

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

RAMACHANDRA (PLAINTIFF), APPELLANT,

v.

JAGANMOHANA AND OTHERS (DEFENDANTS NOS. 3 TO 6),
RESPONDENTS.*

1891.
April 29.
September 9.

*Limitation Act—Act XI of 1877, sched. 11, arts. 131, 132, 140—Kattubadi—
Recurring right—Rent Recovery Act—Act VIII of 1865 (Madras), s. 7.*

In a suit by a zamindar against the grantee of an inam, to recover arrears of kattubadi, it appeared that no payment had been made in respect of kattubadi for a period of twelve years before suit. The suit was dismissed in the Court of first appeal on the findings (1) that no exchange of patta and muchalka had been proved, (2) that the plaintiff had not proved his right to the kattubadi, and (3) that his right to it, if any, was barred by limitation.

On second appeal by the plaintiff :

Held, that the second and third of the above findings should be accepted and the second appeal dismissed *Alubi v. Kunhi Bi* (I.L.R., 10 Mad., 115) distinguished.

Per cur. We do not think it necessary to consider whether if there had been a grant subject to kattubadi, patta and muchalka ought to have been exchanged.

SECOND APPEAL against the decree of H. R. Farmer, District Judge of Vizagapatam, in appeal suit No. 33 of 1890 reversing the decree of B. Rajalinga Sastri Garu, District Munsif of Parvatipore, in original suit No. 389 of 1888.

The plaintiff, zamindar of Salur, sued to recover from defendants twelve years' arrears of kattubadi accrued due on service inam lands at Rs. 30 per annum, alleging that the last payment was made in 1883 for the amount due for 1871-72.

Defendants pleaded, *inter alia*, that the lands were inam lands free of kattubadi, that no services were ever rendered, that a permanent patta was given to the ancestor of defendants by the ancestor of plaintiff, that plaintiff's claim was barred by limitation, and that plaintiff's claim to kattubadi for more than three years prior to suit was barred by limitation.

The District Munsif passed a decree for the plaintiff for five years' arrears. The District Judge on appeal reversed this decree and dismissed the suit.

* Second Appeal No. 1254 of 1890.

RAMA-
CHANDRA
v.
JAGAN-
MOHANA.

The plaintiff preferred this second appeal.

Subramanya Ayyar for appellant.

Mr. *Gantz* and Mr. *K. Brown* for respondents.

JUDGMENT :—The appellant is the zamindar of Salur and respondents are the descendants of the grantee of an inam. The questions for decision were whether the original grant was rent free or subject to the payment of kattubadi of Rs. 30 a year and whether the present suit for arrears of kattubadi for a period of twelve years was barred by limitation. The District Munsif determined both questions in appellant's favour, but decreed his claim to arrears of kattubadi for five years only, commencing with fasli 1293 on the ground that kattubadi had been paid for fasli 1292, and that, in the circumstances of the case, he was entitled to presume that there had been no arrears due for the prior period. From this decree defendants Nos. 3—6 appealed, and on appeal the District Judge found that payment of kattubadi for 1292 was not proved, and that the entry in exhibit G as to a part payment in 1871-72 was not reliable and, in the view which he took of the facts, he held that the appellant was not entitled to claim any kattubadi, that even if he was, he could only claim arrears for three years before suit and that his right to kattubadi, if any, had become extinct under section 28 of the Limitation Act by reason of respondents' refusal to pay it for more than twelve years prior to suit. He observed also that the kattubadi claimed by the appellant was a mere rent and that no suit would lie for its recovery, no patta and muchalka having been exchanged as required by Act VIII of 1865. In the result, the Judge dismissed appellant's suit with costs ; hence this second appeal.

Upon the facts found by the Judge, we think his decision is right though we do not agree in all the reasons assigned by him in its support. He discusses at some length the question whether kattubadi payable to a zamindar is a mere rent or a rent charge, but we entertain no doubt that when a grant is made subject to an annual payment of kattubadi, it represents the portion of the revenue reserved by the grantor and excluded from the interest alienated as inam. As regards the question, whether the appellant was entitled to claim payment of kattubadi, the Judge observes that none was paid prior to 1846, and infers from that fact that the original grant was rent free. He rests this opinion on exhibit H and we cannot say that it is not well founded. Though the

District Munsif found that kattubadi was paid in 1871-72 and in 1883, yet the Judge after discussing the evidence, set aside the finding and held that the evidence in its support was not trustworthy. This is a question of fact which it was for him to determine and in second appeal we are bound to accept his conclusion as to the weight due to the evidence. Again, the suit was brought on the 1st November 1888, and upon the evidence as appreciated by the Judge, no rent had been paid not only for twelve years prior to the date of the suit but also from 1869. There only remains then the fact that when the appellant's estate was under the Court of Wards a kattubadi had been levied prior to 1869. The District Munsif considered that such payment, though made more than twelve years ago, was sufficient proof of the appellant's title, but the Judge declined to attach weight to it as it was levied under the erroneous impression that an alienee claiming from a zamindar could not make good a title by adverse possession for twelve years, and as on that ground it was not levied in 1869 when the Court of Wards again happened to take charge of the estate. We cannot say that if kattubadi had been irregularly levied for a time and then abandoned more than twelve years before suit, it is wrong in law to refuse to accept such irregular collection as proof of a legal right, especially when that right, if any, has become barred by non-payment for more than twelve years before suit. The District Munsif relied upon the decision *Alubi v. Kunti Bi*(1), but the case now before us is not all fours with it. There the nature of the tenure and the liability to pay kattubadi were admitted, the only matter in dispute being whether the then plaintiff was really the party to whom it ought to be paid, and as his title was considered to be established, the Court held that there was no statutory bar. In the present case the nature of the tenure and the plaintiff's right to kattubadi were denied. In the view which we take of the case we do not think it is necessary to consider whether if there had been a grant subject to kattubadi, patta and muchalka ought to have been exchanged. We accept the findings that the appellant has not proved his right to the kattubadi and that the right, if any, is barred by limitation and dismiss the second appeal with costs.

(1) I.L.R., 10 Mad., 115.