

1870.
June 29.
S. A. No. 605
of 1869.

karnams of unsettled districts withdraws this question from the cognizance of the Civil Courts.

The decrees of both the Lower Courts must be reversed, and the original suit dismissed. As this special appeal was admitted after the time for appealing had expired, we shall not allow the 3rd defendant any costs.

Appellate Jurisdiction. (a)

Special Appeal No. 7 of 1870.

JONNA VENKATSAWMY *alias* } *Special Appellant.*
VENKATASETTI..... }
BASIREDDY KONDAREDDY } *Special Respondents.*
and 4 others..... }

A suit was brought upon an unregistered and registrable mortgage bond. The Lower Courts treated the suit as one for the debt due, and held the suit barred, it having been brought more than three years after the debt was payable.

Held, on special appeal, that as the relief prayed fairly implied the recovery of the debt by the enforcement of the mortgage security and the subject-matter stated in the plaint showed ground for that relief, the suit must be considered as brought to recover in respect of an interest in the land hypothecated, and the period of limitation was twelve years.

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THIS was a Special Appeal against the decision of J. R. Cockerell, the Civil Judge of Nellore, in Regular Appeal No. 175 of 1867, confirming the decree of the Court of the District Munsif of Nellore, in Original Suit No. 146 of 1867.

The plaintiff stated in the plaint that on the 5th August 1860, Basireddi Pottireddi, the father of the 1st defendant and husband of the 2nd, and the 3rd and 4th defendants, executed a document in favour of Hereppah, the son of plaintiff's senior paternal uncle, mortgaging certain moveable and immoveable property; that the said Pottireddi executed another mortgage bond in his (plaintiff's) favor on the 3rd April 1863; and that the balance of principal and interest due on these two documents, after crediting the payments made, was Rupees 997-2-1. The plaintiff accordingly prayed to recover that amount from the defendants 1 to 4 as also from the defendants 5 to 7, who had obtained a mortgage lien upon the property included in the mortgage made to him, and got a document executed by the defendants 1 and 4 on the 3rd January 1867, and had

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the same registered on the 5th January 1867, and who took possession of the mortgaged property.

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The 2nd defendænt was the mother of the 1st defendant.

The 3rd and 4th defendants were undivided uncles of the 1st defendant. The 5th defendant was included, because he had a mortgage on the property mortgaged under the above two bonds.

The 6th and 7th defendants were undivided members of 5th defendant's family.

The 1st, 2nd, 3rd and 4th defendants pleaded that the bond of August 1860 was genuine ; but had been liquidated, all but Rupees 3-5-0, and that the bond of April 1863 was a forgery.

The 5th, 6th and 7th defendants pleaded that their mortgage was contracted after the bond of August 1860 had been discharged. The District Munsif of Nellore dismissed the plaintiff's suit with costs.

The District Munsif found that the bond of August 1860 was barred by lapse of time, and the bond of April 1863, was a forgery.

The plaintiff appealed.

The Civil Judge's judgment was as follows :—

There are two bonds sued upon in this suit—both mortgage bonds. The 1st bond is dated 5th August 1860, and became payable on 12th April 1861. The bond is marked A. Under the law existing when it was drawn, it was optionally registrable under the Regulations, and as it was not registered, under the High Court Ruling in Referred Case No. 80 of 1864 it had, when it fell due on 12th April 1861, only three years to run. The suit was filed more than three years after April 1861. It was filed on 8th March 1867. This is supposing always that the plaintiff comes forward as he has, not treating the bond as a mortgage bond, but as a simple bond. He claims that the bond may be satisfied not on the property mortgaged, but on the defendant's personal property. Accordingly the bond is barred by time, and the District Munsif was right in rejecting it on that ground.

As to the other bond marked B.

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The District Munsif believes it a forgery. This is very probable. The stamp is in the name of a third party. The endorsement on the back shows the stamp was bought nine months prior to the date of the bond. Two of the attesting witnesses are persons well known in the Courts. There are contradictions in their evidence. Though exhibit B existed at the date of the award in Original Suit No. 9 of 1863 in the file of the Civil Court which was an award dividing the property of the family against whom the bond is brought forward, the bond was not produced before the arbitrators. Accordingly, in view of the above circumstances, I concur with the District Munsif in disbelieving the bond. I confirm the decree of the Lower Court with costs.

The plaintiff presented a Special Appeal to the High Court.

Rangaiya Naidu, for the special appellant, the plaintiff.

Kuppuramasamy Sastry, for the 1st and 5th special respondents, the 1st and 6th defendants.

The Court delivered the following

JUDGMENT :—The plaintiff in this case sues to recover the amounts secured by two bonds. One of these bonds exhibit B both the Lower Courts have found to be a forgery, and that finding is conclusive. The question we have now to consider is whether the plaintiff's suit on the other bond exhibit A is barred by the Act for the limitation of suits as the Courts below have decided, more than three years having elapsed between the date of the bond and the institution of the suit.

There is no doubt that the bond, being a mortgage instrument, was registrable, and the question therefore turns upon whether the suit is simply to recover payment of the debt without enforcing the security of the mortgage ; for it is clear that, if it is a suit to enforce the mortgage security, the period of limitation would be 12 years under Clause 12, Section 1 of the Limitation Act. (Special Appeal, 376 of 1863, *II, Madras High Court Reports*, 51, Regular Appeal, 24 of 1861, *II, Madras High Court Reports*, 307 : Special Appeal, 101 of 1866, *III, Madras High Court Reports*, 92).

We must look then to the nature of the plaint, and if we find that the relief prayed fairly implies the recovery of the debt by the enforcement of the mortgage security, and the subject-matter stated in the plaint shows ground for that relief, then we must consider the suit as brought to recover in respect of an interest in the land hypothecated, and that the period of limitation is 12 years.

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The prayer of the plaint is in general terms to recover the debt from the defendants with interest and costs. And when we look to the subject-matter of the plaint, it sets forth substantially that the plaintiff bases his claim on the mortgage, and seeks to impose a liability on the defendants 5 to 7 only in their character of subsequent mortgagees.

We think, therefore, that the suit is to recover the debt by enforcing the mortgage security, and as the claim to that relief is not barred, the suit has been improperly dismissed. The Courts below appear to have decided the point of limitation upon the decision of the High Court in Referred Case No. 80 of 1864, (2, *Madras High Court Reports*, 108). That was a case referred by a Court of Small Causes, and is plainly distinguishable from the present case on the ground that the suit could only be for the recovery of the debt, the Courts of Small Causes having no jurisdiction in respect of immovable property. The suit must be remanded to the Lower Appellate Court for full hearing and determination of the claim upon the bond A. The costs of this appeal will abide the event.

Special Appeal allowed.
