

APPELLATE CIVIL.

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

THE SECRETARY OF STATE FOR INDIA (DEFENDANT),
APPELLANT,

1895.
October 1.
December 4.

v.

KOTA BAPANAMMA GARU (CLAIMANT), RESPONDENT.*

*Forest Act—Act V of 1882, Madras—Burden of Proof—Shifting of burden of proof—
Limitation Act—Act XV of 1877, art. 149.*

Portions of certain land, which had been taken up by Government as forest reserve, were claimed by one who had admittedly been in possession and enjoyment of them for thirty years. The Government failed to establish any subsisting title of its own :

Held, (1) that the burden of proof had been shifted on to the Government and had not been discharged and accordingly that the claim should be allowed.

(2) Article 149 of the Limitation Act applies only to suits brought by, or on behalf of, the Secretary of State.

SECOND APPEAL against the decree of H. T. Ross, District Judge of Godavari, in appeal suit No. 20 of 1893, reversing the decisions of the Forest Settlement-officer, Godavari, in the matter of certain claims by the owner of the Gangole estate to various plots of land recently taken as forest reserve belonging to a Government village.

The District Judge decided in favour of the claimant.

This second appeal was preferred on behalf of the Secretary of State represented by the Forest officer of the Godavari district.

The Government Pleader (Mr. E. B. Powell) for appellant.

Pattabhirama Ayyar and *Sriramulu Sastri* for respondent.

JUDGMENT.—The question in this appeal is whether the plots three and four in the plan which have been taken up as forest reserve belong to the Government village of Pedda Kopalli or to the claimant's village of Lakshminarayana devupeta. The District Judge found in favour of the claimant.

It is admitted that the two plots have, for the last thirty years, been in the possession of the claimant, but the Government Pleader contends that, under the Madras Forest Act, it is for the claimant to make out his title in the first instance; that claimant has not produced his sale-deed, nor has he proved as against Government an

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adverse possession of sixty years. It is alleged that the Bhubund accounts prove Government possession up to 1854, and therefore that the presumption that claimant's thirty years' possession continued from an earlier period is rebutted.

There is, however, a clear finding of the District Judge in paragraph 15 of his judgment that there is no satisfactory proof of possession at any time, or of title, in the Government. We may point out that the limitation of sixty years prescribed by article 149 of the Limitation Act only applies to suits brought by, or on behalf of, the Secretary of State. The presumption of the Madras Forest Act is that all *unoccupied* land is at the disposal of Government, but if the land be really occupied when a notification is published under section 4, it will be ground for presuming that the occupant is the *prima facie* owner and shifting the onus on to Government (see the remarks of this Court in the *Periya Kabrayen case*(1)). Granted that it is incumbent upon the claimant in the first instance under sections 4 to 10 to prove some *prima facie* ground of ownership before Government can be called upon to disprove his title or prove its own, the onus is certainly shifted when the claimant starts with an admitted possession and enjoyment for thirty years. The Government could not compel the claimant to prove sixty years' possession, but must show a subsisting title of its own *Secretary of State v. Vira Rayan*(2), *Secretary of State for India v. Bavotti Haji*(3) and the presumption in favour of Government is only as regards unoccupied land.

Even assuming the Bhubund accounts X and XI to be genuine documents, exhibit G shows cultivation of these three hamlets in 1865 by the claimant, and the omission of their names in exhibits VIII and IX is no more significant than the omission of Jillellagudem, which is admitted to belong to claimant. It is not however necessary to consider the documents since the onus has been shifted on to Government, and the finding is that no subsisting title has been proved.

The District Judge states that there is no dispute as to boundaries, and that the tracts comprised in the notification admittedly fall within the three hamlets.

The second appeal is dismissed with costs.

(1) S.A., 190 of 1888 unreported.

(2) I.L.R., 9 Mad., 175.

(3) I.L.R., 15 Mad., 315.