In the result, therefore, we hold that this decree is liable to be scaled down under section 8 treating as the principal of the debt the amount originally advanced and any subsequent sums lent to the extent to which the original debt can be said to have been renewed by the agreement of compromise embodied in the decree and that the petitioner is entitled under the proviso to section 19 to prove uncertified payments for the purpose of appropriating those payments if established towards costs of the decree. The petition is therefore remitted to the trial Court for disposal in the light of this judgment and the petitioner is entitled to his costs in this Court.

V.V.C.

APPELLATE CIVIL—FULL BENCH.

Before Sir Lionel Leach, Chief Justice, Mr. Justice Mockett and Mr. Justice Krishnaswami Ayyangar.

1940, April 23.

THE OFFICIAL RECEIVER OF EAST GODAVARI AT RAJAHMUNDRY (NIL), APPELLANT,

v.

CHAVA GOVINDA RAJU AND ANOTHER (DEFENDANT 1 AND PLAINTIFF), RESPONDENTS.*

Indian Limitation Act (IX of 1908), *sec.* 2 (8), *Arts.* 142 *and* 144—*Suit for ejectment—Onus on plaintiff to prove possession within twelve years of suit—Same principle applicable to suit for possession by court-auction-purchaser in suit on mortgage executed subsequent to trespass on mortgaged property.*

In suits for ejectment where the plaintiff sues for possession of immovable property in the occupation of another, the plaintiff cannot rest his case on title alone. Article 142 of the

* Second Appeal No. 255 of 1937.

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Limitation Act applies to such suits and the plaintiff must show that he has exercised rights of ownership by being in possession within twelve years of suit. The fact that the plaintiff is a purchaser at a court-auction held in execution of a mortgage decree does not make any difference in the applicability of Article 142 where the decree is on a mortgage executed subsequent to the trespass by the defendant. When property is sold at such a court-auction the purchaser has vested in him the full title of the mortgagor as it existed before the mortgage and the law which applies to the mortgagor applies to him.

Observations in *Sundaram Aiyar* v. *Thiyagaraja Pillai*(1) not approved.

Periya Jeeyangarswami v. *Esoof Sahib*(2) and *Ramanujachariar* v. *Sundarachari*(3) overruled.

Vyapuri v. *Sonamma Boi Ammani*(4) distinguished.

APPEAL against the decree of the Court of the Subordinate Judge of Rajahmundry in Appeal Suit No. 9 of 1933 preferred against the decree of the Court of the District Munsif of Rajahmundry in Original Suit No. 382 of 1931.

The appeal first came on for hearing before HORWILL J. In view of the conflict between the decisions of two Benches of this Court, viz., *Ramanujachariar* v. *Sundarachari*(3) and *Alam Khan Sahib* v. *Karuppannaswami Nadan*(5) his Lordship directed that the papers in the case be put before the CHIEF JUSTICE, for referring to a Full Bench, if his Lordship so pleased, the question whether, in a case where a plaintiff sets up a case of permissive possession and fails to prove it, the burden lies upon the plaintiff to prove that he was in possession within twelve years of suit, or the onus is upon the defendant to prove adverse possession for a period of twelve years.

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(1) (1922) 50 M.L.J. 183, 189. (2) (1924) 21 L.W. 398.
(3) (1926) 25 L.W. 127. (4) (1915) I.L.R. 39 Mad. 811 (F.B.).
(5) (1938) 1 M.L.J. 113.

The appeal then came on for hearing before the Full Bench constituted as above.

