

Mayne for the special appellant, the 1st defendant
J. H. S. Branson for the special respondents, the plain-
 tiffs.

1868.
 February 21.
 S. A. No. 120
 of 1867.

This special appeal coming on for final hearing, the Court delivered the following

JUDGMENT :—The question is, whether the vendee of a Karaima right is entitled to compel the trustees of a pagoda to admit him to the office and give him the emoluments.

As a general principle the sale of offices is illegal for obvious reasons. There is no doubt that, in cases in which the question has not been agitated, Karaima rights have been treated as if saleable. We are, however, unaware of any affirmative decision where the saleability has been made matter of dispute.

We, however, referred the question whether there is any special custom authorising such a sale, and the finding being that there is no such custom we reverse the decree of the Lower Court and dismiss the original suit with all costs.

Appeal allowed.

APPELLATE JURISDICTION (a)

Special Appeals. Nos. 396, 397, 398, 399, 400 of 1867.

KRISHNAMA CHÁRYAR.....	<i>Special Appellant.</i>	
TOPPAI GAUNDAN.....	<i>Special Respondent</i>	<i>in No. 396.</i>
VIRASÁMI PILLAI.....	<i>do.</i>	<i>in No. 397</i>
M. MUNIYA PILLAI.....	<i>do.</i>	<i>in No. 398</i>
TOPPALA PILLAI	<i>do.</i>	<i>in No. 399</i>
VIRASÁMI PILLAI.....	<i>do.</i>	<i>in No. 400</i>

Plaintiff, claiming as sole Mirásidar of a village, sued the defendants as Sukavasi tenants of cultivated land within the village for arrears of rent from 1856. Defendants denied plaintiff's title. The Civil Judge (reversing the decree of the Munsif) dismissed the suit on the ground that the plaintiff had not proved the collection of the perquisites claimed within 12 years before the institution of the suit.

Held (reversing the decree of the Civil Judge) that if the defendants were Sukavasi ryots and the plaintiff was sold Mirásidar, and in that right entitled to certain annual dues for all lands cultivated by such ryots immediately on their being brought under cultivation, plaintiff's suit was not barred, except as to rent payable more than three years before suit.

THESE were special appeals against the decrees of H. S. Thomas, the Acting Civil Judge of Chingleput, in Regular Appeals Nos. 110, 113, 114, 115 and 116 of 1864, re-

1868.
 January 20.
 S. A. Nos. 396
 to 400 of 1867.

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

1868.
January 20.
S. A. Nos. 396
to 400 of 1867.

versing the decree of the Court of the District Munsif of Tanjore, and reversing the same in Original Suits Nos. 840, 831, 832, 833 and 835 of 1862.

Srinivasa Chariyar, for the special appellant. the plaintiff.

Messrs. Brockman and Prichard for the special respondents, the defendants.

The facts are set forth in the following

JUDGMENT :—The plaintiff in these suits, claiming as sole Mirásidar of the village of Timmapuram in the Zillah of Chingleput, seeks to recover from the defendants, as Sukavasi tenants of cultivated lands within the village, arrears of thunduvaram kuppattam, &c. payable in money and kind from Fasli 1266. The defendants allege in their written statement that they are the Ulkudi Sukavasi tenants, and have never paid the dues now claimed ; that, more than 100 years ago, the lands were reclaimed by their ancestors, and have ever since been enjoyed by them and the defendants, and that the plaintiff has no title to the lands. They also deny that the plaintiff is the sole Mirásidar of the village.

The District Munsif decided all the questions raised in favor of the plaintiff, and passed decrees for the full amount of the claim. But the Acting Civil Judge has reversed those decrees and dismissed the suits on the single ground that the plaintiff had not proved the collection of the perquisites claimed within 12 years before the institution of the suits. In this, we think, the Civil Judge was wrong.

If, as found by the District Munsif, the defendants are the Sukavasi ryots and the plaintiff is sole Mirásidar, and in that right entitled to certain annual dues for all lands cultivated by such ryots immediately on their being brought under cultivation, his right to recover in the suits is not barred except as to so much of the dues, considered in the nature of rent, as was payable more than 3 years before the institution of the suits. There are no findings in the cases that the defendants or their ancestors more than 12

years before the suits set up the right to cultivate adversely to the claim of the Mirásidar, and, in the absence of such findings, we must regard the defendants as continuing to hold the lands from year to year subject to the dues, which, we assume, became the right of the Mirásidar on their first cultivation. But if such findings were before the Court the suits could not be dealt with simply as suits to recover dues payable by tenants of the Mirásidar, and would probably be held to be barred by the Act of Limitation.

1868.
January 20.
S. A. Nos 396
to 400 of 1857.

For these reasons, we must reverse the decrees of the Civil Court and remand the suits to be fully heard and determined on the merits. The following appear to us to be the material questions for consideration and determination : But it will be for the Civil Judge to raise and decide any other questions that he may consider of importance before passing decrees :—

(1st). Whether the plaintiff is the sole Mirásidar of the village of Timmapuram, and the defendants Sukavasi ryots ?

(2nd). Whether the cultivation of the lands of the village by Sukavasi ryots has, for a long period of time, been subject to the payment to the Mirásidar of dues of the kind claimed in the plaints ?

(3rd). Whether such dues have been payable on waste as well as other lands of the village reclaimed and brought under cultivation by Sukavasi ryots themselves, and if not then :—

(4th.) Were the lands cultivated by the defendants, reclaimed by their ancestors from the waste of the village ?

Should the judgment of the Court be in favor of the plaintiff's right, there will of course be the further question of the amounts due for the 3 years preceding the dates of the suits. We think the parties should be allowed to adduce any additional evidence they may be prepared with.

The costs hitherto of this Court and of the Lower Court will abide the decree of the Lower Court.

Suits remanded.