

the decision in *Delroos Banco Begum v. Nawab Syud Ashgur Ally Khan* (1) and *Bunwari Lal v. Daya Sunker Misser* (2).

We are not prepared to differ from it, and are of opinion accordingly that the appellant is bound by the valuation in the plaint.

C.M.N.

SRINIVASA-  
CHARELU  
v.  
PERIN-  
DEVANMA.

WALLIS, C.J.,  
SADASIVA  
AYYAR AND  
SRINIVASA  
AYYANGAR,  
J.J.

## APPELLATE CIVIL—FULL BENCH.

*Before Sir John Wallis, Kt., Chief Justice, Mr. Justice  
Abdur Rahim and Mr. Justice Seshagiri Ayyar.*

THE SECRETARY OF STATE FOR INDIA IN COUNCIL  
(DEFENDANT), APPELLANT,

c.

ILLIKKAL ASSAN (DIED) AND NINE OTHERS (PLAINTIFF AND  
DEFENDANTS NOS. 2-4 AND LEGAL REPRESENTATIVES OF THE  
PLAINTIFF), RESPONDENTS.\*

1915.  
August  
16, 17 and  
October 18.

304.1.7.255

*Madras Land Encroachment Act (III of 1905), ss. 5, 6, 7 and 14—Notice under  
section 7—Levy of penal assessment—Suit for declaration—Cause of action—  
Limitation.*

A notice under section 7 of the Madras Land Encroachment Act (III of 1905) was issued to the plaintiff and penal assessment was thereafter levied from him. More than six months after such levy the plaintiff brought this suit for a declaration of his title to the land, injunction and for the refund of the assessment levied;

*Held*, that the notice under section 7 of the Madras Land Encroachment Act calling on the person in occupation of the land to show cause why he should not be proceeded against under section 5 or 6 of the Act does not give rise to a cause of action; but that the suit was barred having been filed more than six months after the levy of assessment.

*Narayana Pillai v. Secretary of State* (1912) 23 M.L.J., 162, approved.

*Bhaskaradu v. Subbarayudu* (1915) I.L.R., 38 Mad., 874, considered.

SECOND APPEAL against the decree of A. NARAYANAN NAMBIAR, Temporary Subordinate Judge of Palghat, in Appeal No. 347 of 1913, preferred against the decree of A. VERGHESE, District Munsif of Parapanangadi, in Original Suit No. 650 of 1911.

Suit for declaration of title to land and for an injunction to restrain the defendant (Government) from interfering with the plaintiffs' enjoyment thereof and for the refund of the penal assessment levied by the Government from the plaintiff under section 9 of the Madras Land Encroachment Act III of 1905.

\* Second Appeal No. 242 of 1914 (F.B.).

(1) (1875) 15 B.L.R., 173.

(2) (1909) 13 C.W.N., 815.

THE  
SECRETARY  
OF STATE  
FOR INDIA  
V.  
ASSAN

SPENCER AND  
SESHAGIRI  
AYYAR, JJ.

The suit was brought more than six months after the levy of the assessment. The defendant (the Government) pleaded that the plaintiff had no title and that the suit was barred by limitation as provided by section 14 of the Act. The District Munsif dismissed the suit on the merits. The lower Appellate Court held that the suit was barred under section 14 of the Act so far as the refund of the assessment was concerned as it was brought more than six months after the levy thereof; but declared the claim of the plaintiff in other respects holding that the special period of limitation of six months provided by the Act was not applicable to the same.

The defendant preferred this second appeal.

*C. Madhavan Nair* for the *Government Pleader* for the Crown.

*A. V. K. Krishna Menon* for respondents Nos. 2 and 3.

*C. V. Ananthakrishna Ayyar* for respondents Nos. 5 to 10.

This Second Appeal coming on for hearing in the first instance before SPENCER and SESHAGIRI AYYAR, JJ., the following ORDER OF REFERENCE TO A FULL BENCH was delivered by

SPENCER  
AND  
SESHAGIRI  
AYYAR, JJ.

