

NARAYANA  
v.  
SHANKUNNI.

general rule, the plaintiff may be permitted even on appeal to amend the plaint when he had framed it *bonâ fide* under a mistake or erroneous advice, and the other party could be adequately compensated by an award of costs, but it must be observed that when such amendment might possibly create a necessity for fresh written statements and for fresh issues and practically amount to a trial *de novo* from the commencement, it is much more convenient to leave the plaintiffs to the liberty of maintaining a suit for ejection, so that the opposite party might in no way be prejudiced in his defence or harassed with a second trial of the same suit. Under the circumstances we do not consider that this is a case in which we should allow the suit to be changed into one for ejection at this stage. We reverse the decree of the Subordinate Judge on the ground that a declaratory suit will not lie and dismiss the suit with costs.

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## APPELLATE CIVIL.

*Before Mr. Justice Parker.*

THANIKACHELLA AND ANOTHER (DEFENDANTS), APPELLANTS,

v.

SHUDACHELLA (PLAINTIFF), RESPONDENT. \*

1891.

November 12.

*Limitation Act—Act XV of 1877, sched. II, arts. 99, 132—Payment of entire rent by a co-tenant—Suit for contribution.*

One of two persons, having a joint holding from a mittadar, paid the whole of the mittadar's dues for one year, and more than three years after the date of payment he sued the other for contribution:

*Held*, the payment did not create a charge on the land, and the suit was consequently barred by limitation.

APPEAL against the order of P. Narayanasami Ayyar, Subordinate Judge of Salem, in appeal suit No. 271 of 1889, reversing the decree of T. S. Krishna Ayyar, District Munsif of Krishnagiri, in original suit No. 133 of 1889, and remanding the suit for retrial.

The plaintiff and defendants were described in the plaint as owners each of one moiety of two permanent ijara villages held on

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\* Appeal against Appellate Order No. 134 of 1890.

patta in the plaintiff's name, on which a certain sum was annually payable to the mittadars; the plaintiff, it was alleged, paid the whole of this sum for one year on 29th August 1885, and he now sued for contribution.

The District Munsif held the suit was barred by limitation and dismissed the suit. The Subordinate Judge on appeal reversed the decree and remanded the suit, holding, on the authority of *Seshayiri v. Pichu*(1), that the payment constituted a charge and the period of time applicable was twelve years in the Limitation Act, sched. II, art. 132.

The defendants preferred this appeal.

Mr. Norton for appellants.

Sivasami Ayyar for respondent.

JUDGMENT.—The case quoted by the Subordinate Judge was under the Revenue Recovery Act, not under Act VIII of 1865.

The suit, however, is not for rent, but for contribution on account of a payment made by plaintiff in defendants' interest. There is no provision of law making such a claim a charge upon immoveable property. Article 99 of the Limitation Act applies.

The decree of the Subordinate Judge must be reversed and that of the District Munsif restored. The appellants are entitled to their costs in this and in the Lower Appellate Court.

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## APPELLATE CIVIL—FULL BENCH.

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

REFERENCE UNDER STAMP ACT, s. 50.\*

1891.  
October 13.

*Stamp Act—Act I of 1879, sched. I, art. 54—Release—One-anna adhesive stamp—Full stamp-duty leviable.*

A release chargeable with four-annas stamp-duty was executed on paper bearing a one-anna adhesive receipt stamp:

*Held*, that in calculating the stamp due the one-anna stamp ought not to be taken into consideration

*Semle*: A Collector is entitled under Stamp Act, 1879, s. 50, to refer to the

(1) I.L.R., 11 Mad., 452.

\* Referred Case No. 4 of 1891.