APPELLATE CIVIL.

Before Mr. Justice Ramesam and Mr. Justice Madhavan Nair.

1934, May 9.

MAHABOOB SIR FRAJVANTU SRI RAJA PARTHASARATHY APPA RAO, SAVAYI ASWA RAO BAHADUR ZAMINDAR GARU AND ANOTHER (PLAINTIFF AND NIL.), APPELLANTS,

v.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL, REPRESENTED BY THE COLLECTOR OF KISTNA, AND ANOTHER (DEFENDANTS), RESPONDENTS.*

Burden of proof—Service inams within the ambit of a zamindari—If included in the assets of zamindari—Burden on zamindar—Enfranchisement proceedings by Government—Suit by zamindar for declaration denying Government's right—Limitation, according as the zamindar did or did not take part in those proceedings—Indian Limitation Act (IX of 1908), arts. 14 or 120.

In a suit by a zamindar against the Government for a declaration that the latter was not entitled to enfranchise certain service inams in certain villages within the ambit of the zamindari on the ground that they were included in the assets of the zamindari and not excluded from them at the time of the permanent settlement and that the right of resumption is in him and not in the Government,

held (1) that the burden of proof lay on the zamindar to show that the suit lands were included in the assets of the zamindari in spite of the fact that they were within the geographical limits of the zamindari;

Secretary of State for India v. *Raja Jyoti Prashad Singh*, (1926) I.L.R. 53 Calc. 533 (P.C.), followed; and *Secretary of State for India* v. *Kirtibas Bhupati Harichandan Mahapatra*, (1914) I.L.R. 42 Calc. 710 (P.C.), distinguished;

(2) that, in a case when the zamindar was a consenting party to the inam proceedings and raised no objection, article 14 of the Indian Limitation Act would apply, but that, in general, article 120 of the Indian Limitation Act would apply;

* Appeal No. 431 of 1925.

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(3) that, when he had not appeared before the Inam Commissioner and had taken no part in the proceedings and files a suit on the footing that the proceedings were *ultra vires*, the cause of action does not actually arise until he is injuriously affected by the enfranchisement, i.e., where there was a definite refusal by the inamdars to perform the services for which the inams were originally granted;

(4) and that, even if the quit-rent was collected by the Government from the inamdars directly or indirectly through the zamindar giving a commission to him on the collection and in the meanwhile the inamdars continued to render service to the zamindar, it did not give rise to a compulsory cause of action for a declaratory suit though it might afford an optional cause of action for the same.

APPEALS against the decree of the Court of the Subordinate Judge of Kistna at Ellore, dated the 31st March 1925 in Original Suits Nos. 52, 54, 55 of 1923, 30 and 31 of 1924, 56 of 1923, 32 of 1924, 51 of 1923, 24 of 1924, 35 of 1924, 33 of 1924 and 53 of 1923.

P. Venkataramana Rao and *K. Subba Rao* for appellant.

Advocate-General (*Sir A. Krishnasami Ayyar*) for first respondent.

V. Suryanarayana for other respondents.

Cur. adv. vult.

JUDGMENT.

RAMESAM J.

RAMESAM J.—These appeals arise out of suits brought by Raja Parthasarathi Appa Rao, zamindar of one-third share of the zamindari of Nidadavolu. All the suit villages are situate in the Amberipetta purgana of the zamindari. The plaintiff files these suits for a declaration that the Government is not entitled to enfranchise certain service inams in these villages on the ground that they are included in the assets of the zamindari

and not excluded from them at the time of the permanent settlement and that the right of resumption is in the zamindar and not in the Government. So far as the inamdars are concerned, the plaintiff alleges that he is entitled to resume the lands whenever their services are not required and that he gave notice to them to quit the suit lands. Similar questions have arisen before us in connexion with a number of zamindaris in the Kistna district. Those cases are Second Appeals Nos. 648 to 832, 974 to 1058, of 1927 and other connected second appeals and the questions of law arising in those cases were elaborately discussed by us in our judgments in those second appeals and I will have to refer in the course of this judgment to our earlier judgment. The Subordinate Judge of Ellore who tried the suits dismissed them and the plaintiff appeals.

