

1870. paid for closely neighbouring lands of similar description
 October 28. and quality?
 S.A. Nos. 515
 & 582 of 1869.

In Special Appeal No. 582 of 1869.—No ground has been shown for disturbing the decree of the Civil Court as to the rent payable for the nunjah lands. And upon the other question as to the proper rate of rent for the garden lands, the judgment of the Court in the Cross Special Appeal No. 515 of 1869 is decisive and must be followed.

Appellate Jurisdiction. (a)

Special Appeal No. 476 of 1869.

C. ATCHAMMA.....*Special Appellant.*
 J. SUBBARAYUDU and 3 others.....*Special Respondents.*

The plaintiff sought to recover certain property which she inherited from her father and which had been taken possession of by the defendants during the life-time of plaintiff's mother.

The Lower Courts dismissed the suit on the ground that it was barred by the Law of Limitation, plaintiff having failed to show that her mother was in possession at any time within twelve years before the suit.

Held, on special appeal, that the suit was not barred. Until the death of her mother plaintiff's alleged cause of action did not arise, and her right not being derived from or through her mother, the period of limitation could not be considered as having been running against her from the commencement of the adverse possession in her mother's life-time.

1870. **T**HIS was a Special Appeal against the decision of H. Morris, the Civil Judge of Rajahmundry, in Regular Appeal
 November 1. No. 391 of 1868, confirming the decree of the Court of the
 S.A. No. 476 District Munsif of Rajahmundry, in Original Suit No. 215 of
 of 1869. 1867.

This suit was brought to recover 11 acres and 71 cents. of Inam lands capable of yielding produce to the value of Rupees 119 per annum, together with 51 fruit trees, valued at Rupees 29 and standing on the lands.

The plaintiff stated that the property belonged to her father Ivaturi Virannah; that she was entitled to inherit the same under the Hindu Law; that from July 1857, when her mother died, the 1st defendant's father Sharubhannah, deceased, and the 2nd defendant's husband Vira Sharabhanah, deceased, and after their death the defendants took possession of the said property.

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A few of the boundaries of the disputed lands having been inaccurately given in the plaintiff's plaint, she subsequently obtained the permission of the Court and rectified the same. 1870.
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The 1st defendant stated that his father and the plaintiff's father were divided, and that out of the share obtained by the plaintiff's father in the disputed lands, he gave the plaintiff one-fourth putti of land in Kapavaram; that he leaving no male issue at his death, his father and his undivided brother, the husband of the 2nd defendant, took possession on the condition of paying 20 Rupees annually on account of its income to the plaintiff's mother; that till the year 1854, in which the plaintiff's mother died, they continued to pay her the income; that the 1st defendant's father and the 2nd defendant's husband are the male heirs of the plaintiff's mother.

The following issues were framed :—

1. Whether or not plaintiff's suit is barred by lapse of time.
2. Whether the plaintiff's father and the 1st and 3rd defendants' fathers are divided.

Upon the 1st issue the Munsif's judgment was as follows :—

The Court has, from the following circumstances, come to the conclusion that the plaintiff's claim is not relieved from the operation of the Statute of Limitation. The plaintiff admits in the plaint that the property under dispute was in possession of the 1st and 2nd defendants for 9 years and 5 months before the presentation of the plaint, and unless it is proved that plaintiff's mother was in possession within 2 years and 7 months prior to that date, it is to be inferred that the opposite party were in possession and enjoyment of the said property. If plaintiff's mother, as stated by plaintiff was in possession of the said property for a long time of about 40 years, *i. e.*, since the death of her father, up to the year Pingala (1857), the said lands would have been entered in her name in any accounts of the said villages. Neither the plaintiff has shown any such entry, nor does it appear that she herself had cultivated the said lands. Only one document was produced on behalf of the plaintiff to re-

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move the bar of limitation. It is a cowle, marked H, executed by plaintiff's mother Lingamma, under date Sunday the 7th Mokha Bahula of Pramadicha (19th February 1854) renting out to plaintiff's 1st witness the Inam land at Kottapalli for 3 years from Ananda (1854) to Nala (1856). If this cowle be genuine, and if the 1st witness had cultivated the said land, and paid the cist thereof to plaintiff's mother, it is tantamount to the enjoyment by plaintiff's mother of this land, which is a portion of those claimed by plaintiff, within 12 years before the institution of this suit. The Court sees strong reasons for suspecting the genuineness of this document. No mention of this document has been made any where, until the 1st witness made an allusion to it in his deposition. The plaintiff in her application to summon him as a witness has not required that he should be summoned to appear with this document. The Cadapa said to have been executed by this witness to plaintiff's mother is a material document. It has not been filed, nor does the plaintiff state what became of it. This document is said to have been executed 15 years ago; but from its appearance, it seems to have been written recently, and to have undergone all the operations necessary to give it an old appearance. There is no reason for this witness to keep the cowle hidden for a long time after the expiration of its term. The writer of this document is a resident of this village. The plaintiff did not cite him as a witness at first, but she did so after most of her witnesses were examined. This gives room to much suspicion. As he was cited when the examination was about to be closed, he was not examined.