ON THE REFERENCE:

K. R. Vepa for appellant.—The lower Court applying Article 142 of the Limitation Act has held that the plaintiff's claim is barred. The Article that is applicable is Article 144 and under it the burden of establishing adverse possession is on the person setting up the same, that is, by the first defendant in this case. By applying Article 142 the onus has been wrongly thrown on the plaintiff of establishing possession within twelve years of the suit. Article 142 must be confined to cases where possession of the plaintiff and subsequent dispossession by the defendant are alleged. Where the plaint is based on the allegation that the defendant is in permissive occupation of property the proper Article applicable is Article 144, even though that allegation is not found to be true on the evidence. MADHAVAN NAIR J. takes this view in *Periya Jeeyangarswami* v. *Esoof Sahib*(1). This decision is not followed by PHILLIPS J. in *Kuppuswami Mudaliar* v. *Chockalinga Mudaliar*(2). PHILLIPS J. considers the decisions of the Privy Council in *Mohima Chunder Mozoomdar* v. *Mohesh Chunder Neoghi*(3), *Mahammud Amanullah Khan* v. *Badan Singh*(4) and *Dharani Kanta Lahiri* v. *Garbar Ali Khan*(5) and holds that Article 142 is applicable to suits for possession based on title. But DEVADOSS and WALLACE JJ. in *Ramanujachariar* v. *Sundarachari*(6) hold that Article 142 is applicable only to cases where the plaintiff alleges possession and dispossession in his plaint. Where he sets up a tenancy or licence as the basis of the defendant's possession the proper Article is Article 144. This is not approved in the recent decision of VENKATASUBBA RAO and ABDUR RAHMAN JJ. in *Alam Khan Sahib* v. *Karuppannaswami Nadan*(7). There is thus conflict of authority on the point. I submit, however, that Article 142 is not applicable for the further reason that the plaintiff is an auction-purchaser in a sale held in execution of a mortgage decree. He is a

(1) (1924) 21 L.W. 398.
(2) (1925) 49 M.L.J. 788.
(3) (1888) I.L.R. 16 Cal. 473 (P.C).
(4) (1889) I.L.R. 17 Cal. 137 (P.C.).
(5) (1912) 25 M.L.J. 95 (P.C.).
(6) (1926) 25 L.W. 127.
(7) (1938) 1 M.L.J. 113.

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representative of the mortgagee also. It has been held in *Vyapuri* v. *Sonamma Boi Ammani*(1) that adverse possession against the mortgagor does not amount to adverse possession against the simple mortgagee. Following that principle it has been held in *Sundaram Aiyar* v. *Thiyagaraja Pillai*(2) that Article 142 did not apply to the case of a court-auction-purchaser in execution of a mortgage decree. Article 137 has been held to be inapplicable to purchasers in execution of mortgage decrees and for the same reasons Article 142 also will not apply to suits for recovery of property by such purchasers. Such a purchaser is not only the representative of the mortgagor but also of the mortgagee; see *Kunhiamma* v. *Kunhunni*(3) and *Maganlal* v. *Shakra Girdhar*(4).

A. Lakshmayya for respondent.—Where there is a trespass and adverse possession starts before a mortgage is created the principle of the decision in *Vyapuri* v. *Sonamma Boi Ammani*(1) does not apply. The mortgagee in such a case has no higher rights than the mortgagor; nor the auction-purchaser in execution of a mortgage decree. In the present case the first defendant was in possession of the property even before the mortgage, in pursuance of which the plaintiff made his purchase, was created. The plaintiff derives his title from the mortgagors and Article 142 is consequently applicable. Even when a tenancy is alleged in the plaint but is disproved Article 142 has been applied; see *Gopaul Chunder Chuckerbutty* v. *Nilmoney Mitter*(5) and *Venkatarayudu* v. *Sankarayya*(6). The applicability of an Article cannot be made to depend merely on the allegations in the plaint. Otherwise the law of limitation would be evaded by the device of false averments in the plaint.

Cur. adv. vult.

JUDGMENT.

LEACH C.J.

LEACH C.J.—The appellant is the Official Receiver of East Godavari and he has filed this appeal as

(1) (1915) I.L.R. 39 Mad. 811 (F.B.).
(2) (1922) 50 M.L.J. 183.
(3) (1892) I.L.R. 16 Mad. 140.
(4) (1897) I.L.R. 22 Bom. 945.
(5) (1884) I.L.R. 10 Cal. 374.
(6) (1910) 20 M.L.J. 306.

