We consider the Subordinate Judge is right in deciding in favour of the plaintiff. The second appeal fails and is dismissed with costs.

BENSON AND KRISHNASWAMI AIYAR, JJ.

SUBRAMANIA IYER v. RUNGAPPA REDDI.

APPELLATE CIVIL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Krishnaswami Ayyar.

GAVARA RAMANNA (PLAINTIFF), APPELLANT,

v.

ADABALA RATTAYYA (DEFENDANT), RESPONDENT.*

1909. November 29.

Hereditary Village Office Act (Madras), III of 1895, ss. 13, 21—S. 21 is no bar to suit for recovery of land.

A suit in the Civil Courts for land, not based on the ground that such land constituted part of the emoluments of any of the offices described in section 13 of Madras Act III of 1895, is not barred by section 21 of the Act.

The effect of the words in section 13 of the Act, "but such decision, etc.," is to preserve the jurisdiction of the Civil Courts even in cases where the Collector decided the case on the assumption mentioned therein and not to oust such jurisdiction where he did not.

SECOND APPEAL against the decree of N. Lakshmana Rao, Subordinate Judge of Ellore, in Appeal Suit No. 232 of 1905, presented against the decree of P. V. Ramachendra Ayyar, District Munsif of Tanuku, in Original Suit No. 431 of 1904.

Suit to recover lands on the ground that they were the private property of the plaintiff.

In a previous summary suit brought against the plaintiff by the defendant under Madras Act III of 1895 for the recovery of these lands on the ground that they formed the emoluments of the office of village Naik it was contended by the present plaintiff, who was second defendant in the summary suit, that the revenue of the lands and not the lands themselves formed the emoluments of the office. The Sub-Collector found that the lands formed part of the office inam but dismissed the suit on the ground that the defendant was not duly appointed to the office.

On appeal, the Collector held that defendant was validly appointed and decreed possession of the lands.

* Second Appeal No. 1412 of 1907.

WHITE, C.J., AND KRISHNA-SWAMI AIYAR, J.

GAVARA RAMANNA v. ADABALA BATTAYYA.

On these facts, the defendant raised the plea that the Civil Courts had no jurisdiction to entertain the suit. The District Munsif upheld the plea and dismissed the suit. On appeal, the decision was confirmed. The material portion of the lower appellate judgment is as follows :

"Since the appellant contended in the Sub-Collector's Court that at the best only the assignment of revenue payable in respect of the suit land and not the land itself formed the emoluments of the office of Naik, the Revenue Courts should perhaps have decided the claim on the assumption that only the said assignment constituted the emoluments; and then the respondent could have sued in a Civil Court for the recovery of the land itself (section 13, Madras Act III of 1895). To the present suit by the appellant therefore the aforesaid section 13 has no application. If the appellant had pleaded before the Revenue Courts that no emoluments appertained to the office of Naik, then, since the District Collector has decreed the suit land to the respondent, the appellant could sue under section 21 of the aforesaid Act to set aside the decree of the District Collector. But as the appellant never raised the plea in the Revenue Courts that emoluments appertained to the Naik's office, section 21, paragraph 2, has no application to the present case.

Civil Courts are debarred from entertaining suits (1) for the recovery of any one of the offices specified in section 3 of Madras Act III of 1895, (2) for settling the rate or amount of the emoluments of any such office, or (3) except as laid down in proviso (ii) to sub-section of section 13 for the recovery of the emoluments of any such office. Now this is practically a suit for the recovery of the emoluments of the Naikwadi office and no Civil Court may entertain it. I must decide that the District Munsif could not try the suit. Exhibit C is put in to show that the land is not a village service inam but it can serve no useful purpose in this appeal as the plaintiff did not in express terms contend that no emoluments attached to the Naik's office."

Plaintiff appealed to the High Court.

P. Narayanamurti for appellant.

P. C. Lobo for *T. Prakasam* for respondent.

JUDGMENT.—Except in the cases in which the jurisdiction of the Civil Courts is taken away by Act III of 1895 that jurisdiction remains.

