

APPELLATE JURISDICTION. (a.)

*Regular Appeal No. 27 of 1862.*RĀMAKRISHNĀCĀSTRULU.....*Appellant.*DARBA LAKSHMIDEVAMMA and others.....*Respondents.*

A suit for ina'am lands was instituted in 1849, the cause of action having accrued nearly twelve years before. The suit was dismissed on the ground that the plaintiff had no certificate as required by Reg. IV of 1831. Eight years afterwards the plaintiff having obtained the requisite certificate, commenced a suit for the lands :—*Held*, affirming the decree of the Civil Judge, that the institution of the former suit had not suspended the statute of limitations, and that the plaintiff was therefore barred.

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THIS was a regular appeal from the decision of C. R. Pelly, the Acting Civil Judge of Masulipatam, in Original Suit No. 23 of 1861. The plaintiff sought to recover a share in certain ina'am lands, of which the foster-mother of the first defendant wrongfully took possession on the 2nd of July 1837. The plaintiff on the 3rd March 1859 instituted a suit in the Court of the Sadr Amin of Masulipatam and obtained a decree which in *Appeal Suit No. 36 of 1852*, was reversed by the Sadr Court on the ground that in the absence of a certificate from a Secretary to Government the suit was not cognizable by a civil tribunal. The plaintiff subsequently obtained the requisite certificate, and instituted Original Suit No. 23 of 1861 in the Civil Court of Masulipatam, when a question was raised as to whether his claim was not barred by the statute of limitation. "This," said the Civil Judge, "depends on whether the institution of Original Suit No. 100 of 1849 and the fact of the Sadr Amin having passed judgment in that action alive; and I am of opinion that they are not, either in law or equity. The plaintiff did institute the above action, but having omitted to obtain a certificate, the Court's jurisdiction was barred by Regulation IV of 1831 (b) (extended by Act XXXI of 1836);

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

(b) "First. The Courts of 'Adalat are hereby prohibited from taking cognizance of any claim to hereditary or personal grants of money or of land revenue, however denominated, conferred by the authority, of the Governor in Council in consideration of services rendered to the State, or in lieu of resumed offices or privileges, or of zamindaris or palaiyams forfeited or held under attachment or management by the officers of Government, or as a yaumia or charitable allowance, or as a pension, and

and [as] the mere fact of a suit being instituted in a court by which under the circumstances it was not cognizable, would not keep the cause of action alive, the statute of limitation would commence to run from the date on which the cause of action arose, viz., 2nd July 1837, and the suit in point of law would be barred by lapse of time.”

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Tirumalacharyar for the appellant, the plaintiff.

Rangayya Nayudu for the respondent, the first defendant.

FRERE, J. :—This suit was instituted for the recovery of a share of ina'am lands, of which the defendants are said to have taken wrongful possession.

The Acting Civil Judge dismissed the claim on the ground that according to the plaintiff's own statement in a former suit instituted by him on the same subject, No. 100 of 1849, the cause of action arose so far back as the year 1837. This suit of 1849 was finally dismissed in appeal in the year 1853, on the ground that the lands being ina'am, the jurisdiction of the Court was barred by Regulation IV of 1831, and Act No. XXXI of 1836. The Acting Civil Judge held, however, that the term for which this suit was pending could not be allowed to the plaintiff in calculating the period of twelve years under the law of limitation, and that the statute must be considered to have commenced running from the year 1837.

The plaintiff has now appealed from this decision.

It appears that the plaintiff eight years after the date on which he was non-suited in the suit of 1849 on the grounds already mentioned, instituted the present action with the accompanying certificate prescribed by Regulation IV of 1831. We are however, clearly of opinion, with the Acting Civil Judge, that the irregular institution of a suit in the year 1849 forms no bar to the operation of the ordinary law also of any claim for the recovery or continuation of, or participation in, such grants, whether preferred against private individuals or public officers, unless the plaint is accompanied by an order signed by the Chief or other Secretary to Government, referring the complaining party to seek redress in the established Courts of 'Adalat.'

Second. The power to decide on such claims is reserved exclusively to the Governor in Council, after due investigation by such persons and in such manner as he may deem fit.”

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of limitation as against the plaintiff. We accordingly affirm the original decree and dismiss the appeal with costs.

HOLLOWAY, J. :—The plaintiff had a complete cause of action in 1837. The fact that he failed to obtain the required certificate will no more suspend the statute than the inability to procure evidence would have done. The statute is a statute of peace, and is to be liberally construed. Here, however, it is quite manifest that much more than twelve years have run against the plaintiff's remedy. That the certificate was not procured may be from the plaintiff's misfortune or from his negligence, but with that the Court had no concern.

This case really proceeds on the very obvious principle that a plaintiff's failure to procure what is necessary to the institution of his suit does not keep alive a cause of action. The cause of action accrued in 1837, and even allowing for the time occupied by the former suit, the remedy was barred unless the frivolous excuse was to be admitted. Of course there is the point that through the plaintiff's laches the former suit was no suit at all : but no opinion is expressed upon that.

Appeal dismissed.

APPELLATE JURISDICTION. (a)
Regular Appeal No. 31 of 1862.

UDAYA VARMA and others.....*Appellants.*
NÁYAR CHAMBITHU and others.....*Respondents.*

Where the plaint, in a suit to establish a right to landed property and to recover arrears of rent, alleged no specific acts of ownership since 1845, but contained a statement general enough to let in evidence of such acts, and it did not appear that the plaintiff had been questioned:—*Held* that the plaint should not have been rejected under sec. 32 of Act VIII of 1859 on the ground that it appeared to the Court that the right of action was barred by lapse of time.

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THIS was a regular appeal from the decree of R. Chatfield the Civil Judge of Mangalur, in Original Suit No. 3 of 1861. The suit was brought to establish the plaintiff's right as proprietors and hereditary mukhyasthans to the devasthána of the pagoda of Kshetrapala, and also to re-

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