the representative of the estate of one Adusumilli Venkatasubbarayudu who was adjudicated an insolvent during the pendency of the suit out of which this appeal arises. The insolvent was the plaintiff in the suit. On 29th November 1911 the second defendant and his sons mortgaged certain land belonging to them and in 1922 the mortgagees filed a suit in the Court of the District Judge of Rajahmundry to enforce the mortgage. They obtained a decree which they assigned to the plaintiff, who caused the land to be put up for sale in execution proceedings. The plaintiff bought the land at the court-auction and in due course obtained a sale certificate. When he went to take possession of the property he was obstructed by the first respondent, who claimed it as his ancestral property. Thereupon the plaintiff applied to the Court for an order under Order XXI, rule 98, of the Code of Civil Procedure. His application was dismissed and consequently he filed in the Court of the District Munsif, Rajahmundry, a suit for a decree declaring his title to the property and for the ejectment of the first respondent therefrom. In his plaint he averred that in 1909 the second defendant, on being appointed a village munsif, entrusted the property to the first respondent, his nephew, who was to manage it for him. With the dishonest idea of defeating the mortgage the second defendant had, it was said, instigated the first respondent to claim the property as his own. In addition to claiming the land as his ancestral property the first respondent averred that he had title to it by adverse possession. The District Munsif found for the plaintiff on all the issues and consequently decreed the suit. The first respondent then appealed to the Court of the Subordinate Judge of Rajahmundry. The Subordinate Judge held that the land was not the ancestral property of the first

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respondent, but belonged to the second defendant and his family. He disagreed with the District Munsif, however, on the question whether the land had been entrusted to the first respondent. In his opinion this had not been proved, but without considering the question whether the first respondent had been in adverse possession for twelve years he allowed the appeal on the ground that possession had been with the first respondent since that date. The question which the Court is called upon to decide is whether Article 142 or Article 144 of the Limitation Act applies to this case. The appellant contends that Article 144 applies. The first respondent would have it that the proper Article is Article 142. That the first respondent has been in possession since 1909 is admitted and it is conceded by both sides that if Article 142 applies the appeal must fail. It is also conceded that if Article 144 applies the suit must be remanded to the Subordinate Judge to consider whether the evidence justifies the first respondent's contention that he has obtained a title by adverse possession.

Article 142 prescribes a period of limitation of twelve years for a suit for possession of immovable property when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession. The period of twelve years runs from the date of dispossession or discontinuance. Article 144 prescribes the same period of limitation for a suit "for possession of immovable property or any interest therein not hereby otherwise specially provided for". The period commences when the possession of the defendant becomes adverse to the plaintiff. Articles 134, 134-B, 135, 136, 137, 138, 139, 140, 141 and 143 also deal with suits for possession of immovable property. Article 144 is a residuary Article and therefore can only be applied if a suit does not fall

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within any of the earlier articles. There has been much discussion in the Courts of India with regard to the application of Articles 142 and 144. If a suit falls within Article 142 the plaintiff must show that he has been in possession within twelve years of the suit. When Article 144 applies the burden of proving adverse possession for this period is upon the defendant.

A discussion of the reported cases relating to Articles 142 and 144 would be a most formidable task and in my opinion it is not necessary to undertake it. I consider that the Privy Council has indicated the application of these Articles in *Mohima Chunder Mozoomdar* v. *Mohesh Chunder Neoghi*(1), *Mahammud Amanullah Khan* v. *Badan Singh*(2) and *Dharani Kanta Lahiri* v. *Garbar Ali Khan*(3). In *Mohima Chunder Mozoomdar* v. *Mohesh Chunder Neoghi*(1) the plaintiffs had proved that formerly they were the proprietors of the land to which they alleged title, and from which they claimed to oust the defendants. They had, however, been dispossessed, or their possession had been discontinued, some years before the suit was brought by them and the land was occupied by the defendants, who denied their title. The Judicial Committee held that in these circumstances the burden was on the claimants to prove their possession at some time within the twelve years next preceding the suit. It was not sufficient for them to show an anterior title without proof of their possession within twelve years to shift the burden on the defendants of showing that they were entitled to remain in possession. In the judgment under appeal the Subordinate Judge who tried the case observed:

"When I showed above that the plaintiffs are the rightful owners of the disputed land, it is for the ryot defendants

(1) (1888) I.L.R. 16 Cal. 473 (P.C.). (2) (1889) I.L.R. 17 Cal. 137 (P.C.).
(3) (1912) 25 M.L.J. 95 (P.C.).

