APPELLATE CIVIL.

Before Mr. Justice Munro and Mr. Justice Abdur Rahim

SRIMAN MADHABUSHI ACHAMMA AND ANOTHER (PLAINTIFFS), APPELLANTS,

1909. September 17.

v.

GOPISETTI NARAYANASAWMY NAIDU AND OTHERS (DEFENDANTS NOS. 1, 3, 4, 5 TO 7, 9, 10 AND SECOND DEFENDANT'S REPRESENTATIVE), RESPONDENTS.*

Limitation Act XV of 1877, sch. II, arts. 120, 131—Right of tenant to sue in respect of excess collections arises on every occasion when excess collection is made—Art. 120 and not art. 131 of sch. II of the Limitation Act applies to such suits.

A landlord had been collecting excess rents from his tenant from 1872. In respect of the excess collection made in October 1898, the tenant brought a suit in December 1909 for a declaration that the landlord was not entitled to collect such excess:

Held, that the right to sue for such declaration arose on each occasion the excess was collected; that the period of limitation was six years from the date of collection under article 120 of schedule II of the Limitation Act, and that article 131 of the schedule did not apply to such suits.

SECOND APPEAL against the decree of M. D. Bell, District Judge of Kistna, in Appeal Suit No. 451 of 1905, presented against the decree of T. Varada Rao, Additional Subordinate Judge of Gódávari at Rajahmundry, in Original Suit No. 56 of 1901.

The facts are sufficiently stated in the judgment of the lower Appellate Court which is as follows:—

Plaintiffs who are Agraharamdars of Gopavaram sue for an injunction to restrain the Zamindar by whose predecessors agraharam was granted from collecting in the way of quit-rent a sum in excess of that fixed by the permanent settlement.

The first point taken in appeal is that the suit is barred by time and I think that this contention must prevail. The right which the plaintiffs now seek to establish was denied so far back as 1872. In a suit brought in 1876 the Zamindars established their right to collect quit-rent at the rate at which the plaintiffs now seek to restrain them from collecting. It was conceded in the lower Court that the parties to that litigation were the same

* Second Appeal No. 1016 of 1908.

MUNRO AND ABDUR RAHIM, JJ.

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as now. It is argued that the right of a tenant to sue for a declaration that he is entitled to an abatement of rent recurs every year that the landlord demands a higher rent (XII Madras Law Journal, Part IV, page 126). This ruling however applies to a case in which the right claimed had never been denied. It is quite a different matter when, as in the present case, the right claimed has been specifically denied. There is no question that the right now claimed by the plaintiff was denied in 1872 (See exhibit IV). I am of opinion that the ruling in XVI Madras, page 294, applies to the present case and that the suit is barred by article 131 of the Limitation Act. The appeal is allowed and the suit dismissed with costs throughout.

Plaintiffs appealed.

The Hon. the Advocate-General for appellants.

S. V. Padmanabhachariar for *P. R. Sundara Ayyar* and *C. R. Tiruvenkatachariar* for first and ninth respondents.

JUDGMENT.—The plaintiffs stated in their plaint that their cause of action arose on the 3rd October 1898 when the first defendant illegally levied Rs. 165-14-0 and they brought their suit in December 1901 for a declaration that the Zamindar of Nidadavolu had no right to levy from them any sum in excess of the sum of Rs. 549 per annum by way of quit-rent. We are clearly of opinion that article 131 of schedule II to the Indian Limitation Act does not apply to a suit like the present. The suit cannot be said to be a suit to establish a periodically recurring right. The article applicable is article 120. Under that article limitation runs from the time when the right to sue accrues. As was held in *Gopaladasu Garu* v. *Perraju*(1) the plaintiff's right to sue for a declaration arises on each occasion when the Zamindar collects or demands the enhanced rent. Each exaction is, if illegal, a separate injury and gives rise to a new cause of action. This suit was brought within six years of the 3rd October 1898 and is not barred. We therefore reverse the decree of the District Judge and remand the appeal for disposal according to law. Costs will abide the result.

(1) (1902) 12 M.L.J., 126.