As to the contention that the finding in the former suit against the truth and validity of the oral will was sufficient for the dismissal of that suit, there is nothing before us to show that the claim was disallowed on that ground only. In *Krishna Behari Roy* v. *Brojeswari Chowdranee*(1), the Judicial Committee of the Privy Council observed that the adjudication on the question of adoption in a previous suit concluded the party claiming to be adopted in a subsequent suit, although the decision in the former suit proceeded on the finding that a patni lease granted by the mother of the plaintiff was not in excess of her powers as a widow, and although the determination that the adoption was true was not necessary to the dismissal of the claim, though it would certainly be material to the ground of claim.

We are, therefore, of opinion that this second appeal must fail, and we dismiss it with costs.

APPELLATE CIVIL.

Before Mr. Justice Brandt and Mr. Justice Parker.

VENKATACHALAM (PLAINTIFF), APPELLANT,

and

VENKATAYYA AND OTHERS (DEFENDANTS), RESPONDENTS.*

1887. Sept. 6, 13.

Limitation Act XIV of 1859, *s.* 1, *cls.* 9, 10, 16.

The period of limitation applicable under Act XIV of 1859 to suits upon written instruments which could not have been registered under the law in force at the time of execution of such instruments is six years under cl. 16 of s. 1 of the said Act.

APPEAL from the decree of W. F. Grahame, Acting District Judge of Cuddapah, confirming the decree of S. Dorasámi Ayyangár, District Múnsif of Cuddapah, in suit No. 176 of 1884.

This appeal was reheard after an application for review of judgment had been granted on 1st February 1886.

The Acting Advocate-General (Mr. *Spring Branson*) and *Balaji Ráu* for appellant.

Rama Ráu for respondents.

The facts necessary, for the purpose of this report, appear from the judgments of the Court (Brandt and Parker, JJ.).

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(1) L.R., 2 I.A., 283.

* Second Appeal No. 483 of 1885.

VENKATA-CHALAM v. VENKATAYYA.

BRANDT, J.—A suit brought upon the bond, dated the 13th April 1848 (exhibit III), would not have been barred under the law of limitation then in force, viz., Regulation II of 1802 (Madras) at the time when the bond was renewed under exhibit VII, viz., the 15th January 1858.

And in the case of the bond of the 28th May 1848 (exhibit XII), it also was renewed within twelve years from the date on which the sum secured became payable on default of payment of instalments as agreed, viz., the 20th May 1850, the renewed bond (exhibit IX) bearing date the 26th January 1862, and a suit might, therefore, have been instituted upon the latter bond within three years from the date of the passing of the Act of 1859, viz., the 5th May 1859.

The question, then, is whether the renewals in 1869 of the debt secured by exhibit VIII (dated the 17th October 1863), which latter was in renewal of exhibit III, and in 1867 of exhibit IX by other documents, being within six years, but in excess of three years, suits upon the bonds of 1862 and 1863 were or were not barred in 1867 and 1869 respectively?

I am of opinion that the six years' rule must be held to apply.

The law as to registration in force up to the 1st January 1865 was contained in Regulation XVII of 1802 (Madras) and Act XIX of 1843. Under that law the only deeds which the registering officer was "authorized and required" to register were deeds relating to real property, wills and authorities to adopt. The bonds (exhibits VIII and IX) could not then have been registered under the law then in force.

Whether it might be possible to put some other construction upon cls. 9, 10, and 16 of s. 1 of the Limitation Act of 1859 I do not think it necessary to consider. These provisions have been, on several occasions, the subject of judicial decision by this court—*Gurivi Chetty* v. *P. Aiyappa Naidu*(1), *Y. Venkatachalam* v. *Mala Kasigadu* (2), and we should follow those decisions, unless strong reasons appear for doubting them, and to me no such reasons appear.

A clear distinction was intended to be drawn between suits for money lent and on contracts not evidenced in writing and suits in which the loan or contract was evidenced in writing, and it

(1) 2 M.H.C.R., 329. (2) 5 M.H.C.R., 63.

would seem that the general rule aimed at was to allow three years in case of the former class of suits and six years in the case of the latter, an exception being, however, made in the case of the latter to this extent that, where the instrument could have been, but was not, registered, or was registered, but not within six months from the date of its execution, the creditor should be in no better position than if he held no security in writing. Section 10 does not expressly deal with the case of writings which could not be registered, but, unless by implication suits on such writings are taken to fall within cl. 16 of the section, a suitor in a suit based upon such an instrument would stand on the same footing as regards limitation as one bringing a suit under cl. 9.

It is more reasonable to infer an intention to place the holder of an instrument which he could not register on the footing of the holder of a registered instrument.

The result is that, in my opinion, our decision in second appeal No. 483 of 1885 should be set aside and the decree of the Lower Appellate Court restored, the second appeal being dismissed with costs. I would allow no costs in the matter of this application for review as the exception to the plea of bar by limitation was not fully argued in the second appeal on the point on which we now allow the appeal.

PARKER, J.—I agree with my learned colleague that the debts secured by the renewals of 1869 and 1867 (exhibits XI, XIV, XV, and XVI) were not barred.

The bonds then renewed were exhibit VIII executed in 1863 and exhibit IX executed in 1862, and the question is whether the period of limitation for suits on these bonds was three years or six.

The Limitation Act applicable was Act XIV of 1859 and the bonds VIII and IX could not have been registered by virtue of any law or regulation then in force. The period of limitation was, therefore, six years under s. 1, cl. 16.

It was argued by the learned Advocate-General that Act XIV of 1859 made no distinction between loans and loans evidenced by writing, but that the only distinction was between loans (whether in writing or not) and loans of which the registration was compulsory. This view, however, is not in accordance with the rulings of this court reported at II, Madras High Court Reports, 329 and 401, by which we are bound.

VENKATACHALAM v. VENKATAYYA.

When the appeal was before us for the first time the point was not taken as to what was the right period of limitation calculated under Act XIV of 1859, and hence there was an oversight in assuming that the time was three years as under the present law.

The second appeal must, therefore, be dismissed with costs, but we make no order as to costs in the review.

APPELLATE CIVIL.

Before Mr. Justice Muttusámi Ayyar and Mr. Justice Brandt.

1887. Aug. 31.

TIRUPATI AND OTHERS (DEFENDANTS), APPELLANTS,

and

NARASIMHA (PLAINTIFF), RESPONDENT.*

Civil Procedure Code, s. 43.

A leased certain land to B. The lease expired in 1877. B continued to hold over and refused to accept a fresh lease from A. A sued B in 1882 for mesne profits for three years, but did not claim possession of the land. The suit was dismissed on a preliminary point. A then sued B to recover possession of the land and mesne profits. It was argued that A's claim to the land was barred by s. 43 of the Code of Civil Procedure, because he omitted to claim the land in the former suit for mesne profits:

Held that the suit was not barred.

APPEAL from the decree of Venkata Rangayyar, Acting Subordinate Judge at Ellore, confirming the decree of M. Ramayya, District Múnsif of Tanuku, in suit No. 139 of 1884.

Bhashyam Ayyangar for appellants.

Rama Rau for respondent.

The facts appear from the judgment of the Court (Muttusámi Ayyar and Brandt, JJ.).

JUDGMENT.—The land in dispute, which is in the appellants' possession, belongs to the respondent. The appellants originally entered into possession under a lease which expired in 1877. They continued, however, to hold over, and refused to accept a fresh lease from the respondent. In 1882 the landlord claimed mesne profits for three years, but did not claim possession of the land on the ground that the appellants were liable to be evicted. The District

* Second Appeal No. 908 of 1886.