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to show that they are entitled to retain possession of these lands."

Their Lordships' comment on this observation was this:

"That, as a proposition of law, is one which hardly meets with the approval of their Lordships."

Their Lordships went on to say:

"This is in reality what in England would be called an action for ejectment, and in all actions for ejectment where the defendants are admittedly in possession, and *a fortiori* where, as in this particular case, they had been in possession for a great number of years, and under a claim of title, it lies upon the plaintiff to prove his own title. The plaintiff must recover by the strength of his own title, and it is the opinion of their Lordships that, in this case, the onus is thrown upon the plaintiffs to prove their possession prior to the time when they were admittedly dispossessed, and at some time within twelve years before the commencement of the suit, namely, for the two or three years prior to the year 1875, or 1874, and that it does not lie upon the defendants to show that in fact the plaintiffs were so dispossessed."

In *Mahammud Amanullah Khan* v. *Badan Singh*(1) the Privy Council pointed out that Article 144 only gives the rule of limitation where there is no other Article in the schedule specially providing for the case. Although the proprietary right would continue to exist until, by the operation of the law of limitation, it has become extinguished, where a claim comes within the terms of Article 142, adverse possession is not required to be proved in order to maintain a defence. The plaintiffs' ancestors at the settlement in the Delhi District in 1843, declined to pay revenue in respect of a plot of land which had been held under rent-free tenure and had been resumed in 1838. The land was nevertheless assessed and the Government made an engagement with the villagers (the defendants in the suit) under which the villagers were to

(1) (1889) I.L.R. 17 Cal. 137 (P.C.).

be put into possession. A revision of the settlement took place some thirty years later and the plaintiffs claimed possession on the strength of their title. According to the judgment under appeal to the Privy Council the plaintiffs were undoubtedly the proprietors before 1838, but the land had been since 1842 in the possession of the defendants, who had exercised all the rights of proprietors. There was no possession of any description in the plaintiffs or their ancestors since the period of the engagement and, under those circumstances, the Judicial Committee held that whether any proprietary right existed did not matter. The question was whether there was a dispossession or discontinuance, and clearly there was. The proprietary right would undoubtedly continue to exist until by the operation of the law of limitation it had been extinguished; but upon the question whether the law of limitation applied, it appeared to be clear that the case came within the terms of Article 142. Therefore it was unnecessary to embark upon an inquiry whether there had been adverse possession.

The decision in *Dharani Kanta Lahiri* v. *Garbar Ali Khan*(1) was to the same effect. The suit was one for ejectment of persons who admittedly were at the date of suit in possession of the land. Their Lordships said:

"It lay upon the plaintiffs to prove not only a title as against the defendants to the possession, but to prove that the plaintiffs had been dispossessed or had discontinued to be in possession of the lands within twelve years immediately preceding the commencement of the suit. Their Lordships find that the plaintiffs failed to prove a title against the defendants to the possession of the lands in dispute or any part of them; they failed to prove that the lands, the possession of which they claimed, were not the lands covered by

(1) (1912) 25 M.L.J. 95 (P.C.).

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the sanad; and they failed to prove that they had been dispossessed or that their possession had been discontinued within twelve years before suit".

In view of these decisions of the Privy Council it cannot in my judgment be maintained that a person who proves title in a suit for ejectment has the right to the decree sought unless the defendant proves adverse possession for twelve years. The plaintiff is not entitled to succeed unless he shows in addition to title, that he has been in possession of the property within twelve years of the suit. The Privy Council has declared that to be the effect of the Article 142 and that suits for ejectment come within that Article. It may be a hardship that a person who proves a title to property should lose it to a trespasser unless he can also show that he has been in possession within twelve years of suit, but that is what the Limitation Act says and the Court must administer the law. And drafting his plaint in a manner which disguises the real nature of the suit will not help a plaintiff. In *Gopaul Chunder Chuckerbutty* v. *Nilmoney Mitter*(1) GARTH C.J. pointed out a mere allegation of a tenancy will not relieve a plaintiff from the burden of proving that he or those under whom he claims had been in possession within twelve years. If it did that device might always be resorted to for the purpose of evading the law of limitation.

