

consider, was to put a stop to benamie purchases at execution-sales, and this object can only be carried out by enforcing it in all cases without regard to consequences. In any view therefore we think the second appeal must fail and we dismiss it with costs.

There is nothing in the memorandum of objections and we dismiss it with costs.

RAMA KURUP
v.
SRIDEVI.

APPELLATE CIVIL.

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

SRIMANA VIKRAMAN AND ANOTHER (PLAINTIFFS
Nos. 1 AND 2), APPELLANTS,

1892.
September 19.

v.

RAYAN AND OTHERS (DEFENDANTS NOS. 1 TO 3 AND 5 TO 8),
RESPONDENTS.*

*Civil Procedure Code—Act XIV of 1882, s. 544—Appeal by two persons—
Withdrawal of one appellant from appeal—Reversal of decree on appeal.*

A decree was passed for the plaintiff in a suit to redeem a kanom brought against various persons most of whom disclaimed all interest. An appeal was preferred by one of the defendants who claimed to be the jenmi of the premises comprised in the kanom and another who held a kanom from him. The first mentioned appellant withdrew from the appeal which, however, was prosecuted by the other and the appellate court reversed the decree :

Held, that since the appellants were the only substantial defendants the appellate court was right in allowing the appeal to proceed.

SECOND APPEAL against the decree of E. K. Krishnan, Subordinate Judge of South Malabar, in appeal suit No. 756 of 1890, reversing the decree of A. Annaswami Ayyar, District Munsif of Ernad, in original suit No. 419 of 1889.

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

The plaintiffs preferred the second appeal.

Sankaran Nayar for appellants.

Ryru Nambiar for respondent No. 8.

JUDGMENT.—The only point urged is that the Subordinate Judge was in error in reversing the whole decree when only two

* Second Appeal No. 1567 of 1891.

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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 Surnah 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.