

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Wilkinson.

VIRASAMI (PLAINTIFF), APPELLANT,

v.

RAMA DOSS AND ANOTHER (DEFENDANTS), RESPONDENTS.*

Limitation—Suit for mutation of names in register—Parties.

The Collector of the district is a necessary party to a suit by a purchaser against his vendor to compel mutation of names in the register. Such a suit is not barred by limitation unless the Collector has refused without qualification to effect such mutation, negating the plaintiff's right to the land in question.

APPEAL against the decree of S. T. McCarthy, District Judge of Chingleput, in original suit No. 9 of 1887.

The plaintiff purchased from the first defendant two zamin villages on 6th March 1872 and sought to have his name substituted for that of the vendor in the registry. In May 1876, the Collector refused to effect the mutation of names for want of the consent of the vendor; and, again, in July 1882, he made an endorsement on an application of the plaintiff for mutation of names as follows:—"Registry cannot be transferred to the plaintiff's name unless he appears with his vendor." The plaintiff sued the vendor in 1887 for a decree "directing the registers of the zamin to be made in the name of the plaintiff instead of in the name of the defendant." The defendant pleaded, but failed to prove an agreement for a resale to him of the property in question.

The District Judge dismissed the suit as being barred by limitation. His decree was reversed on appeal (appeal No. 74 of 1888) by the High Court (MUTTUSAMI AYYAR and WILKINSON, JJ.), and the suit remanded. Their Lordships said:—"We hold that Act I of 1876 has no application, that following *Mangamma v. Timmapaiya*(1), the Collector is a necessary party, "and that time began to run from his refusal to register. We "reverse the decree of the Lower Court, and remand the suit for

* Appeal No. 100 of 1890.

(1) 3 M.H.C.R., 134.

“the Collector to be made a party, and direct that the suit be reheard.”

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The suit was reheard and the District Judge again passed a decree dismissing it as barred under Limitation Act, sched. II, art. 120.

The plaintiff preferred this appeal.

Subramanya Ayyar and *Sadagopachariar* for appellant.

Bhashyam Ayyangar for respondent No. 1.

The *Government Pleader* (Mr. *Powell*) for respondent No. 2.

JUDGMENT.—The sales sued upon are in terms admittedly absolute, and the alleged agreement to resell, whenever the purchase money is repaid, is found by the Judge not to have been proved. This being so, the title to the property is in the plaintiff, and, as registry follows title, it is clear on the merits the plaintiff must succeed, unless the suit is, as held by the Judge, barred by limitation. The Judge finds that the Collector refused to register the plaintiff's name in May 1876, and, upon that finding, he considers that the claim is barred by article 120 of the second schedule of the Limitation Act. He appears to us to have misapprehended our former judgment, wherein it was stated that the time would begin to run from the Collector's refusal to register. The refusal must be absolute and unqualified, negating the plaintiff's right to the property, of which registry was sought. The evidence in the case discloses only a conditional refusal, and it does not show that the Collector ever denied the appellant's title, or that he did more than refuse to register unless and until the defendants appeared before him and admitted the plaintiff's title or the plaintiff obtained, what is equivalent to such admission, a decree of Court. The appellant's title being absolute upon the facts now found, we are of opinion that no question of limitation arises, and that the claim must be decreed with costs throughout.
