

with her husband's co-parceners. She made no attempt in the Court below to throw any doubt upon the correctness of the weight specified in the inventories referred to; and the difference in weight is strongly against the truth of her claim. She admits that about Rs. 3,000 are due to her by persons to whom they have been lent, and since the partition she has acquired a considerable extent of land. And these will account for the money, which she got in the partition, about Rs. 2,500.

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Before the District Judge there was a distinct allegation that the first and second defendants and their partisans had removed property of considerable value from their house. It would have been more satisfactory had the District Judge recorded evidence as to the truth of this complaint. But his omission to do so did not prejudice the defendants, and they have not attempted to show that the Judge excluded any evidence which they were desirous of adducing in regard to their ownership of the jewels, etc., claimed to be their own property.

We, therefore, dismiss the appeals except so far as the third defendant is concerned as already stated. The first, second and fourth defendants will pay the costs of their respective appeals. We see no reason to make any order on the memorandum of objections.

APPELLATE CIVIL.

Before Mr. Justice Subrahmania Ayyar and Mr. Justice Davies.

PULLANAPPALLY SANKARAN NAMBUDEI (DEFENDANT),
APPELLANT,

1905.
March 16, 17.

v.

VITTEL THALAKAT MUHAMOD AND OTHERS (PLAINTIFFS AND
FIRST PLAINTIFF'S REPRESENTATIVES), RESPONDENTS.*

*Ryotwary tenure—Grant of bed of tidal and navigable river on ryotwary tenure—
Power of Government to determine such tenure—Limitation Act XV of 1877,
sch. II, art. 149—Decree in the alternative, legality of.*

Land forming the bed of a tidal and navigable river is the absolute property of Government. Where Government has for a long time been collecting revenue

* Second Appeal Nos. 127 and 128 of 1903, presented against the decree of M.R.Ry. T. Krishna Rau, Subordinate Judge of South Malabar at Calicut, in Appeal Suits Nos. 96 and 97 of 1899, respectively, presented against the decree of M.R.Ry. T. V. Anantan Nair, District Munsif, Kutnad, in Original Suit No. 507 of 1897.

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and special cesses from the occupant thereof, it will be presumed that such land was granted on ryotwary tenure and the occupier will be entitled to hold the land so long as he pays the revenue; and he can be ousted only under the provisions of Madras Act II of 1864.

Where the assignees from the Secretary of State join him as a co-plaintiff with themselves in a suit, the period of limitation will not be 60 years under article 149, schedule II of the Limitation Act; such article applying only to suits brought on behalf of the Secretary of State.

The only parties entitled to a decree in such a suit will be the assignees; and a decree in the alternative cannot be passed in favour of the Secretary of State or the assignees when the right of the assignees is admitted.

THE plaintiffs sued for the recovery of lands alleged to be the jemm property of the fifth plaintiff, the Secretary of State, by whom they were demised to the plaintiffs Nos. 1 to 4. The fifth plaintiff pleaded that the plaint lands belonged to Government and formed part of a tidal and navigable river and were by Government demised to plaintiffs Nos. 1 to 4. The defendant contended that the lands were his jemm property, that he had been enjoying them for a long time paying Government the revenue due thereon; he further pleaded that the suit was barred by limitation. The District Munsif dismissed the suit as barred on the ground that the defendant had been in possession for more than 30 years and held that the lands were the jemm property of the defendant.

On appeal the Subordinate Judge after calling for findings, held that the lands were the property of the fifth plaintiff, being the bed of a tidal and navigable river, that as the defendant had enjoyed the land for 30 years only, the suit was not barred under article 149, schedule II of the Limitation Act, but that the defendant was entitled to compensation, fixing the amount. He decreed that the plaintiffs Nos. 1 to 4 or fifth plaintiff do recover possession on paying compensation.

The defendant preferred this second appeal.

C. Sankaran Nair and *C. V. Anantakrishna Ayyar* for appellants.
The Government Pleader for fifth respondent.

Mr. C. Krishnan for respondents Nos. 2 to 4, 9, 10, 12 and 13.

JUDGMENT.—The decree of the Subordinate Judge as it stands giving possession to plaintiffs Nos. 1 to 4 on the one hand or the fifth plaintiff on the other hand is in any view erroneous. On the case set forth in the plaint it is only the plaintiffs Nos. 1 to 4 who could claim possession, the fifth plaintiff having upon his own admission parted with his right to possession to plaintiffs Nos. 1 to 4. In this view the period of limitation for the suit would

prima facie be 12 years and not 60 years. (*The Municipal Commissioners v. Sarangapani Mudaliar*(1) and *Maharaja Jagadindra Nath Roy Bahadur v. Rani Hemanta Kumari Debi*(2).) It is however unnecessary to decide the point of limitation here, as in our opinion the suit fails on another ground. Both Courts find that the defendant has been in possession of the disputed land at least since 1868, that is, for 30 years before suit. Admittedly the first defendant has been paying to Government certain revenue for the land since 1885 and it appears from the receipts that special cesses were also paid with the revenue. It is thus clear that the defendant has been holding the land as a ryot under Government. Taking it as a fact that the land was at one time the bed of a tidal and navigable river and thus land at the absolute disposal of Government, there was nothing to prevent the Government from granting the land to the defendant on ordinary ryotwary tenure as in fact they did. Having done so, it was not competent to the Government to put an end to the defendant's tenure by the arrangement made by them with plaintiffs Nos. 1 to 4. The defendant was entitled to hold the land as long as he paid the revenue properly leviable from him, and in default he could be ousted only on legal process taken under Act II of 1864. (*Rajagopala Iyengar v. The Collector of Ohingleput*(3).) On this ground we set aside the decree of the Subordinate Judge and restore that of the District Munsif, with costs in this and in the lower Appellate Court, payable by the plaintiffs Nos. 2 to 4 and first plaintiff's legal representatives to the defendant. The fifth plaintiff will pay his own costs.

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(1) I.L.R., 19 Mad., 154 at p. 156.

(2) L.R., 31 I.A., 203 at p. 207.

(3) 7 M.H.C.R., 98.