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RAYAN.

of the defendants appealed, one of whom withdrew from the appeal and reliance is placed on the wording of section 544, Civil Procedure Code, and a case reported *Boydonth Surmah v. Ojan Bibee*(1). That case is not on all fours with the present. The ground common to all the defendants was that the plaintiff was not the jenmi and that defendants Nos. 1 and 2 never held under him. The first and second defendants disclaimed all interest. The third defendant claimed to be the jenmi and the eighth defendant, the appellant in the Lower Appellate Court claimed as kanomdar under the third defendant. The decree of the District Munsif proceeded on the ground that the plaintiffs were the jenmis and that defendants Nos. 1 and 2 held under there. The defendants Nos. 1 and 2 having disclaimed all interest, the only substantial defendants were the third and eighth. We cannot, therefore, say that the Subordinate Judge was wrong in reversing the decree of the Court of first instance on the appeal of one of the defendants alone. The second appeal is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Mutusami Ayyar and Mr. Justice Wilkinson.

BALAKRISHNA (PLAINTIFF), APPELLANT,

v.

THE SECRETARY OF STATE FOR INDIA (DEFENDANT),
RESPONDENT.*

Limitation Act—Act XV of 1877, sched. II, arts. 120, 131—Periodically recurring right—Denial of right.

In a suit brought in 1889 by a landholder against the Secretary of State for a declaration of his right against Government to have certain remissions made in the sum to which he was annually assessed, no consequential relief was sought, and it appeared that the plaintiff's claim for the remission had been made in 1878 and had been refused by Government :

Held, that Limitation Act 1877, sched. II, art. 120, and not art. 131 applied to the case and the suit was barred by limitation.

SECOND APPEAL against the decree of J. W. Best, District Judge of Chingleput, in appeal suit No. 6 of 1891, confirming the decree

(1) 11 W. R., 238.

* Second Appeal No. 1694 of 1891.

of C. Sury Ayyar, District Munsif of Chingleput, in original suit No. 482 of 1889.

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The facts of this case appear sufficiently for the purposes of this report from the following judgment of the High Court.

The Lower Courts passed decrees dismissing the suit : the plaintiff preferred this second appeal.

Parthasaradhi Ayyangar for appellant.

Sundara Ayyar for respondent.

JUDGMENT.—This was a suit brought by the appellant to establish his right to certain yearly remissions and to have it declared that the Government is not entitled to levy full assessment without granting those remissions. They are called *tiyagakari* remission and *varam* remission under the orders of the Board of Revenue. The appellant rested his claim on a permanent *cowle* alleged to have been granted by the Government to his ancestors on the 29th April 1785. He stated further that so long as the *amani* system prevailed, the Government paid to appellant's family the excess *kudivaram* at the rates mentioned in the *cowle* and that, when the system of fixed money assessment was substituted for the *amani* system, the Government remitted a portion of the money assessment at certain rates till 1878. It was contended for respondent that the Civil Courts had no jurisdiction to entertain a suit relating to the rate and amount of assessment payable to the Government, and that the claim was barred by limitation. The only questions tried in this suit were those of jurisdiction and limitation. The District Munsif determined them both against the appellant and, on appeal, the District Judge considered it sufficient to decide that the suit was barred. It is urged before us that the right in question is one which recurs every year and that article 131, second schedule of the Act of Limitation, is applicable to this case. We do not consider, however, this contention to be tenable. Article 131 applies only to those suits in which a decree for consequential relief is asked for by virtue of the periodically recurring right, and, in the present case, no such relief has been asked, although the remission claimed has been refused from the year 1878. We must, therefore, hold that article 120 applies to this suit which was brought to obtain a merely declaratory decree. It was held in *Pachamuthu v. Chinmappan*(1), that a suit for declaration of title to

(1) I.L.R., 10 Mad., 213.

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land was barred by article 120, and we observe that even according to article 131, time begins to run from the date when the plaintiff *first* refused the enjoyment of his periodically recurring right.

As the present suit was not brought within six years from the date when plaintiff's right was denied, and, as it is for declaration of title, it is barred.

The second appeal is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Wilkinson.

1892.
 August 31.

SYED AMEER SAHIB AND OTHERS (PLAINTIFFS), APPELLANTS,

v.

VENKATARAMA AND OTHERS (DEFENDANTS NOS. 2 TO 5),
 RESPONDENTS.*

Local Boards Act—Act V of 1884 (Madras), ss. 27, 128, 156—Suit against Taluk Board—Suit framed erroneously—Error persisted in—Things done under the Act.—Special period of limitation.

In a suit brought against, among others, the President of a Taluk Board constituted under Local Boards Act, 1884 (Madras), to recover land on which the Panchayat of a Union within the taluk had erected a public latrine, it was pleaded that the suit, as against the abovementioned defendant was wrongly framed and also that it was barred by the special rule of limitation contained in section 156 of that Act. The plaintiff asked for no amendment, but proceeded to trial :

Held, that the suit was not maintainable under Local Boards Act (Madras), 1884, s. 27, on the ground that it was not brought against the Taluk Board.

Quære, whether section 156 is applicable to suits other than suits for compensation for wrongful acts committed under colour of the Act.

SECOND APPEAL against the decree of P. Dorasami Ayyar, Subordinate Judge of Salem, in appeal suit No. 169 of 1890, affirming the decree of V. T. Subramania Pillai, District Munsif of Namkal, in original suit No. 164 of 1890.

Suit to recover possession of certain land on which a public latrine had been built by the Panchayat of the Sandamangalam Union, of which defendant No. 1 was Chairman ; defendant No. 5 was the President of the Taluk Board. Both of these defendants

* Second Appeal No. 1476 of 1891.