SPENCER, J.—The question that arises for our decision is whether the period of limitation for a suit brought by a person who seeks a declaration of his title as against the Government on account of a notice issued by Government under Madras Act III of 1905 is six months as provided by section 14 of that Act, or some longer period as provided for suits brought under section 42 of the Specific Relief Act.

In the plaint it is stated that the Collector of Malabar sent a notice to the plaintiff in September 1910 stating that a certain piece of land belonged to Government and offering the plaintiff a patta for a portion and requiring him to give up the rest at once. In answer to that notice, it is stated that the Collector was required on 21st December 1910, by a registered notice, to release the claim set up by Government and to refund the penalty levied under the Act. It is quite clear that the plaintiff's suit is barred, so far as the reovery of the sum collected by Government is concerned, and both the lower Courts have held the suit to be barred in this respect. Now, the cause of action is stated in the plaint to have arisen on the 21st December 1910 when a demand was sent to the Collector of Malabar and he did not comply with that demand. But the respondents' vakil concedes that, so far as a cloud was thrown upon his title by the action of

Government, the cause of action must date from the notice sent by the Government in September 1910.

It was held in *Narayana Pillai v. Secretary of State*(1), that there were only two causes of action by which a party might be aggrieved and have a right of suit under section 14 of this Act, and that they were, (1) the levy of penalty and (2) eviction or forfeiture; and the learned Judges who decided that case observed that a person could not be regarded as "aggrieved" by a mere preliminary notice given by Government before exercising their powers under the Act. But in *Bhaskaradu v. Subbarayudu*(2) another Bench decided that a mere notice or denial of the plaintiff's title to property, if taken under the provisions of the Act, would give the plaintiff a cause of action upon which he must sue within six months from the date of the act alleged. The learned Judges observed that, if the plaintiff did not feel himself aggrieved by the notice, he must wait until some further action was taken by Government, but if he alleged it to be a proceeding under the Act, he was bound to sue within six months.

We find it difficult to reconcile these two decisions of different Benches of this Court. The later decision does not seem to have taken account of the words in section 14: "such persons, for any such cause of action unless such suit shall be instituted within six months." "Such cause of action" appears to refer to the proceedings mentioned in the first part of the section, by which persons may "deem themselves to be aggrieved"; but the explanation shows that a person can be "aggrieved" within the meaning of this section only by the levy of penalty or by eviction, and this was pointed out in *Narayana Pillai v. Secretary of State*(1). No doubt, the service of a notice is a preliminary act before evicting the occupant of the land. [See sections 6 (2) and 7 of the Act.] But if a person possesses a substantive right to establish his title to property as against any other person who denies his title, such substantive right will not be taken away by an Act of the legislature without an express declaration to that effect. But as the decision in *Bhaskaradu v. Subbarayudu*(2) is against the view we are inclined to take, we refer to a Full Bench the question—

"Whether a suit for a declaration of title to a land in dispute, if brought in consequence of a notice given under Act III of

THE  
SECRETARY  
OF STATE  
FOR INDIA  
v.  
ASSAN

SPENCER AND  
SESHAGIRI  
AYYAR, JJ.

(1) (1912) 23 M.L.J., 162. (2) (1915) I.L.R., 38 Mad., 674.

THE  
SECRETARY  
OF STATE  
FOR INDIA  
v.  
ASSAN.

SPENCER AND  
SESHAGIRI  
AYYAR, JJ.

1905 to vacate the land, is governed by the six months' limitation provided in section 14 of the Act?"

The other point argued on behalf of Government is that the suit is barred by limitation under Act XXVIII of 1860. But on this point we consider that the lower Courts were right in deciding that there was no bar, as there is no material for deciding that the plaintiff had notice of the decision of the Survey Officer in 1903 and was concluded by it.

