JUDGMENT.—We think that, under section 85 of the Transfer of Property Act, it is necessary to make Lakshumanan Chetti a party, as he has an interest in the property comprised in the mortgage, even though the plaintiff may not ask for a personal decree against him. He is, at any rate, interested in item 4.

The subsequent encumbrancers must also be made parties unless the items of property sold or mortgaged to them have been excluded from the properties against which plaintiff seeks a decree. It may be that sales or mortgages made with plaintiff's concurrence have excluded such items from liability, but, if so, they must be excluded from the suit. It is not clear that such is the case. The decrees of the Courts below must be reversed and the suit remanded to the Court of First Instance for disposal.

We will give the appellant the costs of this appeal and the other costs will abide and follow the result.

APPELLATE CIVIL.

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

1892. March 23.

SAMBAYYA AND ANOTHER (DEFENDANTS), APPELLANTS,

v.

GOPALAKRISHNAMMA (PLAINTIFF), RESPONDENT.*

Practice—Variance between pleadings and proof—Relief not asked for.

The plaintiff, alleging that a certain lane was his property and that he had been obstructed by the defendants from building a door upon it, sued for an injunction and for damages. The Court held that the plaintiff's title to the land was not established, but passed a decree declaring that both the plaintiff and the defendants were entitled to use the lane by right of easement :

Held, that this declaration, which had not been asked for, should not have been made, and that the suit should have been dismissed for want of proof of the title alleged by the plaintiff.

SECOND APPEAL against the decree of M. B. Sundara Rau, Subordinate Judge of Ellore, in appeal suit No. 468 of 1890, reversing the decree of Y. Janakiramyya, District Munsif, Ellore, in original suit No. 17 of 1890.

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* Second Appeal, No. 1026 of 1891.

SAMBAYYA v. GOPALA-KRISHNAMMA.

The plaint stated that a certain lane was the property of the plaintiff, who had erected the frame of a door across it, and that the defendants wrongfully removed the door frame, and prayed for an injunction and for damages. The District Munsif dismissed the suit, on the ground that the lane was not the property of the plaintiff. On appeal, the Subordinate Judge upheld this finding, but passed a decree, declaring that the plaintiff and defendants had both a right of easement over the lane, and decreed "that they should use it only as a passage, in such a way as they may not interrupt each other from using it."

The defendants preferred this second appeal.

Gopalasami Ayyangar for appellants.

Venkatarama Sarma for respondent.

JUDGMENT.—The suit brought by respondent was for restraining the appellants from obstructing him in raising a door across the lane in dispute, on the ground that the lane was his exclusive property.

The Subordinate Judge has found that the lane does not belong to the respondent.

Instead of dismissing the suit on that finding, he has declared that both plaintiff and defendants have rights of easement by long use over the lane, and has decreed that neither party should interfere with the other in the exercise of this right.

In a suit brought to establish a right of ownership of property, it is not competent to the Court to enter into, and decide the question of right to an easement over the same.

Though, as observed in *Virasvami Gramini* v. *Ayyasvami Gramini*(1), the Courts are bound to take into consideration all the rights of the parties to a suit, both legal and equitable, and give effect thereto by their decrees, as far as possible, they are not at liberty to grant a relief either not prayed for in the plaint, or that does not naturally flow from the ground of claim as stated in the plaint.

Neither the pleadings nor the issues in the present case suggest a right of easement and the parties cannot be fairly presumed to have proceeded to trial with reference to such right.

We therefore set aside the decree of the Subordinate Judge and restore that of the District Munsif, without prejudice, how-

(1) 1 M.H.C.R., 477.

ever, to plaintiff's right to establish his claim of easement, if any by fresh suit. SAMBAYYA v. GOPALA-KRISHNAMMA.

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

APPELLATE CIVIL.

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

CHATHU (DEFENDANT No. 3), APPELLANT, 1892. April 11.

v.

VIRARAYAN (PLAINTIFF) RESPONDENT.*

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 defendent No. 3. Secondary evidence of its contents, however, was given upon which the Judge relied.

Defendent 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

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* Second Appeal No. 1121 of 1891.