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otti-holder is a mortgagee, and so he continues until the land is redeemed, and the option in question is evidently in respect of his interest as mortgagee in almost the whole value of the land. The benefit to the mortgagee, too, does not really arise until after the twelve years, for during that period no advance can be obtained and applied so as to dispossess him of the land. Our opinion, then, clearly is that the right of the janmi proprietor as regards the option to which the otti-holder is entitled is the same after as before the expiration of the twelve years, and consequently that the decrees of the lower courts are not sustainable in law. In reversing the decree of the Principal Sadr Amin we direct that the plaintiff do bear all costs.

Appeal allowed.

APPELLATE JURISDICTION. (a)

Special Appeal No. 417 of 1862.

NARASU REDDI *Appellant.*

KRISHNA PADAYACHI *Respondent.*

Where the statute of limitations was not pleaded in the Original Court :—*Held* that it might be set up in the Appeal Court if evidence could be taken there in reply to such plea.

On special appeal the statute of limitations cannot for the first time be pleaded unless where the facts which raise the plea are admitted.

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THIS was a special appeal from the decree of George Ellis, the Civil Judge of Cuddalore, in Appeal Suit No. 4 of 1861, reversing the decree of the District Munsif of Vilupuram in Original Suit No. 293 of 1860. The plaintiff sued for rupees 504-8-0, the amount due to him on a mortgage-bond, dated the 21st of March 1840, and made by the first defendant's father. The Munsif decreed for the plaintiff. The first defendant appealed to the Civil Court, urging for the first time that the plaintiff's claim was barred by the law of limitation. The Civil Judge, considering that the statute applied, reversed the Munsif's decree with costs. The plaintiff now specially appealed.

Branson for the plaintiff, the appellant, contended that the statute of limitations could not be set up for the first time on appeal.

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

Karunagara Manavan for the respondent, the first defendant.

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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.

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