

## APPELLATE CIVIL.

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

1896.  
October 7.

SRINIVASARAGAVA AYYANGAR AND ANOTHER (PLAINTIFFS),  
APPELLANTS,

v.

MUTTUSAMI PADAYACHI AND ANOTHER (DEFENDANTS),  
RESPONDENTS.\*

*Limitation—Adverse possession—Rent Recovery Act (Madras)—Act VIII of 1865—  
Omission by inamdar to obtain registration of title under Regulation XXVI of  
1802—Effect of—.*

An inamdar had not obtained registration of his title under the registered landlord and could not therefore sue to enforce acceptance of pattas and had not collected rent from the tenants for more than twelve years :

*Held*, that the tenants had not by reason of these facts acquired rights against the inamdar by adverse possession.

SECOND APPEAL against the decree of E. J. Sewell, Acting District Judge of Tanjore, in appeal suit No. 333 of 1894, reversing the decision of R. B. Clegg, Acting Sub-Collector of Tanjore, in summary suit No. 132 of 1893.

The facts of this case set forth in the judgment of the Sub-Collector were as follows :—

“ This is a suit under Act VIII of 1865 to enforce acceptance of patta for fasli 1302. The patta was tendered to the defendants on the 23rd June 1893, but they refused it. There is no question of the tender of patta.

“ The issues in this suit are :—(i) whether the defendants are tenants of the plaintiffs and are bound to accept a patta ; (ii) whether the terms of the patta tendered are correct.

“ On the first issue the plaintiffs allege that they are registered inamdars of the ‘ Nadusettu ’ of Tirupatorai. They produce exhibit A, a sale-deed, dated 19th January 1878, under which they derive their title as inamdars of this ‘ Settu ’ from the former inamdar Sankara Peshwai. Exhibit D is a copy of the revenue register, ordering the patta for the lands purchased from

\* Second Appeal No. 807 of 1895.

“Sankara Row Peshwai to be entered in their names on February 1884.

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“The defendants’ contention on this issue is that they have never paid any rents to the plaintiffs for over twelve years; that they have been in possession of their lands with all rights of ownership for over twelve years, and that, therefore, the plaintiffs’ claim is barred by limitation.

“The defendants rely on a judgment in A. S. No. 419 of 1880 of the District Court, Tanjore. This was an appeal against the decree of the Head Assistant Collector in summary suit No. 84 of 1880 in which Sankara Row Peshwai was first plaintiff and the present plaintiffs second and third, respectively. The District Judge then held that as the present plaintiffs had not then been registered as inamdars in the Collector’s register, they were not entitled to tender patta though he ordered defendants to accept patta from Sankara Row Peshwai. The defect of revenue registry has now been overcome, and the question is whether the defendants have acquired a title to the melvaram rights over the land by adverse possession for more than twelve years.”

The Sub-Collector held that the defendants were bound to accept the patta tendered subject to a modification not now material.

The District Judge reversed this decree and dismissed the suit with costs with the following remarks:—

“The right of the plaintiffs to take action as the landlords of the defendants was explicitly denied in 1880 and the matter was decided against plaintiffs. If the relation of landlord and tenant had ever existed between them, the tenancy was then put an end to. The defendants have held possession ever since, although the bar stated in the decision to the claim of the plaintiff’s (want of registry of the inam in their name) was removed in 1884. The present suit was not brought until 1893. I am of opinion that the plaintiffs’ suit as landlords is barred, and that the defendants are not their tenants.”

The plaintiffs preferred this second appeal.

Mr. *Krishnan* for appellants.

No one appeared for the respondents.

JUDGMENT.—No one appears to oppose the appeal. We find ourselves unable to support the decree of the District Judge.

The decree in appeal suit No. 419 of 1880 (exhibit I) did not decide that the then defendants were in adverse possession of

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the lands as against the then landlord. It merely decided that the present plaintiffs (then second and third plaintiffs) had not then obtained registration of their title under the registered landlord, and that they could not maintain a suit to enforce acceptance of patta until such registration had been made. The registration was made in 1884 and by that registration the plaintiffs for the first time obtained a complete title on which to enforce acceptance of pattas. There is no evidence that the possession by the tenants was at any time hostile to the plaintiffs or their vendor. The mere omission to collect rent does not make the tenancy hostile.

We must reverse the decree of the District Judge and restore that of the Sub-Collector. The plaintiffs must have their costs throughout.

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## APPELLATE CRIMINAL.

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

QUEEN-EMPRESS

v.

ABDUL KADAR SHERIFF SAHEB.\*

*Criminal Procedure Code, ss. 195, 433—Abetment of an offence, s. 109, Penal Code—Sanction to prosecute unnecessary.*

Though sanction to prosecute is necessary in cases falling under the sections of the Penal Code set forth in section 195, Criminal Procedure Code, no such sanction is required previous to the prosecution of a person charged with the abetment of such offences.

CASE stated for the opinion of the High Court by W. E. Clarke, Acting Chief Presidency Magistrate, in calendar case No. 18351.

The case was stated as follows :—

“ One Beejan Bi accused one Hyath Bi of criminal breach of trust in calendar case No. 3732 of 1896 on the file of this Court. Accused was discharged under section 253, Criminal Procedure Code. Hyath Bi subsequently in calendar case No. 5988 of 1896 applied for sanction to prosecute Beejan Bi and one Abdul Kadar Sheriff who was alleged to have abetted Beejan Bi to

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\* Criminal Referred Case No. 1, of 1896.