

heir as a gotraja sapinda, and all female gotraja sapindas such as brother's and paternal uncle's widows are excluded from the table of heirs prescribed by the Mitakshara. The decision of the District Judge is right, and I would also dismiss the appeal with costs.

BALAMMA  
v.  
PULLAYYA.

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## APPELLATE CIVIL.

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

GOVINDA PILLAI (PLAINTIFF), APPELLANT,

v.

RAMANUJA PILLAI AND OTHERS (DEFENDANTS NOS. 1 TO 4 AND 6),  
RESPONDENTS.\*

1894.  
January 17,  
April 19.

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*Li mitation—Adverse possession—Non-payment of melvaram—Claim of kudivaram  
right by prescription.*

In a suit to recover land, of which neither the plaintiff nor his predecessor in title had been in possession within a period of forty years before the suit, the defendants pleaded that the plaintiff had been entitled to receive melvaram only, that the payment of melvaram had been discontinued fifteen years before the date of the suit, and that they themselves were entitled to the kudivaram right in the land. It was found that the non-payment of melvaram had not been accompanied by an assertion of adverse title and that the defendants' kudivaram right had not been set up twelve years before the suit :

*Held*, that the suit was not barred by limitation.

SECOND APPEAL against the decree of W. F. Grahame, District Judge of South Arcot, in appeal suit No. 271 of 1892, reversing the decree of T. B. Vasudeva Sastri, District Munsif of Chidambaram, in original suit No. 661 of 1891.

Suit to recover possession of land with mesne profits. It appeared that neither the plaintiff nor his predecessor in title had actual possession for the forty years previous to this suit; and the defendants, who were in possession, pleaded that the plaintiff, like his vendor, was a manyamdar merely, and that the arrangement was that the manyamdar should receive a fixed permanent rent of twelve cullums of paddy per cawni *per annum*, and that the raiyats should pay the quit-rent to Government and enjoy the land with

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\* Second Appeal No. 773 of 1893.

GOVINDA  
PILLAI  
v.  
RAMANUJA  
PILLAI.

all rights of ownership, and that the melvaram had been paid accordingly up to fifteen years before the institution of the suit. The District Munsif determined the suit in favour of the plaintiff, but his decree was reversed on appeal by the District Judge, who held that the claim was barred by limitation.

The plaintiff preferred this second appeal.

*Ramaachandra Rau Saheb* and *Ranga Ramamujachariar* for appellants.

*Bhashyam Ayyangar* for respondents.

This second appeal coming on for hearing, the Court delivered the following judgment.

JUDGMENT.—We must accept the Judge's finding that plaintiff was not dispossessed in February 1891 as alleged, and that neither plaintiff nor his vendor had possession for the last forty years. The finding, however, that defendants' possession was adverse is not warranted by the circumstances from which it is inferred. Defendants themselves admitted that they paid melvaram and claimed only a kudivaram right. Mere non-payment of melvaram for any number of years is not sufficient to give defendants a kudivaram right unless their possession has been accompanied by an assertion of such right for more than twelve years prior to the suit. The Judge's finding that plaintiff's vendor exercised no rights of ownership for a period of forty years is opposed to the defendants' plea that melvaram was paid till fifteen years ago, and Courts are not at liberty to go in defendants' favour behind the plea set up by the defendants themselves in the suit.

Therefore the question whether the defendants have acquired a kudivaram right by prescription depends on the further question whether such right was set up more than twelve years prior to the suit.

We must ask the Judge to try the issue indicated above.

Fresh evidence may be adduced on either side, and the finding is to be submitted within one month from the date of the receipt of this order, and seven days will be allowed for filing objections after the finding has been posted up in this Court.

In compliance with the above order, the District Judge submitted a finding, which was to the effect that the defendants had not set up a claim to the kudivaram right for more than twelve years prior to the suit. The case coming on for final disposal, the Court delivered the following judgment.

GOVINDA  
PILLAI  
v.  
RAMANUVA  
PILLAI.

JUDGMENT:—Upon the finding we must allow this appeal, and setting aside the decree of the Lower Appellate Court, restore that of the Court of First Instance.

The present case is not on all fours with that in *Mohima Chunder Mosoomdar v. Moresh Chunder Neoghi*(1). In that case the defendants denied the plaintiff's title as proprietor and set up that of a third party. Here the plaintiff's title is found to be established, and the defendants' plea of non-payment of melvaram is found not to have been accompanied by assertion of adverse title.

We, therefore, allow this appeal and decree as above and direct respondents to pay appellant's costs in this Court and in the lower Appellate Court.

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## APPELLATE CIVIL.

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

VENKATANARASIMHULU (PLAINTIFF), APPELLANT,

1894.  
Dec. 12.

v.

PERAMMA (DEFENDANT), RESPONDENT.\*

*Limitation Act—Act XV of 1877, sch. II, arts. 62, 97—Suit to recover price paid on a void sale.*

In 1885 the plaintiff obtained from the defendant a sale-deed of a certain land and paid part of the purchase money. Subsequently a judgment-creditor of the defendant's husband sought to execute his decree against the land in question, and eventually, in October 1889, obtained a decree in the High Court under which the plaintiff was ejected. The plaintiff now sued in 1892, less than three years from the date of the last-mentioned decree, to recover the sum paid by him to the defendant as above mentioned :

*Held*, that the suit was not barred by limitation.

SECOND APPEAL against the decree of N. Swaminadha Ayyar, Subordinate Judge of Vizagapatam, in appeal suit No. 346 of 1893, confirming the decree of Y. Janakiramayya, District Munsif of Vizagapatam, in original suit No. 632 of 1892.

Suit to recover from defendant Rs. 800. It was averred in the plaint that on 16th April 1885 the defendant executed a

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(1) I.L.R., 16 Calc., 473.

\* Second Appeal No. 1327 of 1894.