

AKATTI
MOLDIN
KUTTY
v.
CHIRAYIL
AMBI.

suit to oust the second defendant from possession should have been dismissed. Such rights, if any, as the plaintiff may have on the strength of his mortgage must be enforced in another suit. What he asks for here is possession, and that he is clearly not entitled to (Reference may be made to the decisions in *Nanack Chand v. Teluckdye Koer*(1), *Durgopal Lal v. Bolakee*(2) and *Venkata-narsamma v. Ramiah*(3)).

This second appeal must be dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Bhashyam Ayyangar.

1902.
October 3.

RAMASWAMI NAJK AND ANOTHER (PLAINTIFFS), APPELLANTS,

v.

THAYAMMAL AND TWO OTHERS (DEPENDANTS NOS. 1, 7 AND 8),
RESPONDENTS.*

Transfer of Property Act—IV of 1882, s. 111—Landlord and tenant—Determination of tenancy—Commencement of occupation of dwelling house—Profession by tenant to hold adversely to landlord—No determination of tenancy—Hindu Law—Suit by presumptive reversionary heirs for decree declaring alienations by Hindu widow not binding except for life interest—Maintainability—Limitation Act XV of 1877, sched. II, art. 120.

Where a tenant enters into occupation of a dwelling house as a tenant, the tenancy, in the absence of evidence to the contrary, will be presumed to be one from month to month; and until it has been legally determined in one of the modes specified in section 111 of the Transfer of Property Act, limitation does not run against the landlord though the tenant may, in fact, profess to hold the property adversely to the landlord.

Srinivasa Ayyar v. Mullaswami Pillai, (I.L.R., 24 Mad., 246), and *Sushamma Shettai v. Chikaja Hegade*, (I.L.R., 25 Mad., 507), followed.

Assuming that a presumptive reversionary heir may be given a decree declaring that he is entitled to succeed, on the death of a widow, to property alleged to form part of her husband's estate, which property is in the possession of persons who claim it as their own, adversely to the widow, the suit praying for such a

(1) I.L.R., 5 Cal., 265.

(2) I.L.R., 5 Cal., 269.

(3) I.L.R., 2 Mad., 108.

* Second Appeal No. 1140 of 1900, presented against the decree of T. M. Rangachariar, Subordinate Judge of Madura (West), in Appeal Suit No. 14 of 1900, presented against the decree of V. Swaminatha Ayyar, District Munsif of Tirumangalam, in Original Suit No. 117 of 1899.

declaration must be brought within the period prescribed by article 120 of schedule II to the Limitation Act. Article 125 does not apply to such a suit.

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STRT for a declaration. Plaintiffs sued as reversioners for a declaration that certain alleged alienations of property were not binding on the reversioners after the death of the life-tenant. The alienations were alleged to have been made by a Hindu widow (first defendant) in favour of persons who were all impleaded as defendants. Of those, all compromised the suit except defendants seven and eight. The subject-matter of the suit, so far as it concerned defendants seven and eight, was a house situated in Madura. It was not alleged that the widow had alienated this house, but it was contended that it had belonged to her husband, and that it had been occupied by defendants seven and eight and an uncle of theirs since and prior to 1875. Plaintiffs claimed that these defendants had entered into occupation of the premises as tenants of the first defendant's husband. Defendants seven and eight denied the alleged tenancy and, at any rate, pleaded that they had occupied the house during the past 35 years in their own right. The District Munsif found on the evidence that seventh and eighth defendants commenced their occupation of the house as tenants of first defendant's husband, but he did not consider that the circumstances of the case warranted the presumption that they had up to the present time continued their occupation in the capacity of tenants. He thought that defendants seven and eight had enjoyed the house in their own right, at all events from and after the year 1882, if not before. Accordingly he dismissed the suit. The Subordinate Judge, on appeal, agreed with the Munsif's findings and confirmed that decree.

Plaintiffs preferred this second appeal.

P. R. Sundarra Ayyar for appellants.

T. Rangachariar for second and third respondents.

JUDGMENT.—Both Courts find that defendants seven and eight originally came into possession of the house as tenants of the husband of the first defendant. In the absence of any evidence to the contrary, the house being a dwelling house, the tenancy must be presumed to be one from month to month, and until the tenancy has been legally determined in one of the modes specified in section 111, Transfer of Property Act, there is no law of limitation running against the landlord or his representative in interest, though the tenant may in fact profess to hold the

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property adversely to the landlord (*Srinivasa Ayyar v. Muthusami Pillai*(1) and *Seshamma Shettali v. Chikkaya Hegade*(2)).

Apart from the title as owner set up by defendants seven and eight the question is whether a declaratory decree of the kind sought for in this case in respect of the house which it is not alleged was alienated by the widow, the first defendant, could be given to the presumptive reversionary heir and if so whether the suit has been brought within the period prescribed by article 120 of the Limitation Act, *i.e.*, within six years from the time when the cause of action for such declaratory suit accrued, article 125, which prescribes a period of twelve years, being inapplicable to such a suit.

Assuming, without deciding, that such a suit could be brought we are clearly of opinion that it has not been brought within the time prescribed. All the circumstances found by the Courts below indicate that the cause of action for such a declaratory suit arose much more than six years before the suit was brought in 1899, if not before the death of the husband of the first defendant in 1886. On this ground we dismiss the second appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Subrahmaniam Ayyar and Mr. Justice Davies.

1902.
October 8.

SOUNDARA PANDIA THEVAN AND TWO OTHERS
(PLAINTIFFS), APPELLANTS,

v.

VELATHIAPPA THEVAN AND FOUR OTHERS (DEFENDANTS NOS. 1
TO 3, FIFTH DEFENDANT'S REPRESENTATIVE AND SIXTH DEFEND-
ANT), RESPONDENTS.*

*Village officers—Madras Hereditary Village Officers Act—III of 1895, s. 3, cl. 3—
Suit for lands forming emoluments of the office of Ambalam—"Head of the
village"—Office in a "Proprietary estate"—Office in Inam village—Grant
conferred by Government—Jurisdiction of Civil Court to entertain suit.*

A suit was brought to recover lands which formed the emoluments of the office of Ambalam in a certain village. It was found on the evidence that the

(1) I.L.R., 24 Mad., 246.

(2) I.L.R., 25 Mad., 507.

* Second Appeal, No. 105 of 1901, presented against the decree of H. Moberly, District Judge of Madura, in Appeal Suit No. 412 of 1899, presented against the decree of D. K. Viraswamy, District Munsif of Paramukudy, in Original Suit No. 16 of 1899.