Two important questions arise in suits of this kind: (*A*) On whom does the burden of proof lie? Is it for the zamindar to prove that the suit lands were included in the assets of the zamindari at the time of the permanent settlement; or is there a *prima facie* presumption that the lands being within the ambit of the zamindari are included in the assets of the zamindari; or is it for the Government to prove that they were excluded from the assets of the zamindari at the time of the settlement? On this question it is unnecessary for me to repeat what I have said in my former judgment, but, as that judgment has not been reported, it may be convenient to summarise what I have said therein. In the printed copy of that judgment I discussed this matter at pages 13 to 16. I there show that, though at first sight

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it looks as if the decision of the Judicial Committee in *Secretary of State for India* v. *Kirtibas Bhupati Harichandan Mahapatra*(1) is in favour of the zamindar and throws the burden of proof upon the Government, that case relates to Sukinda and Madhupur estates in Orissa and it somewhat resembles the decision in *Secretary of State* v. *Rajah of Venkatagiri*(2) which relates to Venkatagiri and connected zamindaris in this Presidency. These estates have a special history of their own, and the rule of presumption in respect of all zamindaris cannot be inferred from these cases. The general rule is laid down in the decision in *Secretary of State for India* v. *Raja Jyoti Prashad Singh*(3). According to that decision it is for the zamindar to show that the suit lands were included within the zamindari in spite of the fact that they are within the geographical limits of the zamindari. Accordingly I held that the burden of proof is in such cases always on the zamindar. (*B*) Question of limitation. This question was discussed by me at pages 21 to 27 of that judgment. There I held, (i) that in a suit by a zamindar against Government for a declaration that an enfranchisement by the Government is not valid and binding on the zamindar the period to be applied is not 12 years. In this matter I differed from an unreported judgment of WALLACE and THIRUVENKATACHARIAR JJ. in Appeal No. 355 of 1922 ; (ii) in general, article 120 will apply to such suits; (iii) where the zamindar was a consenting party to the inam proceedings and raised no objection, article 14 may

(1) (1914) I.L.R. 42 Calc. 710 (P.C.). (2) (1921) I.L.R. 44 Mad. 864 (P.C.).
(3) (1926) I.L.R. 53 Calc. 533 (P.C.).

apply ; but, where the zamindar had not appeared before the Inam Commissioner and had taken no part in the proceedings and files a suit on the footing that the proceedings are *ultra vires*, then, the effect of the order of the Inam Commissioner is not such as to make it necessary for the zamindar to set it aside, and therefore article 14 does not apply to such cases. A further question was discussed as to when exactly the cause of action begins, assuming that the period of limitation is six years under article 120. I held that, where the zamindar took no part in the proceedings and studiously kept himself aloof and afterwards files a suit for a declaration on the ground that the proceedings are *ultra vires*, the cause of action does not actually arise until he is injuriously affected by the enfranchisement, i.e., until there is a definite refusal by the inamdars to perform the services for which the inams were originally granted. This portion of my judgment is at pages 21 to 23. I made observations to the effect that, even if quit-rent is collected by the Government from the inamdars directly or indirectly through the zamindar giving ten per cent to the zamindar as commission and in the meanwhile the inamdars continued to render service to the zamindar, this does not necessarily compel the zamindar to sue though if he likes he may sue, i.e., it does not give rise to a compulsory cause of action for a declaratory suit though it may afford an optional cause of action for a declaratory suit. A compulsory cause of action arises when for the first time he is injuriously affected by the enfranchisement. Once such a compulsory cause of action arises, a suit brought more than six years

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from that date would be barred ; *Kodoth Ambu Nayar* v. *Secretary of State for India*(1). In the last case it was held that one cannot evade limitation by making a second application to the Government and bringing a suit within six years from the rejection of the second application. Here I may mention that in most of the cases with which we were concerned in those second appeals the zamindar did not appear before the Inam Commissioner. The only exceptions to the statement were the Mokhasa of Kondaparva and the Gampalagudam estate. In the case of Kondaparva the mokhasadar was present and agreed to the enfranchisement. I held that he was barred even under article 14 (*see* page 27). As to Gampalagudam estate except as to one village (Anumalalanka) the zamindar agreed to the lands being enfranchised (page 27 of the former judgment) and I held that the suits were barred under article 14 also. In all the other cases I held that article 14 did not apply and article 120 applied.

Now in the suits before us it is unnecessary to discuss the question whether article 14 applies, because in the view I am taking, even if article 120 applied, except in the case of three villages all the suits would be barred by limitation. What happened in these cases is this. The notification by the Government was on 1st October 1909, and the date fixed under section 19 of Act II of 1894 was 1st July 1910. The zamindari was then the subject of a litigation. The present zamindar-appellant, Raja Parthasarathi Appa Rao, filed a suit for the recovery of one-third share of the zamindari. The matter went up to the Privy

(1) (1924) I.L.R. 47 Mad. 572.

Council where the zamindar finally obtained a decree for one-third share; see *Narasimha* v. *Parthasarathy*(1). It is admitted before us that during all this litigation the estate was being managed by a receiver. The receivership terminated in 1916 and the plaintiff's share of the estate was made over to him in the same year (*vide* the deposition of plaintiff's first witness). When the enfranchisement notice was given to the receiver, the receiver actually sent his tanedar to appear before the Inam Commissioner and make a statement. In most of the cases in which he appeared he had no objection to the enfranchisement but wanted the kattubadi on the inams to be excluded from enfranchisement. Afterwards no document was produced to make out the case for exclusion of kattubadi, with the result that even kattubadi was not excluded.

