

with the question of limitation the claim would not be *res judicata* if we were at liberty to enter on the merits, we must still hold that it is barred by limitation on the ground that the right to sue had accrued more than twelve years before the present suit and during the lifetime of appellant's predecessor in the stanom. Another contention on appellant's behalf is that, as respondent did not state in the previous suit who was the uralan of the devasom; or that he was himself the uralan, the claim cannot be barred. We are unable to accede to this contention. It is not necessary that respondent should have either claimed the uralima right or stated in whom it was vested, and it is sufficient that he then denied that appellant's predecessor in the stanom was the uralan or that the relation of uralan and pattamali subsisted between them. It is then argued that article 124 of the second schedule of the Act of Limitation could not apply unless respondent stated who the real uralan was. But we do not think that that article is applicable, the suit being based on the alleged relation of uralan and pattamali between appellant and respondent. The suit is clearly barred either by article 120 or 144, and as more than twelve years had elapsed before suit, it is unnecessary to decide which article applies. The present case is similar to the one in *Balvant Rao Bishwant Chandra Chor v. Purani Mal Chaube*(1).

The appeal must fail, and we dismiss it with costs.

APPELLATE CIVIL—FULL BENCH.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, Mr. Justice Muttusami Ayyar, Mr. Justice Parker and Mr. Justice Wilkinson.

REFERENCE UNDER STAMP ACT, s. 46.*

Stamp Act—Act I of 1879, s. 51 (d), (6).

1892.
August 9

A mortgage-deed, which provided for the transfer of possession of the mortgage premises, was executed to secure the re-payment of money to be advanced for the discharge of certain debts owing by the executants. The instrument was stamped but not registered; and on its appearing that the amount of the debts in question exceeded the sum named, the intended mortgagee refused to carry out the

(1) L.R., 10 I.A., 90.

* Referred Case No. 22 of 1892.

REFERENCE
UNDER
STAMP ACT,
s. 46.

transaction, and the executants executed a deed of conditional sale of the same premises in favor of another :

Held, that the stamp duty paid on the mortgage could be refunded under Stamp Act I of 1879, s. 51 (d), (6).

CASE referred for the decision of the High Court under Stamp Act, 1879, s. 46, by the Board of Revenue.

The case was stated as follows :—

“ On 11th August 1891, one Chinnu and seventeen others of Manthradi village, Mangalore taluk, executed a document on three stamp papers of the aggregate value of Rs. 15 in favor of one Raju Shetti, mortgaging two lands assessed at Rs. 80-6-0 for Rs. 1,500. But before the document was produced for registration, the consideration of the mortgage bond having been found inadequate to meet all the demands of their creditors, and the said Raju Shetti who had not paid the Rs. 1,500 having refused to lend more money on the security of the same property, a conditional deed of sale of the same property for Rs. 2,665 was executed and registered on 4th November last in favor of one Ravlu Prabhu. The said Chinnu now claims a refund of the value of the stamps used for the mortgage bond on the ground that that bond has been cancelled, and that the transaction intended to be effected thereby has been effected by the fresh document mentioned above. As the mortgage (with possession) originally intended in this case does not differ much from the subsequent conditional sale (subject to redemption within a given period of years), the refund applied for may, it seems, be granted under clause (d), (6), section 51, of the Stamp Act; which does not expressly require that the parties to both transactions must be the same as is laid down in the next clause (d), (7) of the same section ; but as the Board in its Proceedings, dated 24th October 1881, No. 2476, seems to have held that the parties to the two instruments should be the same under both the clauses quoted above, I request that I may be favored with orders on the subject.”

The letter of reference of the Board of Revenue after stating the facts proceeded as follows :—

“ A somewhat similar question came before this Board in 1881, and in its Proceedings, dated 24th October 1881, No. 2476, it was held that to establish the continuity of a transaction so as to bring it under the terms of clause (6), section 51 (d) of the

“ Act, it must be between the same parties. The Board, how-
 “ ever, as now constituted, doubts the correctness of this view.
 “ The omission of the words ‘ between the same parties,’ which
 “ occur in clause (7), from clause (6) seems to show that the
 “ intention of the legislature was that clause (6) should be con-
 “ strued in a sense sufficiently wide to admit of a case like the
 “ present in which, though one of the parties has been altered,
 “ and the new document is technically of a somewhat different
 “ nature, the transaction evidenced by both instruments is prac-
 “ tically the same, viz., the pledging of certain land against
 “ repayment of a loan received.

“ Clause (6), section 51 (d) of the Act, is apparently the only
 “ provision of the Act under which refund could be made in this
 “ case. Clauses (3) and (4) do not apply, for all the parties seem
 “ to have executed the document, nor does clause (5) apply, for
 “ the refusal to advance money was merely in respect of an addi-
 “ tional amount which was not originally provided for owing to a
 “ mistake.”

The *Acting Government Pleader (Subramanya Ayyar)* for the
 Board of Revenue.

JUDGMENT.—We are of opinion that the view of the Board of
 Revenue is correct, and that refund may be given under section
 51 (d), (6) of the Stamp Act.

APPELLATE CRIMINAL.

Before Mr. Justice Shephard and Mr. Justice Best.

QUEEN-EMPRESS

v.

NAGAPPA,*

1893.
 March 28.

*Criminal Procedure Code—Act X of 1882, s. 476—The nearest Magistrate of the first
 class—Jurisdiction of such Magistrate.*

A Head Assistant Magistrate sanctioned a prosecution under Criminal Procedure
 Code, s. 195, on the charge of preferring a false complaint, and forwarded his

* Criminal Revision Case No. 111 of 1893.