*N. Grant, the Acting Government Pleader for the appellant.*—The reference turns upon the construction of section 14 of the Madras Land Encroachment Act (III of 1905). Where a person is in unauthorized possession of Government land, the Government can either assess him or levy a penalty or evict him. Under section 7 of the Act, the Government issued a notice to the plaintiff to show cause why he should not be proceeded against. At about the same time the Government imposed the penal assessment of Rs. 15 and collected it compulsorily.

[WALLIS, C.J.—Had the Government power to do that before the occupant showed cause?]

Assuming that the imposing of the penalty was illegal, I would submit that the plaintiff's suit was barred under section 14.

On the 21st December 1910 plaintiff served a notice on the Government to release the claim as that was a cloud on his title. The plaintiffs state that their cause of action arose on that date. The cause of action arose either when the Government served the notice on the plaintiff in September 1910 or when the plaintiff served the counter-notice on the Government on 21st December 1910.

[ABDUR RAHIM, J.—Has the Government passed any orders on the notice by the plaintiff?]

Yes, they refused to recognize his claim.

[WALLIS, C.J.—Can the mere service of a notice which the Government was authorized to issue, give a cause of action?]

[SESHAGIRI AYYAR, J., referred to *Bhaskuradu v. Subbarayudu* (1).]

[ABDUR RAHIM, J.—What is the date of the order by the Government on the petition by the plaintiff? The refusal by the Government might furnish a cause of action.]

But that is not the case of the plaintiff here. There is no cause of action apart from the imposition of the penalty. The remedy by recovery of the assessment paid, is now barred under section 14 of the Act.

THE  
SECRETARY  
OF STATE  
FOR INDIA  
V.  
ASSAN.

[WALLIS, C.J.—If a cause of action is barred for one purpose, is it barred for every purpose?]

Yes.

[ABDUR RAHIM, J.—When was the penalty imposed?]

In June 1910.

I have two points to place before your Lordships:—(1) The plaintiff's cause of action, if any, arose when the penal assessment was levied, and (2) that a mere notice to show cause under section 7 does furnish a cause of action.

[WALLIS, C.J.—In *Narayana Pillai v. Secretary of State*(1), it is stated that notice is no grievance. Eviction or penal assessment only gives rise to a cause of action.]

*Bhaskaradu v. Subbarayudu*(2) holds the other way.

[WALLIS, C.J.—*Bhaskaradu v. Subbarayudu*(2) only says that the cause of action arises only when the Government denies the title. The judgment refers to a notice to quit.]

Under section 6 (2) there is a notice to quit.

[WALLIS, C.J.—In this case there was the penal assessment only.]

A suit in which the levy of the penalty is the cause of action is clearly barred under section 14.

[ABDUR RAHIM, J.—When the Government levies the penalty again, the plaintiff can sue again.]

Yes.

*S. Ranganadha Ayyar for A. V. K. Krishna Menon* for respondents Nos. 2 and 3.

The fourth respondent did not appear in person or by pleader.

*C. V. Ananthakrishna Ayyar* for respondents Nos. 5 to 10.

[ABDUR RAHIM, J.—When do you say your cause of action arose?]

When the notice was sent by the Collector.

[ABDUR RAHIM, J.—Then your suit is six months after that date?]

The six months' limitation applies only to the special act which the Collector is authorized to do under the Act.

THE  
SECRETARY  
OF STATE  
FOR INDIA  
v.  
ASSAN.

[WALLIS, C.J.—The six months' limitation applies to all proceedings under the Act and the sending of a notice is a proceeding under the Act.]

[ABDUR RAHIM, J.—The Collector purports to act under the Act and so the limitation provided by it will apply. But if he purports to act outside it, then the ordinary provisions of law will apply.]

[WALLIS, C.J.—The action of the Collector was to ask you to show cause and that is not a cause of action. The Government levied the penalty without waiting for the plaintiff's explanation and a cause of action based on the levy of penal assessment is barred.]

The limitation referred to only applies to a suit to recover the penalty paid and it has no reference to the other relief that the plaintiff may ask for.

[ABDUR RAHIM, J.—As regards two of the remedies the dates on which the causes of action arise are specified, but as regards the others, though no dates are specified on which the causes of action arise, the limitation is provided by the Act.]

