

Karunagara Manavan for the respondent, the first defendant.

1863.

June 8.

S. A. No. 417
of 1862.

SCOTLAND, C. J. :—I am of opinion that the statute of limitations may be set up for the first time on appeal whenever the plaintiff as an opportunity of meeting the plea by evidence; and in a case reported in the fourth volume of Moore's Indian Appeal Cases^(a) an objection raised for the first time at the hearing of the appeal before the Privy Council—that the Government's right to sue was barred by a Regulation of limitation—was expressly sustained. Here the plaintiff, on the appeal to the Civil Judge, must have had ample opportunity of bringing forward evidence to meet the defence in question, but he does not appear to have done so, and the Civil Judge, considering upon the evidence that the statute applied, very properly dismissed his appeal.

I may remark that, in this Court, on *special appeal*, the plea of the statute of limitations cannot for the first time be set up, unless, indeed, the facts which raise the plea and appear in the case are admitted by the plaintiff.

FARRE, J. concurred.

Appeal dismissed.

(*) *Maha Raja Dheeraj Raja Mahatab Chund Bahadoor v. The Bengal Government*, 4 Moo. I. A. C. 466, 508, and see *Mt. Imam Bandi Hurgovind Ghoose*, *Ibid.* p. 414.

NOTE.—See M. S. D. 1851, p. 252 : M. S. D. 1860, p. 31.

APPELLATE JURISDICTION. (a)

Special Appeal No. 387 of 1862.

KAIPRETA RAMEN.....Appellant.

MAKKAIYIL MUTOREN and others.....Respondents.

The assent of the anandravāns is necessary to a sale of tarawād land by a karanavan.

The chief anandravan's signature to the instrument of sale is sufficient, but not indispensable, evidence of such assent.

THIS was a special appeal against the decree of G. R. Sharpe, Officiating Sub-Judge of Calicut, in Appeal Suit No. 282 of 1861, affirming the decree of J. M. D'Rozario, District Munsif of Calicut, in Original Suit No. 575 of 1858. That suit was brought to recover lands sold to the first defendant in 1846-47 by one Rairu Nayar, the karanavan of the plaintiff and of the second and sixth defendants.

1863.

June 13.

S. A. No. 487
of 1862.

(a) Present : Phillips and Holloway, J. J.

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The evidence proved the purchase from Rairu Náyár, and also that the plaintiff was present at such purchase and offered no objection thereto. But though it did not appear that the instrument of sale was signed by any of the vendor's anandravans, the District Munsif dismissed the suit, and on appeal the Officiating Sub-Judge affirmed his decree.

Mayne for the appellant, the plaintiff, contended that the sale of tarawád property was invalid without the signatures of the chief anandravans as well as that of the káranavan, and that the fact that the plaintiff was present without making objection did not supply the defect. He cited *Strange's Manual of Hindu Law*, 1st ed. § 378. "The káranavan can alienate all moveable property, ancestral or self-acquired, at his discretion. But as to immoveable property, whether self-acquired or ancestral, he must have the *written* assent of the chief anandravans."

PER CURIAM :—The sale by a káranavan of tarawád land requires, no doubt, the consent of the anandravans. But the signature of the chief anandravan, if sui juris, is sufficient evidence of the assent of himself and the rest to the sale, and throws the burden of proving dissent therefrom on him who alleges such dissent. The anandravans' assent, however, may be proved by means other than the signature of the senior; and in the present case, where the Court has found that the plaintiff, an anandravan, was present and assented to the sale, he clearly has no ground for this appeal.

Appeal dismissed.

ORIGINAL JURISDICTION. (a)

THE SECRETARY OF STATE *against* MIR MUHAMMAD

HUSAIN and others.

An interpleader suit is not improperly constituted merely because one of the defendants does not claim the whole of the subject-matter.

Hoggart v. Cutts, (Cr. & P. 197) observed upon.

1863.
June 16.

THIS was an interpleader suit arising out of claims made by the several defendants on the whole or part of a sum of rupees 4,123-6-9 payable to the parties entitled thereto under a series of transactions which began with an

(a) Present : Scotland, C. J. and Bittleston, J.