

VENKATA-
RAMAYYA
v.
VENKATA-
LAKSHMAMMA.

The last male owner died in 1880, and the defendant at once took possession of the property. The last male owner's daughter, who was the party entitled to possession, died in 1886. The present suit by the reversioners to recover possession was filed in 1893. Under article 141, schedule 2 of the Indian Limitation Act (XV of 1877), the reversioners had 12 years from the date of the daughter's death and their suit was therefore clearly in time (*Srinath Kur v. Prosumo Kumar Ghose*(1), *Sham Lal Mitra v. Amarendro Nath Bose*(2), *Cursandas Gobindji v. Vundravandas Purshotam*(3), *Mukta v. Dada*(4), *Tai v. Ladu*(5), *Ram Kali v. Kedar Nath*(6)). The respondent relies on the Privy Council case reported as *Lachhan Kunwar v. Manorath Ram*(7). If that case was a decision with reference to article 141, schedule 2 of the present Act (XV of 1877), or the corresponding article of Act IX of 1871, it would be in point, but there is nothing to show that it is so, and the dates in the recital of facts lead us to the conclusion that the rights of the reversioners in that suit had become barred under Act XIV of 1859 before the provisions of Act IX of 1871 came into force.

We must, therefore, reverse the decree of the District Judge and restore the decree of the District Munsif. The appellants must have their costs in this and in the Lower Appellate Court.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Benson.

SUBBARAYAR AND OTHERS (PLAINTIFFS NOS. 1, 2, 3 AND 5),
APPELLANTS,

v.

ASIRVATHA UPADESAYYAR AND ANOTHER (DEFENDANTS
NOS. 1 AND 2), RESPONDENTS.*

Revenue Recovery Act—Act II of 1864 (Madras), s. 38—Sale for arrears of revenue—Benami-purchase.

The purchaser at a sale held for arrears of revenue sued for possession of the land. It was pleaded that his purchase was made *benami* for the persons from whom the defendant derived title :

- (1) I.L.R., 9 Calc., 934. (2) I.L.R., 23 Calc., 460. (3) I.L.R., 14 Bom., 482.
(4) I.L.R., 18 Bom., 216. (5) I.L.R., 20 Bom., 801. (6) I.L.R., 14 All., 156.
(7) I.L.R., 22 Calc., 445. Second Appeal No. 278 of 1896.

Held, that Revenue Recovery Act, s. 38, did not debar the defendant from raising this plea, and that the averments on which it was based having been proved, the suit should be dismissed.

SUBBARAYAR
v.
ASIRVATHA
UPADES-
AYYAR.

SECOND APPEAL against the decree of S. Gopalachariar, Subordinate Judge of Tinnevely, in Appeal Suit No. 48 of 1894, affirming the decree of V. K. Desikachariar, District Munsif of Tuticorin, in Original Suit No. 425 of 1891.

Suit to recover possession of certain land with mesne profits: The land in question had been sold under Revenue Recovery Act for arrears of revenue due by the landholder and had been purchased by the father, since deceased, of the plaintiff on 28th October 1879.

Possession had never been obtained by the purchaser, and it was pleaded that the purchase had been made benami for the vendors of defendant No. 1.

The District Munsif held that it was open to the defendant to raise this plea, and that it was proved, and that defendant No. 1 and his vendors had been in adverse possession for over 12 years. He accordingly dismissed the suit.

The Subordinate Judge, on appeal, held that the suit was not barred by limitation, but affirmed the decree on the other ground on which the District Munsif based his judgment.

Plaintiff preferred this second appeal.

Krishnasami Ayyar for appellants.

Sivasami Ayyar for respondent No. 1.

JUDGMENT.—It is contended that, as the plaintiff's father purchased the land at a sale for arrears of revenue, section 38 of Act II of 1864 (Revenue Recovery Act) precludes the defendants from proving that the purchase was really made by the plaintiff's father not solely on his own behalf but on behalf of the villagers generally. The words of section 38 are "such sale certificate shall state the property sold and the name of the purchaser, and it shall be conclusive evidence of the fact of the purchase in all courts and tribunals, where it may be necessary to prove the same, and no proof of the Collector's seal or signature shall be necessary, unless the authority before whom it is produced shall have reason to doubt its genuineness."

The intention clearly was to prevent any plea from being raised that the defaulter's interest did not pass by the sale. There is nothing in the language of the section to warrant the contention

SUBBARATAR
v.
ASIRVATHA
UPADES-
AYYAR.

that the legislature intended thereby to preclude proof being given that the person whose name was entered in the certificate was not the person, or the only person who acquired a right under the purchase.

Where this was intended, the legislature has made a distinct provision to that effect, as in section 317, Civil Procedure Code.

The evidence objected to was, therefore, rightly admitted, and upon the findings the suit was rightly dismissed. We dismiss this second appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Davies.

1897.
September 1.

KUNHI MARAKKAR HAJI (DEFENDANT), APPELLANT,

v.

KUTTI UMMA (PLAINTIFF), RESPONDENT.*

*Civil Procedure Code—Act XIV of 1882, s. 571—Contents of appellate judgment—
Duty of Appellate Court to examine the correctness of a finding in the absence
of a memorandum of objections.*

A Judge having remanded a case for further evidence to be taken and a fresh finding recorded on a question of fact, he is bound to examine the correctness of the finding, and to state in his judgment the reasons for which he either accepts or rejects it.

SECOND APPEAL against the decree of H. H. O'Farrell, District Judge of South Malabar, in Appeal Suit No. 612 of 1895, modifying the decree of T. V. Anantan Nayar, District Munsif of Kutnad, in Original Suit No. 120 of 1895.

The plaintiff sued as the divorced wife of the defendant to recover Rs. 105 agreed mahur, and Rs. 28-13-9 the kizhi given to the defendant at the time of their marriage which took place in 1871. The divorce was alleged to have taken place in March 1874, but the defendant denied the divorce and on that ground disputed his liability to repay the kizhi. As to the claim for mahur he pleaded that he had already satisfied it by purchasing land for the plaintiff.

* Second Appeal No. 55 of 1897.