

APPELLATE JURISDICTION (a)

*Special Appeal No. 338 of 1862.*RANGASVAMI AYYANGAR..... *Appellant.*KIRISTNA AYYANGAR..... *Respondent.*

In a suit for land, the defendant pleaded that the land was his ancestral estate. He subsequently tendered evidence, then first obtained, to show that the land had, in 1814, been mortgaged to, and, in 1831, brought by, his father:—*Held* that the evidence was receivable notwithstanding the erroneous plea.

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THIS was a special appeal from the decree of G. T. Beauchamp, the Civil Judge of Tanjore, in Appeal Suit No. 560 of 1860, reversing the decree of the District Munsif of Páppávinásam, in Original Suit No. 172 of 1860.

Sadagopácharlu for the appellant, the third defendant.
The facts sufficiently appear from the following

JUDGMENT:—The plaintiff sued for land conveyed to him under a deed of gift by the first defendant's father and the second defendant, and held by the third defendant on mortgage, which mortgage the plaintiff sought to pay off.

The suit was defended by the third defendant, who at first denied that the property had been obtained by his family on mortgage, and alleged that it was ancestral property. At a subsequent stage he put in evidence to shew that the property had come in by mortgage, but had afterwards been purchased by his father.

The District Munsif considered that the defendants exhibits II and III, which were revenue documents obtained from the collector's kachahri, evidencing the third defendant's tenure by purchase, and bearing date in 1837 and 1841, afforded proof of adverse possession which, under the statute of limitation, served to bar the plaintiff's title. He accordingly dismissed the suit.

The Civil Judge, in receiving the evidence to the plaintiff's title, has refused to admit the appellant's evidence, because of its conflicting with the prior plea. His decree has therefore been for the plaintiff.

(a) Present Strange and Frere, JJ.

We do not look upon the contradiction of the third defendant's plea by the evidence subsequently adduced as conclusive against the reception of the latter. The land has been in his family under the mortgage since the year 1814, and the purchase was effected in his father's time in 1831. Respecting transactions of so remote a date it is quite possible that the third defendant may have been, as he represents to have been the case, without specific information until he met with the aforesaid revenue documents II and III, which show the nature of his title. We are therefore of opinion that when he obtained the said specific information, and had the opportunity of introducing it in the suit, he was not estopped from so doing by his previous erroneous plea.

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We concur with the District Munsif in thinking that the exhibits II and III afforded clear evidence of the nature of the third defendant's tenure, of which the first and second defendants, and after them the plaintiff, could have informed themselves, and that the prosecution of the plaintiff's title is consequently barred by the statute of limitation.

We reverse the decree of the Civil Judge and affirm that of the District Munsif.

The costs in appeal and special appeal are to be paid by the plaintiff.

Appeal allowed.

NOTE.—See *Standen v. Edwards*, 1 Ves. Jun. 133.