APPELLATE CIVIL.

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

PRESIDENT OF THE TALUK BOARD, SIVAGANGA, AND ANOTHER (DEFENDANTS), APPELLANTS,

1892. November 7.

v.

NARAYANAN (PLAINTIFF), RESPONDENT.*

Local Boards Act (Madras)—Act V of 1884, ss. 27, 156—Notice of action—Form of suit—Injunction against Taluk Board.

The plaintiff built a wall on his land situate within the limits of the Sivaganga Taluk Board. The Local Board called upon him to remove the wall as constituting an obstruction, and gave him notice that in default of his doing so it would be demolished by the authorities. The plaintiff now brought a suit against the President of the Taluk Board and the Chairman of the Union, within the limits of which the land was situated, for an injunction restraining the defendants from interfering with the wall. No notice of action was given under Local Boards Act, s. 156. In the Courts of first instance and first appeal no objection was taken to the frame of the suit with reference to the provisions of s. 27:

Held, (1) that the defendants should not be permitted on second appeal to raise such objection to the frame of the suit;

(2) that previous notice of action under s. 156 was not necessary.

SECOND APPEAL against the decree of T. Weir, District Judge of Madura, in appeal suit No. 63 of 1891, confirming the decree of S. Dorasami Ayyangar, District Munsif of Sivaganga, in original suit No. 455 of 1890.

Suit against the President of the Taluk Board, Sivaganga, and the Chairman of a Union within the taluk, for a permanent injunction restraining the Taluk Board and the Union in question from in any manner interfering with a wall erected on certain land, described in the plaint, which was the property of the plaintiff. No notice of the claim was given under Local Boards Act, s. 156, which is in the following terms:

"No action shall be brought against any Local Board, or any "of their officers, or any person acting under their direction for "anything done or purporting to be done under this Act until "the expiration of one month next after notice in writing shall

* Second Appeal No. 319 of 1892.

PRESIDENT OF THE TALUK BOARD, SIVAGANGA v. NARAYANAN.

"have been delivered, or left at the office of the Local Board, or at "the place of abode of such person, explicitly stating the cause of "action and the name and place of abode of the intended plain-"tiff; and, unless such notice be proved, the Court shall find for "the defendant; and every such action shall be commenced with-"in six months next after the accrual of the cause of action, and "not afterwards; and if any person to whom any such notice "of action is given shall, before action brought, tender sufficient "amends to the plaintiff, such plaintiff shall not recover more "than the amount so tendered, and shall pay all costs incurred by "the defendant after such tender."

The District Munsif passed a decree as prayed, and it was confirmed on appeal by the District Judge.

The defendants preferred this second appeal, stating, among other grounds, "the plaintiff's suit ought to have been dismissed "also on the ground that the suit ought to have been brought "against the Taluk Board, Sivaganga, as provided by section 27 "of the said Act and not against Messrs. W. B. Ayling and "Ramasami Ayyar."

Bhashyam Ayyangar for appellants.

Ramachandra Rau Saheb for respondent.

JUDGMENT.—Both Courts have found that the land in dispute is the private property of the plaintiff and that finding must be accepted in second appeal.

We do not think section 156, Madras Act V of 1884, applies. The cases contemplated in that section are suits for compensation and for damages, and the principle is to allow public bodies time for tender of amends to the parties as to avoid litigation—see *Chunder Sikhur Bundopadhya* v. *Obhoy Churn Bagchi*(1) followed in *Syed Ameer Sahib* v. *Venkatarama*(2), *Price* v. *Khilat Chandra Ghose*(3), *Sorabji Nassarvanji* v. *The Justices of the Peace for the City of Bombay*(4) and *Joharmal* v. *The Municipality of Ahmednagar*(5).

This principle cannot apply when the object of the suit is to obtain a declaration of title to immovable property and for an injunction to restrain interference with immovable property. No

(1) I.L.R., 6 Cal., 8. (2) See *ante*, p. 297. (3) 5 Beng. L.R., App. 50.
(4) 12 Bom. H.C.R., 250. (5) I.L.R., 6 Bom., 580.

question as to misdescription or defect of parties was taken in the courts below, and the point does not affect the merits of the case. The second appeal is dismissed with costs.

APPELLATE CIVIL.

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

MALLIKARJUNA (PLAINTIFF), APPELLANT,

v.

PULLAYYA AND OTHERS (DEFENDANTS), RESPONDENTS.*

1892. December 23.

Civil Procedure Code—Act XIV of 1882, s. 53—Amendment of plaint—Substitution of legal representative for deceased defendant.

A suit was brought to recover arrears of rent. The persons whose names were entered on the record as defendants were in fact dead when the suit was instituted. The suit was dismissed. The plaintiff appealed, and sought leave to amend the plaint by substituting for the names of the dead men those of their legal representatives, as against whom the suit would then have been barred by limitation:

Held, that the amendment should not be allowed.

CASES referred for the decision of the High Court under Civil Procedure Code, s. 617, by G. T. Mackenzie, District Judge of Kistna.

The case was stated as follows:

"The Zamindar of Challapalli filed these two suits before the "District Munsif of Masulipatam to recover rent due by tenants. "The tenants had died before the suits were filed, but the zamin- "dar's office was not aware of that. The District Munsif dis- "missed the suits. On appeal it is contended that plaintiff "ought to be permitted to amend the plaint by substituting for "the names of the dead men the names of their sons. The sons "have been served as respondents and appear at the hearing of "the appeals.

"It is contended for plaintiff that a fresh suit against the sons "is time-barred and that a refusal to permit the amendment of "the plaint is a denial of justice. It is contended that the father "and son are one legal and continuous *persona*, and that this "amendment does not change the nature of the suit. Especially

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* Referred Cases Nos. 36 and 41 of 1892.