

contracts, and also the value of the improvements, effected subsequently, calculated under the provisions of the Act.

VIRU
MAMMAD
v.
KRISHNAN.

We must direct the District Judge to return findings on these questions. Fresh evidence may be taken.

The findings should 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 findings have been posted up in this Court.

APPELLATE CIVIL.

Before Mr. Justice Shephard and Mr. Justice Subramania Ayyar.

REGO (PLAINTIFF), APPELLANT,

v.

ABBU BEARI (DEFENDANT), RESPONDENT.*

1897.
November
23.

Limitation Act—Act XV of 1877, sched. II, art. 134—Sale by mortgagee as owner.

A mortgaged land to B and then sold it to C, and subsequently sold it to B ignoring the previous sale. C now brought a suit for redemption and B, who had been in possession for many years, pleaded limitation :

Held, that the suit was governed by Limitation Act, schedule II, article 134.

SECOND APPEAL against the decree of H. G. Joseph, District Judge of South Canara, in Appeal Suit No. 353 of 1895, affirming the decree of O. Chandu Menon, Subordinate Judge of South Canara, in Original Suit No. 24 of 1894.

Suit to redeem a mortgage, dated 12th June 1862. The plaintiff, on the 4th October 1864, purchased the property from the mortgagors, who, however, in 1868, executed a conveyance of the same property to the mortgagee, who was the predecessor in title of the defendant who now pleaded limitation. The Subordinate Judge dismissed the suit, and his decree was affirmed on appeal by the District Judge, who held that the suit was barred by limitation.

The plaintiff preferred this second appeal.

Sankaran Nayar and Narayana Rau for appellants.

The Acting Advocate-General (Hon. V. Bhashyam Ayyangar) for respondent.

* Second Appeal No. 1224 of 1896.

REGO
v.
ABBU BEARI.

JUDGMENT.—Inasmuch as the plaint alleges that the original transaction was a mortgage and that was not denied by the defendant, we must treat it as such. It is contended that, as the mortgagee purported to transfer a title acquired since the mortgage and independently of it, the case is not governed by article 134 of the schedule to the Limitation Act. In effect the defendant's vendor purported to transfer the full ownership, when in point of law he had only a mortgage right to transfer. This is exactly the case for which the article is provided.

We must dismiss the appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Shephard and Mr. Justice Subramania Ayyar.

1897.
November
23, 30.

VENKATARAYADU AND OTHERS (PLAINTIFFS AND LEGAL
REPRESENTATIVES OF PLAINTIFF No. 2), APPELLANTS,

v.

RANGAYYA APPA RAU AND OTHERS (DEFENDANTS NOS. 1, 2
AND 4 TO 9 AND LEGAL REPRESENTATIVES OF DEFENDANT No. 9),
RESPONDENTS.*

*Civil Procedure Code—Act XIV of 1882, s. 2—Appeal against order rejecting an
insufficiently stamped appeal.*

An appeal petition having been presented bearing an insufficient Court-fee stamp was returned to the appellant. After the period of limitation had expired, it was presented again bearing a sufficient stamp together with a petition that it be received. The Appellate Court made an order refusing to admit the appeal: *Held*, that no appeal lay to the High Court.

SECOND APPEAL against the decree of E. C. Rawson, Acting District Judge of Kistna, rejecting an appeal against the decree of N. Saminatha Ayyar, Subordinate Judge of Ellore, in Original Suit No. 12 of 1892.

The order appealed against was as follows:—

“The appeal cannot be admitted. Even on petitioner's own showing, a ten rupees stamp was required, only an eight anna stamp was affixed to the appeal, and it was accordingly returned.

* Second Appeal No. 13 of 1896.