

have been as yet no application made to the revenue authorities or refusal by them to change the registry. 1866.
June 21.
Ostensibly at least the sole purpose of this suit is to S. A. No. 79
of 1866.
obtain a change of registry, and if the plaintiff upon the facts alleged by him is not entitled to or cannot obtain from this Court such relief as is alone sought for, his suit must be dismissed, and it is not necessary to consider or decide the questions of title considered by the Courts below.

Appeal allowed.

APPELLATE JURISDICTION (a)

Special Appeal No. 164 of 1866.

TANJI and others.....*Appellants.*

NĀGAMMA.....*Respondent.*

The period of limitation for a suit to redeem a mortgage of immovable property is (by Cl. 15, Section I, Act XIV of 1859) 60 years, and this apparently without reference to the nature of the title the mortgagee in possession is asserting.

Semble, it makes no difference that the hostile possession is supposed to have commenced on a claim of the defendant to a title altogether inconsistent with the mortgage.

THIS was a special appeal from the decision of Srinivāsa Row, the Principal Sadr Amin of Mangalore, in Regular Appeal No. 647 of 1864, reversing the decree of the Additional District Munsif of Mangalore in Original Suit No. 134 of 1863. 1866.
June 26.
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of 1866.

The suit was brought to redeem a mortgage of land made in 1814 by Timmappa Setti, a deceased member of the undivided family of the plaintiffs, to the 1st defendant's father. The Principal Sadr Amin dismissed the plaintiff's claim, as barred by the statute of limitations, on the following grounds. 'The circumstance that the disputed land is in the possession of the 2nd defendant ever since 1839 is undisputed. Consequently, it appears that in opposition to the mortgage right asserted by the plaintiffs, the 2nd defend-

(a) Present Holloway and Innes, J. J.

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ant urged a separate claim to the estate and carried on proceedings in fasli 1248 in the presence of the proprietor Timmappa Setti, and held the adverse possession of the estate against the proprietor. Hence it is doubtless that the plaintiff's claim is barred by the law of limitation, inasmuch as they did not bring this suit within 12 years from that period.'

The plaintiffs appealed.

Srinivasa Chariyar, for the appellants, the plaintiffs.

The Court delivered the following

JUDGMENT :—In this case the plaintiffs sue to redeem a mortgage made in 1814.

The Principal Sadr Amin dismissed the suit, because, as he found, more than 12 years before suit the possession had become hostile.

This finding would undoubtedly have been, according to the constructions put upon the old law, conclusive.

Now, however, by Clause 15, Section I, of the Limitation Act, the period prescribed is 60 years, and this apparently altogether without reference to the nature of the title which the mortgagee in possession is asserting. By an acknowledgment of the character provided by the section alone, the period can be extended, and by no process whatever can it be abridged.

It is unnecessary in this case to say whether the effect could be at all altered by the circumstance that the hostile possession is supposed to have commenced on a claim of the defendant to a title altogether inconsistent with the mortgage. It is difficult to see how it could alter the effect; but it is unnecessary to consider it because the defendant sued upon the inconsistent title so asserted and failed, and it is as if it had never existed, and the defendant by a positive decision of a competent Court continued in possession on the title which it was there sought to improve into absolute ownership.

There will be a decree for the plaintiffs without costs, and with mesne profits from the date of this decree.

Appeal allowed.