[ABDUR RAHIM, J.—Upon the terms of the reference the suit is barred.]

WALLIS, C.J.,  
ABDUR  
RAHIM AND  
SESHAGIRI  
AYYAR, JJ.

The following opinion of the Court was delivered by WALLIS, C.J.—We think that a notice under section 7 calling on the person in occupation to show cause why he should not be proceeded against under section 5 or section 6 of the Act, does not give rise to a cause of action. This was pointed out in *Narayana Pillai v. Secretary of State*(1), and if the learned Judges who decided *Bhaskaradu v. Subbarayudu*(2) were of a different opinion we are with respect unable to agree with them. Further, whether the present suit be regarded as based on the notice under section 7, or on the levy of penal assessment in June 1910, more than six months before the date of suit, it is in either view barred under section 14 because it was not instituted within six months from the time at which the cause of action arose.

1916  
January 19.

This Second Appeal coming on for final hearing before ABDUR RAHIM and SESHAGIRI AYYAR, JJ., the Court delivered the following

ABDUR  
RAHIM AND  
SESHAGIRI  
AYYAR, JJ.

JUDGMENT.—The appeal must be allowed having regard to the opinion of the Full Bench that there was no cause of action based on the notice dated September 1910.

(1) (1912) 28 M.L.J., 162.

(2) (1915) I.L.R., 38 Mad., 674.

The decree of the lower Appellate Court will be reversed and that of the Munsif restored with costs in this and in the lower Appellate Courts. The memorandum of objections is dismissed.

THE  
SECRETARY  
OF STATE  
FOR INDIA  
v.

ASSAN.

G.M.N.

ABDCR

RAHIM AND  
SESHAGIRI  
AYYAR, JJ.

## APPELLATE CIVIL—FULL BENCH.

*Before Sir John Wallis, Kt., Chief Justice, Mr. Justice Seshagiri Ayyar and Mr. Justice Phillips.*

RAMA AYYAR (DIED) AND ANOTHER (PETITIONER AND HIS LEGAL REPRESENTATIVE), APPELLANTS,

v.

KRISHNA PATTAR (COUNTER-PETITIONER), RESPONDENT.\*

*Foreign Court—Appearance by the defendant—Protest against jurisdiction—Defence on the merits—To get refund from the creditor's son to whom the suit debt was repaid and to avoid arrest—Voluntary submission to jurisdiction.*

The defendant who was sued in a foreign Court, viz., a Court in the Cochin State, appeared and defended the suit against him on the merits but protested against the jurisdiction of the Court. His reasons for appearing and defending the suit were : (1) that the creditor's son to whom he had repaid the suit debt refused to refund the money unless he defended the suit brought by the father and (2) that if a decree were passed against him, he might be arrested when he went to Cochin on business or to see his relations ;

*Held*, that the defendant must be deemed to have submitted to the jurisdiction of the foreign Court voluntarily notwithstanding his protest against its jurisdiction.

*Parry & Co. v. Appasami Pillai* (1880) I.L.R., 2 Mad., 407, overruled.

APPEAL against the decree of A. EDGINGTON, the acting District Judge of South Malabar, in Appeal No. 169 of 1912, preferred against the order of V. K. DESIKA AOHARI, the Subordinate Judge of Palghat, in Execution Petition No. 1471 of 1911, in Original Suit No. 164 of 1084 on the file of T. M. KRISHNA MENON, the Additional District Judge of Anjikaimal, in Appeal No. 50 of 1085 on the file of V. KELU ERADI, the Chief Judge, K. NARAYANA MAHAR and F. J. DE ROZARIO, Judges of Cochin.

The facts of the case appear from the ORDER OF REFERENCE OF TYABJI, J.

1914,  
October  
14 and 21  
and  
1915,  
August 19  
and November  
23 and  
24.

30 M.L. 714 8'

\* Appeal Against Appellate Order No. 120 of 1912 (F.B.).