I will now proceed to examine the decisions of this Court to which reference has been made in the course of the arguments. The first decision is that of AYLING and VENKATASUBBA RAO JJ. in *Sundaram Aiyar* v. *Thiyagaraja Pillai*(2). A mortgagee filed a suit to enforce a mortgage created in 1897 and obtained a decree for sale. At the auction sale held on 5th September 1906 the mortgagee purchased

(1) (1884) I.L.R. 10 Cal. 374. (2) (1922) 50 M.L.J. 183.

the property and obtained symbolical possession. A third party was in possession and the mortgagee did not institute a suit to recover possession until 4th September 1918. The defendant who had been in possession from 22nd May 1905 then claimed he had been in adverse possession for more than twelve years. The Court held that the possession of the defendant though adverse to the mortgagor did not affect the rights of the mortgagee or of the auction-purchaser and consequently the suit was not time-barred. This principle had been settled by a Full Bench of this Court (WALLIS C.J. and SADASIVA AYYAR and SRINIVASA AYYANGAR JJ.) in *Vyapuri* v. *Sonamma Boi Ammani*(1) where it was held that the possession of a trespasser who has dispossessed a mortgagor, the mortgage being a simple one within the meaning of the Transfer of Property Act, is not adverse to the mortgagee. In the present case dispossession took place before the mortgage was created and therefore it differs materially from that decided by AYLING and VENKATASUBBA RAO JJ. The learned Judges went on to express the opinion that Article 142 does not apply

> "when upon the facts proved or admitted, dispossession cannot possibly have occurred before twelve years of the institution of the suit",

and to observe that

> "the plaintiff is entitled to say that the allegation relating to his possession may be treated as superfluous and that he may be allowed to rest his case upon the footing that his suit is within twelve years of the accrual of his right".

MADHAVAN NAIR J. discussed the applicability of Articles 142 and 144 in *Periya Jeeyangarswami* v. *Esoof Sahib*(2). In that case a suit was brought

(1) (1915) I.L.R. 39 Mad. 811 (F.B.). (2) (1924) 21 L.W. 398.

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by a dharmakarta of a devasthanam for possession of land which the devasthanam alleged had been leased to the defendants. The District Munsif who tried the suit found for the plaintiff, but his decision was reversed on appeal by the Subordinate Judge, who held that the alleged lease had not been proved and that Article 142 applied. As the plaintiffs had failed to prove possession within twelve years of suit the Subordinate Judge allowed the appeal. On second appeal MADHAVAN NAIR J. held that the proper Article to apply was Article 144 and based his opinion on the judgments of the Privy Council in *Secretary of State for India* v. *Chellikani Rama Rao*(1) and in *Kuthali Moothavar* v. *Kunharankutty*(2) and of that of the Allahabad High Court in *Jai Chand Bahadur* v. *Girwar Singh*(3).

In *Secretary of State for India* v. *Chellikani Rama Rao*(1) the question was whether the Secretary of State in Council was entitled to incorporate into a reserved forest under the Madras Forest Act (V of 1882) certain islands which had been formed on the bed of the sea near the mouth of the river Godavari within three miles of the main land. It was held that the islands belonged to the Crown and that the claimants had not proved adverse possession for a period sufficient to establish a right against the Crown. In the course of their Judgment their Lordships said :

"Nothing is better settled than that the onus of establishing title to property by reason of possession for a certain requisite period lies upon the person asserting such possession. It is too late in the day to suggest the contrary of this proposition. If it were not correct it would be open to the possessor for a year or a day to say, 'I am here; be your

(1) (1916) I.L.R. 39 Mad. 617 (P.C.). (2) (1921) I.L.R. 44 Mad. 883 (P.C.).
(3) (1919) I.L.R. 41 All. 669.

title to the property ever so good, you cannot turn me out until you have demonstrated that the possession of myself and my predecessors was not long enough to fulfil all the legal conditions'. Such a singular *doctrine* can be well illustrated by the case of India, in which the right of the Crown to vast tracts of territory, including not only islands arising from the sea, but great space of jungle lands, necessarily not under the close supervision of Government officers, would disappear because there would be no evidence available to establish the state of possession for sixty years past. It would be contrary to all legal principles thus to permit the squatter to put the owner of the fundamental right to a negative proof upon the point of possession."