The section of the Act of 1895 which bars the jurisdiction of the Civil Courts is section 21. The present suit does not fall within that section. It is not a claim to succeed to any of the offices mentioned in section 13. It does not raise a question as to the rate or amount of the emoluments of any such office. If it did, every claim to recover lands would be outside the jurisdiction of the Civil Courts, which is opposed to the words "but such decision shall not bar the right of the claimant to institute a suit in a Civil Court for recovery of the land itself," the last sentence in proviso (ii) to section 13 (1) of the Act. A claim to recover lands, in our judgment, does not raise a question as to the rate or amount of the emoluments of the office. Section 21 itself contains an express provision as to any claim to recover the emoluments of the office which may include land. The words "any claim to recover the emoluments of any such office" in section 21 do not apply to the present suit, since the suit is not a suit for land based on the ground that the land constitutes part of the emoluments of the office.

The general provision in the Act which bars the jurisdiction of the Civil Courts does not, in our view, apply to the present suit.

In this view it is unnecessary to consider whether proviso (ii) to section 13 (1) applies.

In the view that proviso (ii) applies, we think that the question whether the emoluments of the office consisted of land or of an assignment of revenue was "one of the facts in issue" within the meaning of the proviso and the Collector was therefore bound to decide the claim on the assumption that only the assignment constituted the emoluments. The Collector not having done so the right of suit to establish the claim to the land remains unaffected. The effect of the words "but such decision, etc.," is to preserve the jurisdiction of the Civil Courts even in cases where the Collector decided the claim on the assumption and not to oust the jurisdiction in cases where he did not. Section 13 is an enabling section conferring jurisdiction on Revenue Courts and, by itself, cannot oust jurisdiction which would otherwise exist. This view is not inconsistent with the decision of the Full Bench in *Kesiram Narasimhulu* v. *Narasimhulu Patnaidu*(1).

(1) (1907) I.L.R., 30 Mad., 126.

WHITE, C.J., AND KRISHNASWAMI AIYAR, J.

GAYARA RAMANNA v. ADABALA RATTAYYA.

As in our opinion section 21 does not bar the suit, we must set aside the decrees of the Courts below and send the case back to the Court of First Instance to be disposed of according to law. We desire to point out that this decision does not entitle the plaintiff to reopen the question as to the assignment of revenue forming part of the emoluments of the office. The decree of the Collector must be regarded as binding to that extent.

Costs will abide the event.

APPELLATE CIVIL.

Before Sir Ralph S. Benson, Officiating Chief Justice, and Mr. Justice Krishnaswami Aiyar.

1909. November 1, 2.

SHUPPU AMMAL AND ANOTHER (PLAINTIFFS), APPELLANTS,

v.

SUBRAMANIYAN AND OTHERS (DEFENDANTS, NOS. 1, 2, 5 AND 8), RESPONDENTS.*

Right of suit—Suit by person not a party to an instrument sustainable when charge created in such person's favour—Decree for relief not specifically asked for; when allowable.

A plaintiff asking for certain specific reliefs and for such other relief as the Court should deem fit, should, on being found disentitled to the specific reliefs asked for, be given such relief as the circumstances justify.

A person who is no party to a document but in whose favour a charge is created by such document is entitled to maintain a suit to enforce its terms, either as the actual beneficiary or as the charge-holder.

SECOND APPEAL against the decree of J. H. Munro, District Judge of South Malabar at Calicut, in Appeal Suit No. 394 of 1906, presented against the decree of P. P. Raman Menon, District Munsif of Palghat, in Original Suit No. 122 of 1905.

The facts are fully stated in the judgment of the Court of First Instance as follows :—

The first plaintiff had two sons, the second plaintiff and the deceased Krishna Pattar, the father of defendants Nos. 1 and 2. In 1896, the second plaintiff and the said Krishna Pattar divided

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* Second Appeal No. 70 of 1907.