Appellate Jurisdiction.(a)

Regular Appeals, Nos. 100 *and* 107 *of* 1872.

G. LEE MORRIS, Esq., Manager and Receiver of the Estate of His Highness the late Maharajah of Tanjore. } *Appellant.*

SIVARAMAYYAN, and 192 others.........*Respts. in No.* 100.

CHINNASAMI AYYAN, and 46 others...*Respts. in No.* 107.

Suits by the Receiver of the Tanjore Estate to recover rent due under muchalkas executed by defendants, the Mirásidárs of certain villages, agreeing to take the villages on rent for 5 Fuslies from 1273 to 1277 at an annual rent. The defendants pleaded Act XIV of 1859 as to part of the rent claimed. The plaintiff claimed to be entitled to the advantage of Sec. 14 of that Act, because he was for a time prosecuting suits against defendants separately for the arrears of rents alleged to be barred, all which suits were dismissed on the ground that plaintiff could not sue the defendants separately while they had executed the muchalka jointly. The District Judge found for the defendants on the questions on the Act of Limitation. *Held*, on appeal, that the period of limitation applicable to a suit for rent was 3 years (under Act XIV of 1859), and that as to the claim to the exception under Sec. 14, it failed at every turn. The cause of action was not the same, for there the obligation sued upon was several. here it is joint. The Court which decided the former suits not only did not fail to decide them but did decide them.

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THESE were Regular Appeals against so much of the decisions of F. M. Kindersley, the District Judge of Tanjore, in Original Suits, Nos. 1 and 2 of 1870, as dismissed plaintiff's claim for arrears of rent for Fusly 1275.

The suits were brought by the Receiver of the Tanjore Estate to recover rent due under muchalkas executed by defendants, the Mirásidárs of certain villages, agreeing to take the villages on rent for 5 Fuslies from 1273 to 1277 at an annual rent.

The defendants pleaded the Act of Limitation (XIV of 1859) as to part of the rent claimed.

The facts in each case were similar.

The following is taken from the judgment of the District Judge in O. S. No. 2 of 1870, in which the necessary facts appear.—" The first point raised is what is the period of limitation allowed by the Act. The plaintiff contends that it is a suit to enforce a written contract, and that Clause 16, Section 1, Act XIV of 1859 applies: but though there is a written agreement, it seems to me quite

(a) Present: Morgan, C.J., and Holloway, J.

clear that it is an agreement to pay rent, and that the limitation period is therefore three years under Clause 8. This suit was instituted in February 1870, and, therefore, all rent due prior to February 1867 is barred unless plaintiff can show some reason why the limitation period did not run against him."………

" I conceive then that all that is barred is the claim for Fusly 1275, unless plaintiff can show cause why the limitation period should not be enforced, and it remains to be seen whether plaintiff has shown any such cause."

He claims to be entitled to the advantage of Section 14 of the Limitation Act because he was for a time prosecuting suits against these defendants separately for the arrears of Fusly 1275, all which suits were dismissed on the ground that plaintiff could not sue the defendants separately while they had executed the muchalka jointly.

The question is whether time so occupied is to be excluded under Section 14 in computing the period of limitation, for it is admitted that if that time is to be excluded then the arrears for Fusly 1275 will not be barred.

I have considered this point carefully, and though it may seem hard on the plaintiff, I think he is not entitled to the benefit of Section 14. It seems hard, because it is beyond question, that for many years past it was usual to treat muchalkas similar to that now sued on as giving a separate right of action against each tenant, and each tenant was looked upon as answerable for rent only proportionate to the extent of his holding. Plaintiff therefore in bringing his separate suits was only following the course that had been followed for some years and believed himself no doubt to have a *bonâ fide* right of action against each individual tenant. But it has been ruled by the High Court in *G. Lee Morris* v. *Panchanada Pillai and another,* (V. M. H. C. R., 135) that plaintiff had not and could not have such separate rights of action under these muchalkas.

Now Section 14 of the Limitation Act requires that the plaintiff should have been *bonâ fide* and with due diligence

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prosecuting a claim on the same cause of action against the same defendant, or some person whom he represents, in some Court which from defect of jurisdiction or some other cause shall have been unable to decide upon it.

In the present case there was no defect of jurisdiction, and the cause why the former suit was dismissed was of a totally different nature because plaintiff had not brought his suit in a proper form. And it can hardly be said that plaintiff was in those former suits claiming on the same cause of action. In this suit he claims under a joint muchalka executed by all the defendants, but in those suits he claimed under separate specific contracts entered into by each defendant. That was clearly his case in those suits, for he sought to adduce evidence to show such separate specific contracts. Not being able to prove those separate contracts he now falls back on the joint contracts, but it cannot, I think, be said that under these circumstances plaintiff is suing on the same cause of action as in those former separate suits.

Judgment will be that plaintiff do recover the amount sued for minus the amount claimed for Fusly 1275. Plaintiff will also recover costs on the amount decreed but must pay defendant's costs on the amount disallowed. Interest at 6 per cent. per annum will be allowed on the amount decreed and on the costs from this date to date of payment.

The plaintiff appealed on the ground that the said claim for rent for Fusly 1275 is not barred by the Limitation Act.

In R. A. Nos. 100 and 107, *Handley*, for the appellant, the plaintiff.

In R. A. No. 100, *V. Sanjiva Rau* for the 107th and 116th respondents, the 107th and 116th defendants.

In R. A. No. 107, *A. Ràmachendraiyar*, for the 1st and 18th respondents, the 1st and 21st defendants.

The Court delivered the following

JUDGMENT:—The only questions are on the Statute of Limitation. As to the period applicable to a suit for rent, we have no doubt that the period is 3 years under Clause 8.

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Then as to the claim to the exception of Section 14, it fails at every point. The cause of action was not the same, for there the obligation sued upon was a several one, here it is joint. The English test is—would the same evidence support each suit ? So far is this from being the case that the evidence which sustains this suit defeated those. The Court which decided the former suits not only did not fail to decide them but did decide them. The decrees of the Civil Judge must be confirmed and these appeals dismissed with costs.

Appeals dismissed.

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Special Appeal No. 382 *of* 1871.

CHINNARA'MAKRISTNA A'YYAR.........*Special Appellant.*
MINATCHI AMMA'L, and 2 others.......*Special Respondents.*

An adopted son does not succeed to the estate of his adoptive mother's father in preference to the son's son of the brother of the adoptive mother's father.

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S. A. No. 382 *of* 1871.

THIS was a Special Appeal against the decision of F. S. Child, the Civil Judge of Tinnevelly, in Regular Appeal, No. 141 of 1869, confirming the Decree of the Court of the Principal Sadr Amin of Tinnevelly, in Original Suit No. 177 of 1866.

The suit was brought to obtain a declaration of the plaintiff's right to the reversion of certain land and a house, on the ground that the first defendant, who was the widow of the former owner of the property and held it as a tenant for life, had made alienations in favor of the defendants, Nos. 2 and 3 to the prejudice of the plaintiff's reversionary right. It was conceded that the plaintiff was the divided grand-nephew of the first defendant's husband.

The first defendant denied the alienations said to have been made by her and added that her younger daughter having died issueless, she delivered up the whole estate to her eldest daughter, who was the next legal heiress,—that she too died afterwards leaving behind an adopted son named

(a) Present : Innes and Kernan, JJ.