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It may be that if the zamindar himself was in charge of his own estate he would not have consented but, as the receiver represented the person who was ultimately found to be the owner of the estate and as his bona fides were not questioned, his consent binds the zamindar. At any rate if it is intended to file a suit for a declaration on the ground that the receiver committed a mistake, the cause of action must have arisen the moment the zamindar was affected by the consent. Now the zamindar files all these suits in April 1922. According to him the cause of action arose when notice was issued to the defendants on the 16th October 1921 and the defendants disregarded it. In my opinion the cause of action

(1) (1913) I.L.R. 37 Mad. 199.

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accrued to him in 1910 when the enfranchisement proceedings were made and there cannot be a new cause of action by reason of the notice issued by him in October 1921 calling upon the inamdars to render service. Some of these inamdars replied to the notice issued by the zamindar. Exhibit WWWWW series are the notices issued by the zamindar calling upon the inamdars to render service. The replies given by the defendants are Exhibit YYYYY series. In these documents the inamdars say that they are willing to render service and that if the zamindar has got any complaint it is against the Government. Besides Exhibit WWWWW series the zamindar sent some circulars asking the inamdars to come and render some particular services such as entering muchilikas in accounts and recovering arrears of rent. Exhibit 77 is such a circular issued to the karnam of Dondapadu ; Exhibit 88, to the karnam of Pinakadimi ; Exhibit 86 (*a*), to the karnam of Chodimella ; Exhibit PPPPP, to the karnam of Vanguru ; Exhibit 86 (uu), to the karnam of Chodimella ; Exhibit 76 (tt), to the karnam of Chodimella and Exhibit 88 (n), to the karnams of certain villages. Exhibit PPPPP-1 is the reply by a karnam saying that he is very busy and has no leisure. Exhibit UUUUU is the report submitted to the zamindar saying that the karnams are not promptly attending to their duties. In my opinion all these are collusive proceedings between the zamindar and the karnams for the purpose of conferring a new cause of action on the zamindar in 1921, and that the cause of action accrued to him long ago in 1910, and I think that these notices and replies should be disregarded. Except in the two or

three cases where the tanedar did not appear, in all the other cases the suits are barred by limitation and should fail on that ground ; but I will also discuss the main point on the merits in respect of each village.

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The land now enfranchised is of the extent of 18·54 acres the patta being Exhibit 93. Exhibit 51 shows that according to the old accounts it ought to have been 25·52 but the difference is not accounted for. Now going to the old accounts, Exhibit LLLL of the year 1868 shows that 1¼ kathi was kattubadi inam and 3/8 kathi sarvadumbala. The document also shows that the kattubadi inam was pre-settlement inam and also it was wet. But it is not very clear whether it was subject to kattubadi from before the settlement though one may presume it if there is no other information available in the matter. But coming to Exhibit 45 we find under the heading "service inams" for one kathi of wet land a kattubadi of Rs. 4 per putti was imposed in the Jamabandi of fasli 1212 at the end of that fasli by Raja Venkata Narasimha Appa Rao though previously it had been sarvadumbala. Exhibit 46 practically gives the same information as Exhibit 45 and Exhibit 48 (*a*) supports Exhibits 45 and 46 regarding the imposition of kattubadi in 1212.

The result is we must hold that all the land belonging to the karnam was sarvadumbala originally and on a portion of it—one kathi—kattubadi was imposed on the crop after the permanent

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settlement, i.e., about May or June 1803, and the inam is pre-settlement. The inam is resumable by Government.

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MADHAVAN NAIR J.

MADHAVAN NAIR J.—On the general question of "burden of proof" and "limitation" arising in cases of this description, I have already expressed my opinion in detail in the separate but concurring judgment which I delivered in Second Appeals Nos. 648 to 832 and the connected second appeals. The arguments now addressed to us have not persuaded me in altering the views therein expressed.

In the appeals before us, I agree with my learned brother on the question of limitation regarding the applicability of article 120 of the Limitation Act to the facts of the case and also on the merits, and have nothing to add.

G.R.

APPELLATE CIVIL.

Before Mr. Justice Venkatasubba Rao.

1934, March 29.

SUBBALAKSHMI AMMAL AND ANOTHER (DEFENDANTS), APPELLANTS,

v.

A. NARAYANA AYYAR (PLAINTIFF), RESPONDENT.*

Hindu Law—Widow—Surrender by—Validity of—Motive of widow if relevant on question of.

The validity of a surrender by a Hindu widow does not depend upon her motive.

A surrender by a Hindu widow must be *bona fide* in the sense that there must be a complete relinquishment and that,

* Second Appeal No. 661 of 1930.