As plaintiff's claim is barred by the Statute of Limitation, it is unnecessary to consider the other points.

The suit is therefore dismissed. The plaintiff should pay the costs of the 3rd and 4th defendants.

The judgment of the Civil Judge upon appeal was as follows :—

The District Munsif was of opinion that the suit was barred by the Statute of Limitation. The plaintiff had stated that her mother had been in possession for many years after her father's death, and that the fathers of the 1st and 3rd

benefendants had usurped it on her mother's death 9 years and 5 months before the institution of the suit, so that unless she could prove that her mother had been in possession within 2 years and 7 months before that time, the suit would be barred. The only document which could be interpreted as showing such possession was H, a cowle said to have been executed by the plaintiff's mother in the year Pramadicha (1854); but the Munsif did not believe that it was genuine, or credit the oral evidence regarding it.

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The plaintiff appeals on the ground that the suit is not barred, and consequently the single point for my determination is, whether the suit is barred by the Law of Limitation or not? I see no reason to object to the District Munsif's estimate regarding the fact that the cowle H is not genuine, and not one of the plaintiff's other documents shows that her mother was in possession of the land in any one of the villages named within 12 years before the institution of the suit.

The plaintiff put in a special appeal to the High Court.

Kurpu Ramasamy Sastry, for the special appellant, the plaintiff.

The Court delivered the following

JUDGMENT:—In this case the Lower Appellate Court, affirming the decree of the Original Court, has dismissed the suit upon the ground that it was barred by the Act of Limitations, and the question raised by special appeal is whether that decision is maintainable. The facts upon which it rests are the admission in the plaint that 9 years and 5 months from the death of the plaintiff's mother had elapsed before the institution of the suit, and the conclusive finding that the evidence failed to show that her mother had been in possession of the property within 12 years.

Assuming, as we must do for the purpose of this question, that the land in dispute was the separate property of the plaintiff's father, and that he died possessed of it, we are of opinion that the decision is wrong. Upon the death of the plaintiff's father her mother took by right of succession an estate for her life only in the property, and the reversionary interest passed to the plaintiff as the next heir of her

1870. father, and did not give her any vested possessory right
November 1. during the continuance of such life estate. Until, therefore, the
S. A. No. 476 death of her mother, the present alleged cause of action against
of 1869. the defendants did not arise to the plaintiff, and her right as
 heir not being derived from or through her mother, the
 period of limitation cannot be considered as having been
 running against her from the commencement of the adverse
 possession in her mother's life-time. Consequently as 12
 years appear not to have elapsed since the death of the
 plaintiffs' mother the suit is not barred.

The decrees of both the Lower Courts must therefore be reversed, and the suit remanded to the Court of First Instance in order that the question between the parties may be fully heard and the case determined upon its merits.

The respondents must pay the appellant's costs in this Court. The costs hitherto in both the Lower Court will abide the decree in the suit.

Appeal allowed.

Appellate Jurisdiction. (a)

Referred Case No. 44 of 1870.

Y. PAUPAMMA, widow of Y. VENCATA REDDY
against
 Y. CHINNA REDDY and another.

Where the defendant entered into an agreement in writing with the plaintiff (the widow of defendant's brother) to deliver to her every year a specified quantity of Paddy by way of maintenance.

Held, that the Small Cause Court had jurisdiction to entertain a suit for a breach of the agreement.

1870. **T**HE following was a case referred for the opinion of the
November 2. High Court by G. Ramanjulu Naidu, the District
R. C. No. 44 Munsif of Cuddapah, in suit No. 810 of 1870:—
of 1870.

The plaint stated the 1st defendant is plaintiff's brother-in-law (husband's elder brother). On the 30th of May 1864, he executed herewith the filed stamp document, promising to give for plaintiff's food 14 tooms of paddy, &c., per annum: the document was marked for him with his consent by his son, the 2nd defendant. One year's grain was accordingly supplied, but not that of the subsequent period.

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