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v.  
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admissible under section 19 of the Limitation Act, the present claim will not be barred, but it is contended that, on the true construction of paragraph 2 of section 19, such evidence is not admissible, even though the document may be lost, destroyed or even withheld by the opposite party. We are unable to accept this contention. We agree with the Calcutta High Court for the reasons mentioned in *Shambhu Nath Nath v. Ram Chandra Shaha*(1), that section 19 of the Limitation Act must be read with sections 65 and 91 of the Evidence Act and that it does not exclude secondary evidence of contents of documents in cases in which such would be admissible under section 65.

This second appeal fails therefore and is dismissed with costs.

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## APPELLATE CIVIL.

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

1892.  
March 6, 30.

ANANDA RAZU (PLAINTIFF), APPELLANT,

v.

VIIYYANNA AND ANOTHER (DEFENDANTS), RESPONDENTS.\*

*Limitation Act—Act XV of 1877, sched. II, art. 120—Suit for the apportionment of assessment on land.*

In a suit by the holder of one share against the holders of other shares in inam land, included in a single patta and assessed in an entire sum, for apportionment of the assessment, it appeared that the plaintiff had asked for the apportionment to be made more than six years before suit:

*Held*, that the suit was not barred by limitation.

SECOND APPEAL against the decree of M. B. Sundara Rau, Subordinate Judge of Ellore, in appeal suit No. 436 of 1890, confirming the decree of V. Krishnamurthi, District Munsif of Tanuku, in original suit No. 114 of 1890.

The plaintiff and the defendants were the holders of various shares of land comprised in a single patta, on which an entire sum was assessed by way of kattubadi. The plaintiff now sued for an apportionment of this assessment. It appeared that more than six years before suit, the plaintiff had asked for such apportionment,

and, on this ground, both the Lower Courts held that the suit was barred.

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The plaintiff preferred this second appeal.

*Bashyam Ayyangar* for appellant.

*Venkataramayya* for respondents.

JUDGMENT.—The question for decision in this appeal is whether the Lower Courts are wrong in dismissing the suit as barred by article 120 of schedule II of the Limitation Act. The suit was brought for the apportionment of kattubadi and quit-rent payable on the land in possession of the plaintiff.

Plaintiff's case is that of an entire area of 164 acres charged with Rs. 516-6-6 as kattubadi and quit-rent. He is in possession of 128-92 acres as purchaser from, and of 7-32 acres as tenant under eighth defendant, that defendants Nos. 2 to 7 are in possession of the remainder in several portions as purchasers, that the average amount payable for each acre is Rs. 3-2-4½, but that defendants Nos. 1 to 5 have been paying less than the amount so calculated on the acres 18-22 in their possession, which has, in consequence, been levied from plaintiff since 1882. Hence this suit to have the kattubadi and quit-rent apportioned in the several shares and for the recovery of the excess amount of Rs. 55-5-3 (at Rs. 18-7-1 per annum) levied from plaintiff during the three faslis immediately preceding the suit, and interest thereon.

First defendant disclaimed all interest in the property in question and defendants Nos. 6, 7 and 8 supported the plaintiff's claim, while defendants Nos. 2 to 5 pleaded that the apportionment was rightly made by the Head Assistant Collector in August 1881 on the taram rent or sists of the lands, and that they have been paying accordingly ever since, and no fresh apportionment is necessary. They further pleaded that the suit is time-barred, as the Lower Courts have found. Hence this appeal.

We do not agree with the Courts below that the claim for apportionment is barred by limitation. The parties to the suit hold distinct portions of the inam, subject to payment of the kattubadi under one and the same inam patta. Their position is therefore analogous to that of joint pattadars, who have to bear a common burden as between themselves and Government. So long as the joint liability lasts, each is entitled to claim an apportionment and such claim can no more be time-barred than can a claim for rent so long as the title to the land is not extinct. If the order of the

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Head Assistant Collector, referred to by the defendants, was made under any legal authority, and could as such, be held to be binding, it might bar the suit, but we are not referred to any legal enactment which would justify our treating the order as being-conclusive. The mere fact that such an order was made can have no greater force than the expression of an opinion by a revenue officer.

The decision in *Durga Pershad v. Ghosita Gorla*(1) is only authority for the proposition that article 120 of schedule II of the Limitation Act is applicable to a suit by a tenant against his landlord for apportionment of the rent payable to such landlord for the portion of land obtained by him on partition, out of what had theretofore been held by the tenant under all the co-shares jointly.

The present is not a suit between tenant and landlord, but by a proprietor against other proprietors for apportionment of the assessment on lands included in a single patta. The decision in *Durga Pershad v. Ghosita Gorla*(1) is therefore not in point.

In allowance of this appeal, we set aside the decrees of both the Courts below and remand the suit to the District Munsif for replacement on his file and disposal according to law.

The costs of this appeal and in the Lower Appellate Court will be paid to the plaintiff by defendants Nos. 2 to 5.

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## APPELLATE CIVIL.

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

KUNJI AMMA AND OTHERS (PLAINTIFFS NOS. 2 to 5, 7 to 15,  
17 to 19, 22 to 47), APPELLANTS,

v.

RAMAN MENON AND OTHERS (DEFENDANTS NOS. 5, 7, 8, 8 to 60),  
RESPONDENTS.\*

*Civil Procedure Code, s. 13—"Res judicata"—Court of competent jurisdiction—Act  
X of 1877, s. 438—Suit against a Sovereign Prince.*

A suit for a declaration of the title of the plaintiffs' tarwad to certain land was filed in a District Court against the Maharaja of Cochin and others, including the

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(1) I.L.R., 11 Cal., 284.

\* Appeal No. 156 of 1890.