

UDAYANA  
PILLAI  
v.  
SANTHIVELU  
PILLAI.

The contention of the respondents that the suit is barred under article 132 of schedule 2 of the Indian Limitation Act is untenable. The article applicable is No. 147, and the time allowed for sale is sixty years.

In the result we must reverse the decree of the District Judge and restore that of the District Munsif. The plaintiff must have his proper costs in all Courts.

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## APPELLATE CIVIL.

*Before Mr. Justice Davies and Mr. Justice Boddam.*

1896.  
July 20, 21.

BALAJI RAU (PLAINTIFF No. 1), APPELLANT,

v.

SITHABHOY AND OTHERS (DEFENDANTS AND PLAINTIFF  
No. 2), RESPONDENTS.\*

*Civil Procedure Code, s. 560—No application for rehearing—s. 584 (e)—  
Power of High Court to interfere.*

Where an appeal was heard *ex parte* by a Lower Appellate Court and the decree of the Court of First Instance reversed in the absence of the respondent, on whom notice of appeal had not been duly served and who was not aware of the proceedings till after the time for applying for a rehearing under s. 560 and Limitation Act, sched. II, art. 169 had expired :

*Held*, that the High Court in second appeal had power to interfere under s. 584 (e), Civil Procedure Code.

SECOND APPEAL against the decree of M. B. Sundara Rau, Subordinate Judge of North Arcot, in appeal suit No. 278 of 1893, reversing the decree of T. A. Krishnasami Ayyar, District Munsif of Arni, in original suit No. 283 of 1892.

The facts of the case were as follows :—

The suit was instituted by plaintiff No. 1 alone against the defendants who are respectively his maternal grandmother, mother, and maternal grandfather's brother for a declaration of his rever-  
sionary title to the plaint properties which belonged to his maternal grandfather deceased.

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\* Second Appeal No. 688 of 1895.

Upon the objection of the third defendant who alone appeared and contested the suit, the second plaintiff, another grandson of his brother by another daughter, was brought on the record.

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The substance of plaintiffs' case is that the maternal grandfather having died 20 years ago without male issue, his widow, the first defendant, inherited the properties to the value of Rs. 2,000 left by him, and though possessing only a life interest has conveyed, the lands, &c., in dispute to the third defendant under a deed, dated 21st May 1892, for a nominal consideration of Rs. 832, and that the second defendant is colluding with them.

The Munsif found (*inter alia*) that the sale to defendant No. 3 was not binding on the plaintiff, but that the third defendant is entitled to be recouped by the plaintiff Rs. 135, which had been paid by him to first defendant for her maintenance.

On appeal the Subordinate Judge reversed the decision of the Munsif, the respondent not appearing in person or by pleader, and dismissed the suit with costs.

The plaintiff preferred an appeal to the High Court and filed an affidavit, which was not contradicted, containing the following allegations:—

“That the said appeal was heard and decided *ex parte*, the respondents not appearing in person or by pleader.

“That I did not know of the filing of the appeal at all and I was not served with any summons or other process of Court in connection with said appeal.

“That the endorsement on the summons that the duplicate was affixed to the outer door of the house in which my family was then residing at Sathia Vijianagaram, can only mean, if at all, the house in which either my mother or grandmother was living; and these are respectively the second and third defendants in the suit brought by me.

“That, on the 21st March 1895, for the first time I was told at Ambur that there was an appeal against the decree in my favour in original suit 283 of 1892 on the file of the Court of the District Munsif of Arni, and that the same was decided against me *ex parte*.”

Ranga Rau for appellant.

Ramachandra Rau Saheb for respondent No. 3.

ORDER.—The appellant's remedy under section 560 of the Code of Civil Procedure being barred by limitation through no

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fault of his own, we think we have the power to afford him an alternative remedy in second appeal under clause (c), section 584. So that we shall call upon the Lower Appellate Court to take evidence and find whether the appellant was or was not duly served with notice of the appeal. The report with the notice and return in original and the evidence are to be submitted as early as possible.

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## APPELLATE CIVIL.

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

1896.  
July 16, 30.

RANGAYYA APPA RAU (DEFENDANT No. 4), APPELLANT,

v.

NARASIMHA APPA RAU (PLAINTIFF), 'RESPONDENT.\*

*Boundary Marks Act (Madras)—Act XXVIII of 1860, s. 25—Boundary Marks Act (Madras)—Act II of 1884, s. 9—Suit to set aside decision of the Survey officer—Plea of limitation abandoned.*

A suit filed on 21st April 1891 to set aside the decision of the Settlement officer under the Madras Boundary Acts passed on 15th September 1890 was dismissed by the Munsif as being time-barred not having been brought within six months as provided by s. 25 of Act XXVIII of 1860. This decision was reversed by the District Judge, who remanded the suit for disposal on the merits, holding that the production by the plaintiff of a copy of the judgment, dated 25th October 1890, raised a presumption that the suit was in time and shifted the burden of proof to the defendant to show that an earlier copy was granted to plaintiff, or that the decision was pronounced in the plaintiff's presence. Against this remand order there was no appeal. At the rehearing the question of limitation was not again raised, and the Munsif gave a decree on the merits. An appeal was preferred to the District Court, but no mention was made of the question of limitation. On appeal to the High Court :

*Held* that the question of limitation had been put aside by the consent of the parties who desired to have the case decided on the merits, and that the appellant could not be allowed to fall back on this plea which he had abandoned in the Lower Courts.

SECOND APPEAL against the decree of E. A. Elwin, Acting District Judge of Kistna, in appeal suit No. 935 of 1892, modifying the decree of C. Rama Rau, District Munsif of Bezvada, in original suit No. 181 of 1891.

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\* Second Appeal No. 437 of 1895.