In *Kuthali Moothavar* v. *Kunharankutty*(1) the Judicial Committee observed:

"Standing a title in 'A', the alleged adverse possession of 'B' must have all the qualities of adequacy, continuity and exclusiveness which should qualify such adverse possession. But the onus of establishing these things is upon the adverse possessor. Accordingly when the holder of title proves, as in their Lordship's view he does with some fullness prove in the present case, that he too has been exercising during the currency of his title various acts of possession then the quality of these acts, even although they might have failed to constitute adverse possession as against another, may be abundantly sufficient to destroy that adequacy and interrupt that exclusiveness and continuity which is demanded from any person challenging by possession the title which he holds."

I do not regard these pronouncements of the Privy Council as deciding the question of the effect of Article 142. I regard them as laying down principles which have to be applied when the issue is confined merely to a plea of adverse possession in particular circumstances. As I have already pointed out the Privy Council has dealt with the application of Article 142 in *Mohima Chunder Mozoomdar* v. *Mohesh Chunder Neoghi*(2), *Mahammud*

(1) (1921) I.L.R. 44 Mad. 883 (P.C.). (2) (1888) I.L.R. 16 Cal. 473 (P.C.).

Amanullah Khan v. *Badan Singh*(1) and *Dharani Kanta Lahiri* v. *Garbar Ali Khan*(2) which MADHAVAN NAIR J. did not consider.

The Allahabad High Court in *Jai Chand Bahadur* v. *Girwar Singh*(3) expressed the opinion that it was sufficient for the plaintiff in an ejectment suit to rest his case on title. There the plaintiff, who was a zamindar, sued to eject the defendant from certain land which he alleged the defendant was in possession of as his licensee. The defendant denied the licence and set up a claim of adverse possession. The claim of adverse possession failed and the Court held that the plaintiff was entitled to succeed on the title which he had proved as zamindar. The question whether the licence was ever granted or revoked was immaterial. This decision appears to be in direct conflict with the pronouncements of the Privy Council to which I referred at the outset.

The next decision of this Court is that of PHILLIPS J. in *Kuppuswami Mudaliar* v. *Chockalinga Mudaliar*(4). It was argued there that Article 142 had no application to a suit for possession based on title but, having considered the decisions in *Mohima Chunder Mozoomdar* v. *Mohesh Chunder Neoghi*(5), *Mahammud Amanullah Khan* v. *Badan Singh*(1) and *Dharani Kanta Lahiri* v. *Garbar Ali Khan*(2), PHILLIPS J. rejected this argument.

In *Ramanujachariar* v. *Sundarachari*(6) DEVADOSS and WALLACE JJ. held that Article 142 is applicable only to cases where the plaintiff alleges possession and dispossession in his plaint. They considered that notwithstanding that the plaintiff sets up a

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(1) (1889) I.L.R. 17 Cal. 137 (P.C.).
(2) (1912) 25 M.L.J. 95 (P.C.).
(3) (1919) I.L.R. 41 All. 669.
(4) (1925) 49 M.L.J. 788.
(5) (1888) I.L.R. 16 Cal. 473 (P.C.).
(6) (1926) 25 L.W. 127.

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tenancy or licence as the basis of the defendant's possession the Article applicable is still Article 144. The learned Judges did not, however, consider any of the authorities.

