

## APPELLATE JURISDICTION (a)

*Special Appeal No. 659 of 1861.*PUDIYAKOVILAGALLA ..... *Appellant.*ALLUNANNALATTÀ KADINNI ..... *Respondent.*

In 1841 A established her proprietary right to lands as against B, and an otti mortgagee then in possession. In 1844 B obtained a decree against the mortgagee in a suit to which A was not a party, and assigned his rights under the mortgage to C, who continued to hold as B's assignee down to 1860 :—*Held*, that unless A was aware, or might by ordinary diligence have been aware, of the suit of 1844, his right to redeem the lands was not barred by the lapse of twelve years from the decree in that suit.

The order of the Madras Sadr 'Adálat of 12th September 1851 refers only to summary applications for the execution of decrees.

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THIS was a special appeal from the decision of H. D. Cook, the Civil Judge of Calicut, in Appeal Suit No. 44 of 1860, by which he dismissed the suit on the ground that the plaintiff was barred by the order of the late Sadr Adálat, dated the 12th September 1851. That order provides that no decree shall be executed after the lapse of twelve years unless the party applying for execution shews by clear and positive proof that the application is on one or other of the grounds specified in clause 4, section 18 of Regulation II of 1802, excepted from the general rule of limitation prescribed in that section.

*Karunagara Manavan* for the appellant, the plaintiff.

The facts appear from the following

JUDGMENT :—The appellant in this case was the plaintiff in the original suit, and sued to recover certain lands said to be held by the second defendant, on an otti mortgage for rupees 157-2-3.

It was alleged in the plaint that the lands were formerly the janmam property of the first defendant's family, by whom they were sold to the plaintiff in 1840. Subsequently the plaintiff, by a suit in 1841, established her proprietary right to the land as against the first defendant's family and a mortgagee named Muhammad Ismáyl, who was then in possession. In 1844, however, the first defendant himself sued this otti mortgagee, and obtained a decree against him

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in a suit to which the plaintiff was not a party, since which time the second defendant who had obtained a transfer of the pretended rights of the first defendant, has held possession. The plaintiff therefore sued to eject the second defendant and offered to pay off the amount of the mortgage.

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The District Munsif observed that the plaintiff's assertions were supported by the tenor of the decrees formerly passed in the suits of 1841 and 1844, to which allusion has been already made, and accordingly passed judgment in her favor with costs, declaring her entitled to possession of the lands as janmam proprietor on paying to the second defendant the amount of the mortgage to which his rights were limited. This decision, however, was reversed by the Civil Judge, who dismissed the claim of the plaintiff, on the ground that a period of more than twelve years had elapsed since the date of the decree in the suit of 1841, which pronounced the plaintiff to be entitled to possession as janmam proprietor, and that the claim of the plaintiff was therefore in the opinion of the Civil Judge, unsustainable with reference to the terms of the circular order of the late Sadr Court under date 12th September 1851.

The order of the late Sadr Court on which the Civil Judge has based his decision, have reference only to summary applications for the execution of decrees, and have no connection with a case of such a nature as that now before us.

In the present instance, it is shewn that the decree of 1841 established the plaintiff's proprietary right as against the first defendant and the otti mortgagee in possession, Muhammad Ismáyl. This relation of things would not terminate by mere lapse of time, and unless the plaintiff was aware, or might by ordinary diligence have been aware, of the suit of 1844, by which the first defendant procured a judicial confirmation of his assumed proprietary right as against the mortgagee only, the claim of the plaintiff is not barred, though twelve years may have elapsed from the date of the decree in the latter case to that of the institution of the present suit. We fail to perceive that the plaintiff had any such notice of the suit of 1844, or that any thing occurred which was calculated to put her on inquiry into the nature

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of 1861. of the title claimed by the second defendant, who displaced the former mortgagee. We think it necessary therefore to reverse the decree of the civil judge, and to confirm that of the court of first instance. The second defendant will be charged with the costs incurred by the plaintiff in the appeal and special appeal suits.

*Appeal allowed.*

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*Special Appeal No. 5 of 1862.*

PITCHAKUTTI CHETTI.....*Appellant.*

PONNAMMA NÁTCHIVÁR.....*Respondent.*

A Zamindár granted part of his zamindari absolutely and died. His grantee was then dispossessed by a purchaser from his successor :—*Held* that as the conditions specified in Reg. XXV. of 1802, sec. 8 had not been observed by the former Zamindár, the grant was voidable on the determination of his interest, and that consequently the dispossession was legal.

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of 1862. **T**HIS was a special appeal from the decision of R. R. Cotton, the Civil Judge of Madura, in Appeal Suit No. 122 of 1861 affirming the decree of J. H. Goldingham, Acting Judge of the Subordinate Court of Madura, in Original Suit No. 21 of 1860.

*Branson* for the appellant, the first defendant.

*Winyne* for the respondent, the plaintiff.

The facts appear from the following

**JUDGMENT** :—This was a claim for four villages, forming a portion of the estate of Padamáttur, founded on a grant in 1839 from the then Zamindár to his wife the present plaintiff.

The plaintiff alleged that she was in possession under the grant down to the year 1855, when she was dispossessed by the first defendant, who claimed under a sale executed in his favour by the present Zamindár, the second defendant

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