

Wards was all that was needed and overlooked the provisions of the Act, first in regard to the special limitation subject to which the jurisdiction vesting in him under the Act ought to be exercised, and next in regard to the conditions which limit his power to appoint a Curator. These omissions or errors of procedure clearly amount to material irregularity in the investigation of a matter on which his jurisdiction depended within the meaning of s. 622 of the Code of Civil Procedure.

We therefore set aside the order appointing the Head Assistant Collector a Curator under section 5.

The summary suit which has been fixed must be heard and disposed of by the Judge in accordance with the provisions of the Act regard being had to the very special circumstances to which the Act was designed to apply and subject to the limitations to which we have referred above.

We do not think it necessary in this order to refer to the affidavit and other documents which have been filed in this Court as they were not before the Judge at the time of making the order we are asked to revise.

The counter-petitioner (the Collector) must pay the costs in this Court, and the costs in the Court below will abide and follow the result of the summary suit.

PAPAMMA
v.
THE COL-
LECTOR OF
GODÁVARI.

APPELLATE CIVIL.

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

RAMANAMMA (PLAINTIFF), APPELLANT,

v.

SAMBAYYA AND OTHERS (DEFENDANTS), RESPONDENTS.*

1889.
March 12.

*Maintenance—Limitation—Limitation Act XIV of 1859, s. 1, cl. 13—
Refusal of persons liable to maintain—Cause of action.*

In a suit for maintenance brought in 1887 by a Hindu widow against the undivided family of her deceased husband who had died about 24 years before suit, it appeared that her maintenance had not been made a charge on specific property :

Held, that time began to run against the plaintiff's claim under the Limitation Act of 1859, only from the date of refusal on the defendants' part to maintain her. *Narayan Rao Ramchandra Pant v. Ramabai* (I.L.R., 3 Bom., 415) followed.

* Second Appeal No. 1170 of 1888.

RAMANAMMA
v.
SAMBAYYA.

SECOND APPEAL against the decree of V. Srinivasa Charlu, Subordinate Judge of Cocanada, in appeal suit No. 124 of 1887, confirming the decree of Y. Janakiramayya, District Munsif of Cocanada, in original suit No. 236 of 1887.

Suit by a Hindu widow against the undivided brother and nephews of her late husband, to establish her right to maintenance, to constitute it a charge on the family lands and to recover a certain sum by way of arrears of maintenance.

Her husband died in or about 1853. In 1863 she executed a kararnama which was relied on by the defendants as amounting to a release of her claim to maintenance.

The District Munsif dismissed the suit. He adopted the defendants' construction of the kararnama; and also, finding the plaintiff's allegation that she had been maintained by the defendants until 1885 to be false, he held that her suit would in any case have been barred under the Limitation Act. Upon the latter point he said:—

“It is evident that the plaintiff's claim for maintenance was governed by the Limitation Act XIV of 1859, as her husband died in 1853; and as she never received any maintenance from the defendants, her claim for the same was barred, under Act XIV of 1859, s. 1, cl. 13, before the year 1866, *Abbakku v. Ammu Shettati*(1); as the remedy was extinguished long before the Limitation Act of 1871 came into force, the more indulgent provisions in the later enactments cannot help the plaintiff and revive a claim once barred, I find this issue in defendants' favor and against the plaintiff.”

On appeal the Subordinate Judge affirmed the decree of the District Munsif.

The plaintiff preferred this second appeal.

Subba Rao for appellant,

Desikacharyar for respondents.

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

JUDGMENT.—Two points arise in the case. In holding that the suit is barred by limitation, the Courts below have followed the decision in *Abbakku v. Ammu Shettati*(1) and held that section 1,

clause 13 of the Act of 1859 is applicable to the case. But the judgment of the Privy Council in *Narayana Rao Ramchandra Pant v. Ramabai* (1) makes it clear that that sub-section does not apply unless the maintenance has been made a charge on specific property. That is not the case here, and, therefore, time began to run against the plaintiff only from the date of refusal on the defendants' part to maintain her, when the cause of action arose. With regard to the release, we are also of opinion that it has been misconstrued. The release was given at a time when no claim for maintenance was under discussion, and there is nothing to show that it related to maintenance. We must reverse the decree of the Lower Appellate Court and remand the appeal for disposal on the merits. Costs to be provided for in the revised decree.

RAMANAMMA
*
SAMBAYYA.

APPELLATE CIVIL.

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

SRINIVASA AND OTHERS (PLAINTIFFS), APPELLANTS,

v.

SIVAKOLUNDU (DEFENDANT), RESPONDENT.*

1889.
March 25.

Provincial Small Cause Court Act (Act IX of 1887), sched. II, art. 41—Civil Procedure Code, s. 586—Suit for contribution—Joint property.

Lands of which part belonged to the plaintiffs and part to the defendant were comprised in a patta which ran in the names of the plaintiffs and another. The defendant's share of the assessment fell into arrear and was collected from the plaintiffs who now sued to recover Rs. 200 being the amount so paid together with interest :

Held, the suit was of a nature cognizable by a Court of Small Causes, and so no second appeal lay. *Krishna Kamini Chowdhurani v. Gopi Mohun Ghose Hazra* (I.L.R., 15 Cal., 652) followed.

SECOND APPEAL against the decree of G. D. Irvine, District Judge of Coimbatore, in appeal suit No. 19 of 1888, reversing the decree of T. Dorasami Pillai, District Munsif of Erode, in original suit No. 739 of 1885.

Suit for Rs. 200. The plaint was summarized by the District Munsif as follows :—

(1) I.L.R., 3 Bom., 415.

* Second Appeal No, 1646 of 1888.