Appellate Jurisdiction. (a)

Special Appeal No. 446 *of* 1869.

VALAMPUDUCHERRI PADMANABHAN NUMBUDRI and 2 others..... } *Special Appellants.*

CHOWAKAREN PUDIAPURAYIL KUNHI KOLENDAN..... } *Special Respondent.*

In a suit for redemption of land mortgaged to the defendant, the plaintiffs relied upon a document as containing an acknowledgment of the title of the plaintiff under Section 15 of the Act of Limitation (XIV of 1859). The document contained an admission by the defendant that he held land upon mortgage in a specified district from the temple of which plaintiffs were the trustees.

Held, that oral evidence was admissible to apply the document to the land to which it was intended to refer.

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THIS was a Special Appeal against the decision of G. D. Leman, the Acting Civil Judge of Tellicherry, in Regular Appeal No. 3 of 1868, reversing the decree of the Court of the District Munsif of Painad, in Original Suit No. 1524 of 1862.

The plaint stated that eight pieces of land, the property of the Trikutisheri devaswam, of which the plaintiffs are uralers, were assigned on a kanom of 1,000 Fanams, or Rupees 250, without liability to pay porapad in 977 (1802) by the devaswam to Talepurayil Pakkra Kutti, the karnaven of the 2nd defendant, and that the 1st defendant refused to renew the kanom demise, or to surrender the property on payment of kanom claim. The plaintiffs therefore sued for recovery of the property on payment of the kanom amount. The date of the alleged kanom deed was amended to Chingom 977 afterwards.

In his written statement, the vakil for the 1st defendant stated that the pieces of land, which were the jenmam property of the 2nd defendant's tarwad, together with other lands, were sold by that tarwad to the 1st defendant's tarwad for a large sum due by the former to the latter under a jenmam deed dated 986, and the 1st defendant's tarwad had been enjoying the same since that period; and that therefore the 1st defendant was not bound to surrender the property on payment of kanom claim.

(a) Present: Holloway and Innes, JJ.

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The issues were:—

1. Whether the plaint lands were assigned on kanom within sixty years preceding the date of the plaint.

2. Whether they were so assigned on kanom in the manner mentioned in the plaint.

Among the documents filed by the plaintiff was one marked A, which was described as an oli-muri deed executed by Mammali Keyi, the 1st defendant's karnaven, to the devaswam, surrendering the Palakut field out of the properties of the devaswam in Nelliyeri under kanom mortgage to him, on payment of his kanom claim—dated 30th Medom 1019 (1844).

The Munsif's judgment contained the following:—

The points for determination in this suit are whether the parambas sued for were assigned on kanom within 60 years next preceding the date of the plaint, and whether they were so assigned by the devaswam to the 2nd defendant's karnaven Talepurayil Pakkra Kutti in the manner mentioned in the plaint.

Respecting the 1st point.—The plaintiff's 3rd and 4th witnesses swear that the property sued for was passed on kanom by the Trikutisheri and devaswam to the 2nd defendant's ancestor on the 31st Chingom 977. If the property was in the possession of the 2nd defendant's tarwad before that date, the 1st and 2nd witnesses should have been able to prove that circumstance by documentary evidence. But they have failed to do so as appears from the record. I do not therefore see any reason to discredit the said witnesses. It appears from the record that this suit was instituted on the 29th Chingom 1029, which is before the expiration of 60 years from the date of the demise. It is therefore clear that this suit is free from the bar of Limitation Law.

Respecting the 2nd point.—The plaintiffs' documentary and oral evidence, to show that the plaint property was assigned on a kanom of 1,000 fanams in Chingom 977 by the Trikutisheri devaswam to the 2nd defendant's karnaven, the deceased Pakkra Kutti, without liability to pay *porapad*, is quite satisfactory. The plaintiff's 1st and 2nd witnesses state that the 1st defendant's tarwad was in possession of

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another field of the devaswam known "as Palakattata nilam," under a kanom claim; that in Medom 1019 the 1st defendant's karnaven Mammali Keyi restored the said land to the devaswam on receiving his kanom claim and executed the deed of relinquishment A; that Mammali Keyi had brought with him the kanam deed granted by the devaswam to this 2nd defendant's ancestor in Chingom 977 at the place at which he executed A, and that they (witnesses) then saw the said kanom deed; that the evidence of these witnesses is trustworthy is clear from the document A. It is clear from the language used in A that at the date of its execution, when the 1st defendant surrendered a land, his tarwad had other lands of the devaswam under kanom demise to him. It is stated in the said document that out of the lands in the Nelliyeri desam held by the 1st defendant under kanom claim obtained from the devaswam, the Palakattalu field is returned to the devaswam after the kanom claim on it was discharged. The pieces of land sued for are situated in the said desam, and the pymash account E shows they are the jenmam property of the Trikutisheri devaswam. It is therefore clear that the lands which are held under kanom claim by the 1st defendant's tarwad according to the document A are the land sued for. ' The very appearance of A is a satisfactory evidence of its freedom from forgery.

The Munsif gave a decree in favor of plaintiff.

Upon appeal the Civil Judge dismissed the suit on the ground that it was barred by the Act of Limitation.

Plaintiff appealed specially on the ground that the documents, which showed that the defendant admitted the mortgage, had not been considered.

Sanjiva Row, for the special appellants (the plaintiffs).

Mayne, for the special respondent (the 1st defendant).

The Court delivered the following

JUDGMENT:—The question is whether document A is a sufficient acknowledgment of the title of the jenmy or of his right of redemption to cause the Act to run from the period of execution of that document under Section 15.

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Now with the exception adverted to in *IV, High Court Reports,* 309, the words are precisely the same in effect as those of Section 28 of the English Limitation Act, and certainly there is nothing in the decisions upon that section to justify our holding that the document must be self-contained, and that nothing extra the document can be looked at to determine the subject or object of the admission. *Stansfield* v. *Hobson,* (16, *Beav.,* 236 confirmed 3, *De. Mac.* and *Gordon,* 620) is a case in which the document itself was simply "Sir, I received yours of the 2nd instant. I do not "see the use of a meeting either here or at Manchester "unless some party is ready with the money to pay me off." In *Trulock* v. *Robey,* 12, *Sim.* 406, the Vice Chancellor of England says "It appears to me that the Court being in "possession of the circumstances of the case must construe "the letter in the way in which the writer intended it to "be construed by the person to whom it was addressed."

Now the document A clearly admits the holding on kanom under the devaswam of land belonging to that devaswam in the Nelliyeri desam. We can see no ground for saying that evidence was not admissible to apply this document to the land to which it was intended to refer, and the evidence used by the Munsif for that purpose, including the allegations of the defendant, was, in our opinion, properly so used.

We will ask the Civil Judge now to decide.

Whether the document A is genuine and applies to the land here claimed by plaintiffs?

Appellate Jurisdiction. (*a*)

Special Appeal No. 389 *of* 1869.

VENCAMA SHETTY and 2 others..... *Special Appellants.*

PAMOO SHETTY and 8 others.....*Special Respondents.*

A Court has no jurisdiction to grant a second review of judgment on the application of the same party under the Code of Civil Procedure.

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THIS was a special appeal against the second decision of M. Parthasarathi Pillai, the Acting Principal Sadr Amin

(*a*) Present: Holloway and Innes, JJ.