APPELLATE JURISDICTION. (*a*)

Special Appeal No. 356 *of* 1867.

SUBBA RÁU.....*Special Appellant.*

RÁMA RÁU and 4 others.....*Special Respondents.*

A plaintiff may maintain separate suits for partition of immoveable family property where the property is situate within the limits of different districts, and is not bound to try to proceed in one suit in the manner pointed out in Section 12 of Act VIII of 1859.

1867. *November* 22. *S. A. No.* 356 *of* 1867.

THIS was a special appeal against the decree of the Principal Sadr Amin of Bellary, P. Streenevassa Ráu, in Regular Appeal No. 38 of 1867, reversing the decree of the District Munsif's Court of Kallyanadrug in Original Suit No. 238 of 1866.

Miller, for the special appellant, the plaintiff.

Sanjiva Rau, for the 1st respondent, the 1st defendant.

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

JUDGMENT :—This is an appeal against the decree of the Principal Sadr Amin of Bellary. The plaintiff and defendants are undivided members of one family, and the suit is for ⅓rd share of a house and yard alleged to be ancestral property. The District Munsif, deciding on the issues raised that there had not been a division of the family property, and that the house and yard were ancestral, passed a decree in favor of the plaintiff. On appeal to the Principal Sadr Amin that decree was reversed and the suit dismissed. His decision proceeds, we take it, on Section 7 of Act VIII of 1859, and is thus expressed. "The document No. 1, which is admitted by the plaintiff, proves that for his share in the ancestral lands he has filed a suit in a Court in the Cuddapah Zillah (Original Suit No. 209 of 1864 on the file of the Doovoor District Munsif's Court.) No two actions can be maintained for portions of one single estate ; and as it appears that plaintiff's suit in the Cuddapah Court had been filed long before the institution of the present suit, the latter is not sustainable, and ought to have been thrown out at once."

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

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This decision is not, we think, maintainable. No doubt the suits are brought by the plaintiff, claiming on one and the same right, for his share in separate portions of the family property. But they are portions of immoveable property, and the relief sought in each plaint is possession of a specific share of the portion therein described. Now, by the enactment in Section 5 of Act VIII of 1859, the ordinary jurisdiction of the Doovoor District Munsif 's Court is confined to suits for immoveable property situate within certain local limits, and the house and yard in the present suit are not within those limits. It is, we think, only to suits cognizable under that enactment that Section 7 has reference. It was intended to prohibit a second suit when the whole claim arising out of the cause of action was within the ordinary jurisdiction of the Court in which the plaintiff had brought his first suit, or such suit had been made cognizable by the Court in point of pecuniary value by the relinquishment of a portion of the plaintiff's claim under the express provision in the same Section.

This would unquestionably be the construction, but for the enactments in Sections 11 and 12, providing that a suit for immoveable property situate within the jurisdiction of different Courts may be brought in any Court otherwise competent to try it, within the jurisdiction of which a portion of such property is situate, subject to the leave of a Superior Court. It was contended on behalf of the respondents that recourse to this provision was incumbent on the plaintiff, and consequently there had been an omission to include his present claim in the first suit. But in terms the enactments are, like that in Section 8, permissive, and they were not, we think, intended to be otherwise, construed. They leave untouched the jurisdiction of each Court to entertain a suit in respect of the portion of property situate within its jurisdiction and afford to plaintiffs the option of *trying* to proceed in one suit for the recovery of all the property claimed. The right of suit would no doubt have been absolute, and not, as it is, conditional on the leave of a Superior Court, if the provision had been intended to be imperative. We are, therefore, of opinion that the claim in this suit, which it was discretionary with the plaintiff to

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include in his first suit cannot be considered an omission from such suit within the meaning of Section 7.

The decree of the Lower Appellate Court must be reversed and the suit remanded for trial and determination of the plaintiff's claim on its merits.

The respondents have resisted the appeal, and must pay the appellant's costs.

Appeal allowed.

ORIGINAL JURISDICTION. (a)

Original Suit No. 391 *of* 1867.

SUBBARÁMA *v.* EASTULU MUTTUSÁMI.

A mere verbal admission of the correctness of an account, the items of which are barred by the Statute of Limitations, does not furnish a new starting point for the operation of the Statute.

1867. December 10. O. S. No. 391 of 1867.

THE suit was brought for Rupees 3,310-3-0 on an account stated with the defendant's uncle in respect of dealings carried on with the defendant's uncle from the 24th February 1861 to 23rd October 1862, and on an account stated with the defendant himself in respect of the same dealings on the 3rd January 1866.

Mayne for plaintiff.

Sanjiva Rau for defendant.

The evidence showed that the uncle died on the 14th November 1863. On the 3rd January 1866, plaintiff sent his gumastah to the defendant with his accounts, and the defendant compared them with his own and admitted their correctness. Interest was then calculated, and a balance struck in writing but not signed by the defendant. The dealings consisted entirely of sums of money advanced by the plaintiff to the defendant or to others at his request. There was only one credit which consisted of a sum of Rupees 200 credited to defendant's uncle as paid by him in reduction of his debt.

Defendant called no evidence.

At the conclusion of plaintiff's case—

(a) Present: Bittleston, J.