What the plaintiff seeks to recover is rent or revenue which has accrued. Each year's rent or revenue is a recurring right within art. 131. It is not correct to say that the relation of landlord and tenant did not subsist between the trustees of the mosque and the jenmis, inasmuch as the plaintiff is the party entitled to recover the rent or revenue payable out of the land, and the defendants as the jenmis in possession of the land are bound to pay the plaintiff

such rent. We think the plaintiff is entitled to recover 12 years' rent or revenue up to the date of suit under art. 131 as a recurring right, and also under s. 132 as money charged on land. The fact that the trustees of the mosque did not proceed to recover rent which accrued more than 12 years before suit cannot bar their right to the rents accrued during 12 years before suit.

ALUM
v.
KUNHI BI.

We reverse the decrees of the Lower Courts and make a decree for payment by the defendants who admit their possession of the lands during the accruing of the 12 years' rent or revenue with costs of this suit and appeal.

APPELLATE CIVIL.

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

RAVUNNI MENON (PLAINTIFF), APPELLANT,

and

KUNJU NAYAR AND OTHERS (DEFENDANTS), RESPONDENTS.*

1886.
August 18.
November 4.

Civil Procedure Code, s. 244.

R having obtained a decree for money against K, the karnavan of the defendants, K died and the defendants were made parties to the suit as representatives of K.

Tarwad property was then attached by R, and the defendants having objected, the Court raised the attachment. R sued for a declaration that the property released was liable to be sold :

Held, that the suit was barred by s. 244 of the Code of Civil Procedure.

APPEAL from the decree of V. P. D'Rozario, Subordinate Judge of South Malabar, reversing the decree of T. Subbannacharyar, District Munsif of Kutnad, in suit 77 of 1884.

The facts appear sufficiently from the judgment of the Court (Collins, C.J., and Brandt, J.)

Parathasaradhi Ayyangar and *Sankaran Nayar* for appellant.

Sankara Menon for respondents.

JUDGMENT.—Padinharam Kunnath Ravunni-Menon, the appellant (plaintiff), obtained a decree for money in original suit 314 of 1882 on the file of the District Munsif of Chowgat against Kondi Menon, the late karnavan of the defendants (respondents).