

APPELLATE CIVIL.

Before Mr. Justice Sankaran Nair and Mr. Justice Bakerwell.

D. BHASKARADU (SECOND PLAINTIFF), APPELLANT,

1913.
November 12.

v.

EP. SUBBARAYUDU AND THE SECRETARY OF STATE FOR
INDIA IN COUNCIL (FIRST PLAINTIFF AND DEFENDANT),
RESPONDENTS.*

Madras Land Encroachment Act (III of 1905), ss. 3, 5 and 14—Penal assessment, levy of—Suit for declaration of title and recovery of penal assessment—Suit brought after six months from date of notice and levy of penal assessment—Suit barred—Limitation.

Where the plaintiff brought a suit against the Secretary of State for a declaration of his title to certain immoveable property and for recovery of penal assessment levied from him by Government under section 5 of the Madras Act III of 1905, more than six months after the issue of notice and levy of the assessment from him,

Held, that the suit for declaration of title as well as for recovery of penal assessment was barred under section 14 of the Madras Act III of 1905.

SECOND APPEAL against the decree of A. SAMBAMURTI AYYAR, the temporary Subordinate Judge of Rajahmundry, in Appeal No. 108 of 1911 (Referred Appeal No. 118 of 1910 on the file of the District Court of Godavari) preferred against the decree of J. M. NALLASWAMI PILLAI, the District Munsif of Rajahmundry, in Original Suit No. 240 of 1909.

The plaintiffs brought this suit for a declaration that a certain plot of land, on which the defendant (the Secretary of State for India) levied and collected penal assessment as if it was Government land encroached upon by the plaintiffs, belonged to the plaintiffs as part of their inam patta land and not Government poramboke and for recovery of the penal assessment collected from them. The defendant among other pleas set up the bar of limitation, but did not rely on section 14 of the Madras Act III of 1905 either in the written statement or in the Court of First Instance. The District Munsif decreed the claim in favour of the plaintiff. But on appeal the Subordinate Judge allowed

* Second Appeal No. 1517 of 1912.

the plea of limitation based on the provisions of section 14 of the Madras Act III of 1905 to be raised on appeal. The plaintiffs had alleged in the plaint, which was filed on the 11th February 1909, that the cause of action for the suit arose on the 11th February 1903 (which was the date of receipt of the notice to quit the land), or on the 23rd March 1908 (the date of the levy of penal assessment) or on 6th March 1908 (the date fixed in the notice to defendant). The Subordinate Judge held that the suit for declaration of title as well as for recovery of the amount of penal assessment was barred by limitation under section 14 of the Madras Act III of 1905 and dismissed the suit. The second plaintiff preferred the Second Appeal to the High Court.

G. Venkataramayya for the appellant.

The *Government Pleader* for the second respondent.

SANKARAN NAIR, J.—The suit is brought by the plaintiff against the Secretary of State for a declaration of his title to certain property and for the recovery of the penal assessment levied from him by Government under section 5 of Madras Act III of 1905. The Government claim it as Government land. The suit was dismissed by the Lower Appellate Court on the ground that it is barred by limitation under section 14 of Act III of 1905. In Second Appeal it is contended that the prayer for declaration is not barred. The claim to recover the amount levied as penal assessment is not pressed in Second Appeal. Under section 3 of Act III of 1905 the Government is entitled to levy an assessment on land which is unauthorisedly occupied by any person if such land is the property of Government. Under section 5 in addition to the assessment under section 3 the Government is entitled to levy a penalty. Then section 14 confers a right to sue upon the person from whom the assessment is levied. Such suit must be brought within six months. See the 'Explanation' to the section. This suit is admittedly brought after the six months prescribed by that section. Then section 6 declares that the Government may summarily evict the person who is occupying the Government land without their consent. Section 14 gives a right of suit to the person so evicted and under the section read with the explanation that suit must be brought within six months of the eviction. In the case before us there has been no eviction and therefore the explanation does not apply to this suit.

