

plaintiff may be taken, and the case fully heard and determined upon the evidence of that and any other witness whom either party may produce.

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We think the costs in the Special Appeal and the costs hitherto, in both the Lower Courts, should be paid by the party who fails in the Court of First Instance.

APPELLATE JURISDICTION (a)

Special Appeal No. 140 of 1871.

TAMMIRÁZU RÁMAŚOGI.....*Special Appellant.*

PANTINA NARŚIAH*Special Respondent.*

Suit brought in 1868 to establish that plaintiff had vested in him the right to the office of karnam of certain villages, from which he had been ousted by the defendant in 1857, and to recover from defendant the mirási lands annexed to the office. The Court of First Instance decreed for plaintiff. The Civil Court reversed this decision on the ground that title to the office was the principal matter of plaintiff's claim, and the right to possession of the land merely an incident dependent upon that title; that therefore, as the period of limitation applicable to the former claim (6 years) had elapsed before the institution of the suit, it was not maintainable for the land. Upon Special Appeal, the decree of the Civil Court was affirmed, on the grounds that it was conclusively found that the land was inseparably attached to the office as a source of endowment for the services of the holder of it for the time being, and that, as against the plaintiff, the defendant was protected in the possession of the office by Clause 16, Sec. 1 of the Act of Limitations.

THIS was a Special Appeal against the decision of F. C. Carr, the Acting Civil Judge of Vizagapatam, in Regular Appeal No. 76 of 1869, reversing the decree of the Court of the Principal Sadr Amin of Vizagapatam in Original Suit No. 2 of 1868.

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The suit was brought for the re-establishment of the plaintiff's right to the office of karnam of the villages of Vanam and Rakhundyan within the Zamindari of Bobbili, and also to recover possession of the mirási lands attached to the office, together with mesne profits.

The plaintiff alleged himself to be the *de jure* registered karnam of those villages, and asserted that he exercised the office and enjoyed the lands up to 1857, when he was ousted by the defendant.

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

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The defendant denied the right of the plaintiff to the land, and pleaded that up to 1857, when the plaintiff was performing the duties, he was doing so merely as his (defendant's) representative, and that he himself was the rightful karnam.

The Principal Sadr Amin decided in favour of the plaintiff, establishing his right to the office, and ordering the restoration to him of all the lands and the mesne profits as sued for, and the costs.

Against this judgment the defendant appealed, again urging the same pleas, and further pleading that the plaintiff's claim was barred by lapse of time.

The Civil Judge in his judgment said—"This most important objection was not raised in the Lower Court, nor was it even one of the grounds set forth in the defendant's appeal petition. The defendant, however, was permitted to plead the Statute, for the question of limitation rested entirely upon the admitted facts.

The plaintiff admits that he was ousted from his lands and the office of karnam on the 28th January 1857, and his suit was filed in January 1868, nearly eleven years after. The plaintiff's pleader says that as this a suit for an interest in immoveable property, the suit falls under Clause 12, Section 1 of the Statute, and may be brought within twelve years. I am unable to agree in this view of the case. This suit is not a suit brought for an interest in immoveable property, but it is a suit brought to establish the plaintiff's claim to the office of karnam, and as the lands are attached to such office of karnam, an interest in them forms an incident in this suit; but is not the primary object of the suit. The enjoyment of these mirási lands is the salary of the office, and as such belongs to the office-holder." He, therefore, reversed the decree of the Lower Court.

The plaintiff preferred a Special Appeal on the ground that the suit was not barred.

Rama Rau, for the special appellant, the plaintiff.

Sloan, for the special respondent, the defendant.

The Court delivered the following

JUDGMENT :—This is a Special Appeal arising out of a suit brought to establish that the plaintiff had vested in him the right to the office of karnam of the villages of Varam and Rakhundyan, within the Zamindari of Bobbili, from which he had been ousted by the defendant in the year 1857, and to recover from the defendant the mirási lands annexed to the office as a provision for the person holding such office, together with mesne profits.

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The Court of First Instance declared the right to the office to be in the plaintiff, and ordered the defendant to deliver to him possession of the lands and pay an amount on account of mesne profits. The Civil Court reversed this decision in the Regular Appeal, and decreed the dismissal of the suit, on the ground that title to the office was the principal matter of the plaintiff's claim, and the right to possession of the land was merely an incident dependent upon that title; and, therefore, as the period of limitation applicable to the former claim (six years) had elapsed before the institution of the suit, it could not be maintained for the recovery of the land.

The Civil Judge was, no doubt, correct in the position that the right to the land was a secondary claim in the suit and dependent upon the plaintiff's title to the office of karnam, and we think his conclusion, that the lapse of six years from the time of the alleged ouster by the defendant was fatal to the maintenance of the suit to recover the land, is sustainable. We rest this decision upon the grounds that it is conclusively found that the land was inseparably attached to the office as a source of endowment for the services of the holder of it for the time being, and that, as against the plaintiff, the defendant was protected in the possession of the office by Clause 16, Section 1 of the Act of Limitations. Being precluded from setting up a claim to be admitted to the office, the plaintiff necessarily failed to show himself entitled to recover possession of the land.

The decree of the Lower Appellate Court must be affirmed with costs.

Appeal dismissed.