

ever, to plaintiff's right to establish his claim of easement, if any by fresh suit.

Respondent will pay appellants' costs of this appeal, and also in the Lower Appellate Court.

SAMRAYYA
v.
GOPALA-
KRISHNAMMA.

APPELLATE CIVIL.

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

CHATHU (DEFENDANT NO. 3), APPELLANT,

v.

VIRARAYAN (PLAINTIFF) RESPONDENT.*

1892.
April 11.

Limitation Act—Act XV of 1877, s. 19—Acknowledgment in writing—Evidence Act—Act I of 1872, ss. 65, 91—Secondary evidence.

Limitation Act, s. 19, must be read with Evidence Act, ss. 65 and 91, and does not exclude secondary evidence in cases where such would be admissible under s. 65.

SECOND APPEAL against the decree of E. K. Krishnan, Subordinate Judge of South Malabar, in appeal suit No. 911 of 1889, reversing the decree of T. V. Anantan Nayar, District Munsif of Calicut, in original suit No. 531 of 1888.

Suit to recover possession of certain lands with arrears of rent. The District Munsif held that the claim was barred by limitation and dismissed the suit. His decree was reversed, on appeal, by the Subordinate Judge, who passed a decree as prayed, holding that the suit was not barred by reason of an acknowledgment in writing, which had been filed as exhibit VIII in a previous suit. This document was not filed in the present case, and it appeared to be in the possession of defendant No. 3. Secondary evidence of its contents, however, was given upon which the Judge relied.

Defendant No. 3 preferred this second appeal.

Mr. D'Rozario for appellant.

Sankara Nayar for respondent.

JUDGMENT.—It is conceded that, if secondary evidence of the contents of the document filed as exhibit VIII in original suit No. 747 of 1878 on the file of the District Munsif of Calicut is

* Second Appeal No. 1121 of 1891.

CHATHU
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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.

APPELLATE CIVIL.

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

1892.
March 6, 30.

ANANDA RAZU (PLAINTIFF), APPELLANT,

v.

VIIYANNA 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,