

## APPELLATE CIVIL.

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

NAGAPPA (DEFENDANT), APPELLANT,

v.

SUBBA AND ANOTHER (PLAINTIFFS), RESPONDENTS.\*

*Easements Act—Act V of 1882, s. 15—Easement—Kumki right in South Canara.*

The kumki right of landholders in South Canara is not an easement, but a right exercised over Government waste by permission of Government and it does not entitle the landholder to a decree for possession.

SECOND APPEAL against the decree of W. J. Tate, District Judge of South Canara, in appeal suit No. 189 of 1890, modifying the decree of I. P. Fernandes, District Munsif of Kundapur, in original suit No. 116 of 1889.

Suit for possession of land. The District Munsif passed a decree as prayed. The District Judge dismissed the claim for possession, but made a declaration of the plaintiff's kumki right over part of the land.

The defendant preferred this appeal, and the defendant filed a memorandum of objections.

*Pattabhirama Ayyar* for appellant.

*Ramachandra Rau Saheb* for respondents.

JUDGMENT.—Strictly speaking the suit should have been dismissed, as plaintiffs sued for possession of the land and failed to make out any right to such possession. But as the District Judge has given plaintiffs a decree declaratory of their kumki right over the lands in question, we shall not interfere since it is found such right exists and defendant is not prejudiced by the declaration, because the decree expressly exempts from its operation the buildings with which alone he is concerned.

There is no question of limitation, for the suit is brought within twelve years from the time of defendant's interference with plaintiffs' rights. It is argued that kumki right is in the nature of an easement and, therefore, the suit is barred by section

\* Second Appeal No. 1462 of 1891.

15 of the Easements Act. In our opinion, it is not an easement, but a right exercised over Government waste by permission of Government.

NAGAPPA  
v.  
SUBBA.

The second appeal fails and is dismissed with costs.

As to the memorandum of objections the Judge was right in holding that kumki right did not entitle plaintiffs to a decree for possession. It is a right to do certain things over Government waste. As to land No. 2, it is found to be more than 100 yards from plaintiffs' warg and, therefore, they can have no kumki right over it. This is a finding of fact which is conclusive in second appeal, as there was evidence to support it. The memorandum of objections is also dismissed with costs.

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## APPELLATE CIVIL,

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

VENKATAVARAGA (DEFENDANT), APPELLANT,

v.

THE DISTRICT BOARD OF TANJORE IN } (PLAINTIFF),  
CHARGE OF THE NADAR CHATTRAM, }  
RESPONDENT.\*

1892.  
Sept. 5, 22.

*Limitation Act—Act XI of 1877, sch. II, arts. 110, 120—Suit to recover customary dues payable on account of a chattram—Rent.*

In a suit by the District Board in charge of a chattram to recover a certain sum as the arrears of various murais, being customary dues payable by the defendants for the benefit of the chattram on account of lands held by them, the defendants raised no objection on the ground that there had been no exchange of pattas and muchalkas, but among other defences they relied upon a plea of limitation:

*Held*, (1) that the defendants should be considered to have admitted tacitly that the exchange of pattas and muchalkas had been dispensed with;

(2) that the suit was governed by Limitation Act, sch. II, art. 120, and not by art. 110 as a suit for rent.

SECOND APPEAL against the decree of J. A. Davies, District Judge of Tanjore, in appeal suit No. 807 of 1890, confirming the

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\* Second Appeals Nos. 1440, 1441 and 1548 of 1891 and Civil Revision Petition No. 378 of 1891.