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v.
SUBBA-
RAYUDU.

SANKARAN
NAIR, J.

BEASKARADU

S. SUEBA-
RAYUDU.SANKARAN
NAMB, J.

Section 14 declares that any suit which may be brought by a person aggrieved by any proceeding under the Act must be brought within six months from the time the cause of action arose. If therefore it is any proceeding under the Act which gives a cause of action for the suit, it must be brought within six months of the date of that proceeding. The cause of action is stated in the plaint to be a 'proceeding' under the Act, *i.e.*, the notice and the levy of penal assessment and the suit was brought more than six months afterwards.

The contention before us is that the suit for declaration may be brought within the ordinary period of limitation and reliance is placed upon the decision in *Narayana Pillai v. Secretary of State*(1). It is urged that such suit is maintainable as the title of the plaintiff is not lost till six months have expired from the date of eviction. It may be that the plaintiff has a cause of action to bring a suit within six months of the levy of penal assessment from him in any year to recover the amount so levied, so that, if the plaintiff is compelled to pay any assessment next year or the year after, it is possible that he may have a right to bring the suit within six months from that date. On that point it is unnecessary for us to give any opinion.

It may also be, as contended by the appellant, that, if the Government evict him at some future time from this land, he may have a right to bring a suit within six months from that date of eviction to recover possession of the land and that therefore it cannot be said that he would lose his title to the land till that period has expired. But that again is not the question that we have to consider. The question that we have to consider is when did the cause of action arise for this suit, and whether it is barred under section 14. And the cause of action for this suit for declaration certainly arose as stated in the plaint when the Government denied their title to the property or levied the penal assessment from them. If the plaintiff did not feel himself aggrieved by the notice or levy of the penal assessment, he was not bound to bring a suit for declaration. He might wait till any further step taken by Government gives him a right of suit. But as he alleges that it was a proceeding under this Act, *i.e.*, notice to quit the land, etc., that gives him a cause of action, he

was bound to bring his suit within six months from the date of the Act alleged to give him a cause of action, though his title to the property may not have been lost. In the plaint it is said that the cause of action arose on or before the 23rd March 1908. The suit is admittedly brought six months after those dates.

The Judge is right, therefore, in holding that the suit for the declaration of title is barred, and we accordingly confirm the decree and dismiss the appeal with costs.

BAKEWELL, J.—I entirely agree.

BHASKARADU
v.
SUBBA-
RAYUDU.
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SANKARAN
NAIR, J.

BAKEWELL, J.

APPELLATE CIVIL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Spencer.

PERIYASAMI KONE (FIRST RESPONDENT—FIRST
DEPENDANT), APPELLANT,

1913.
November
17.

v.

V. P. R. M. MUTHIA CHETTIAR (PETITIONER—PLAINTIFF),
RESPONDENT.*

Decree-holder—Petition for execution—Sale of properties not mentioned in the decree—Personal decree—Civil Procedure Code (Act V of 1908), O. XXXIV, r. 6—Application, if necessary—Court's power to amend—Code of Civil Procedure (Act V of 1908), sec. 153.

A decree-holder cannot ignore the terms of a decree directing him to bring the properties mentioned in it to sale before proceeding against other properties of the judgment-debtor.

Manti Kamoji v. Chidimalla Ramamurthy (1908) 3 M.L.T., 335 and *Varadiah v. Raja Perumal Raja Bahadur*, Appeal Against Order No. 257 of 1909, followed.

But when the judgment-debtor has no saleable interest in the properties directed to be sold, the decree-holder need not go through the farce of putting them up to sale.

A decree directing the defendant to pay a certain sum, and in default directing the hypothecated property to be sold, is a personal decree.

Raja of Kalahasti v. Varadachariar (1911) 21 M.L.J., 1036, followed.

* Appeal Against Appellate Order No. 112 of 1912.