The latest decision of this Court is that of VENKATASUBBA RAO and ABDUR RAHMAN JJ. in *Alam Khan Sahib* v. *Karuppannaswami Nadan*(1). In that case the plaintiff was a mutawalli of a Mohomedan trust. He sued for possession of immovable property and alleged that the defendants had been his tenants. It was held that the tenancy was not proved. The defendants did not appear at the trial, but the plaintiff's witnesses themselves stated that the property had never to their knowledge been in the possession of the plaintiff. It was held that the suit was governed by Article 142 and not by Article 144 and that it should be dismissed as the plaintiff had not proved his possession within the statutory period. The learned Judges, however, considered that on the facts of the case it was unnecessary to deal with the broad question whether, in a suit in ejectment where the plaintiff's title is proved, there rests any duty upon him of shifting the burden on the defendants to prove adverse possession under Article 144.

I have said sufficient to indicate that in my opinion a plaintiff who is suing for possession of property in the occupation of another cannot rest his case on title alone. He must show that he has exercised rights of ownership by being in possession within twelve years of suit. It follows that in my opinion the observations which I have quoted from the judgment in *Sundaram Aiyar* v. *Thiyagaraja Pillai*(2) cannot be accepted and that *Periya Jeeyangarswami*

(1) (1938) 1 M.L.J. 113. (2) (1922) 50 M.L.J. 183.

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v. *Esoof Sahib*(1) and *Ramanujachariar* v. *Sundarachari*(2) were wrongly decided.

In the present case the appellant and his predecessors in title have admittedly been out of possession since 1909 and this disposes of the appeal, but before I conclude it is necessary to deal with another argument advanced on behalf of the appellant. It is said that, where the plaintiff is the purchaser at a court-auction held in execution of a mortgage decree, his case does not fall within Article 142. It is contended that that Article only applies when the plaintiff is suing on his own title or on the title of the previous owner of the property and does not apply when he is the representative of both the mortgagor and the mortgagee. In *Kunhiamma* v. *Kunhunni*(3) and *Maganlal* v. *Shakra Girdhar*(4) it was held that the purchaser at a court-auction in execution of a mortgage decree is the representative of the mortgagor and the mortgagee, having acquired both their interests in the property sold. But this cannot mean that he is outside Article 142. When the owner mortgages his property part of his interest passes to the mortgagee, but when the property is sold at a court-auction the purchaser has vested in him the full title of the mortgagor as it existed before the mortgage and the law which applies to the mortgagor applies to him. Section 2 (8) of the Limitation Act defines the word "plaintiff" as including any person from or through whom a plaintiff derives his right to sue. The appellant here derived his right to sue from the mortgagor. It is true that part of his interest in the property came to him from the mortgagor through the mortgagee but that does not warrant the assertion

(1) (1924) 21 L.W. 398.
(2) (1926) 25 L.W. 127.
(3) (1892) I.L.R. 16 Mad. 140.
(4) (1897) I.L.R. 22 Bom. 945.

that different considerations apply when he is suing for the ejectment of a person in possession of the property which he has bought. In my judgment there is no substance in the last contention advanced on behalf of the appellant.

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For these reasons I would dismiss the appeal with costs.

MOCKETT J.—I agree.

KRISHNASWAMI AYYANGAR J.—I also agree.

N.S.

APPELLATE CIVIL—FULL BENCH.

Before Sir Lionel Leach, Chief Justice, Mr. Justice King and Mr. Justice Somayya.

KATIKINENI VENKATA GOPALA NARASIMHA RAMA RAO (DEFENDANT), APPELLANT,

1940, April 26.

v.

CHITLURI VENKATARAMAYYA (PLAINTIFF), RESPONDENT.*

Indian Income-tax Act (XI of 1922), *sec.* 22—*Profit and loss statement and statement showing details of net income filed by assessee under, in support of his return of income—If public documents within sec.* 74 *of Indian Evidence Act (I of* 1872)—*Certified copies of same—If admissible under sec.* 65 (*e*) *of Indian Evidence Act.*

A profit and loss statement and a statement showing the details of net income, filed by an assessee in support of his return of income furnished under section 22 of the Indian Income-tax Act, are public documents with reference to section 74 of the Indian Evidence Act, of which certified

* Appeals Nos. 234 and 235 of 1937.