M.R.O. 1—38,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	677	Press Mis.
681-33 Dated 20-4-1869		N.

Not to be folded or roughly handled

B 12-30

Proceedings of the Madras Government, Revenue Department, 20th April 1869.

Read the following letters :—

No. 431. From J. W. HANDLEY, Esq., Government Pleader, Madras, to the Acting Secretary to Government, Revenue Department, Fort Saint George, dated Madras, 13th April 1869, No. 257 :—

Dated 7th April 1869, Nos. 128, 129.

WITH reference to the Proceedings of Government, Revenue Department, noted in the margin, I have the honor to forward, for the information of Government, the printed records, just obtained by me from the High Court, of the Special Appeals now pending, in which the late Poligar of Ankusagheri was a party.

2. It will be seen that in three of the Appeals (Nos. 465, 466, and 494 of 1868), the late Poligar was appellant, and in the remaining one (No. 464 of 1868) he was respondent. Mr. Mayne was retained as his Counsel in the three former Appeals. The Appeal No. 464 of 1868 came on for hearing on the 24th February last, when I applied, as requested by the Board of Revenue, for an adjournment, pending the decision of Government as to the succession to the Polliem, and the Vakeel for the appellant consenting, the hearing was postponed for six weeks. The other three Appeals came on for hearing on the 5th March; but no application having been made by any person to be allowed to carry them on as representative of the late Poligar, the hearing was postponed for a month to allow time for any such application.

3. It will be seen that the suits, out of which these Appeals arose, were brought by the late Poligar to recover possession of certain villages held by different persons under alleged grants from former Poligars, which it was contended, if made at all, were made after the date of the permanent settlement, and were, therefore, invalid. In three of the cases the Civil Court on appeal decided that the plaintiff's claim was barred by the Limitation Act, and from this decision he appealed in Nos. 465, 466, and 494. The fourth case was at first decided against him by the two lower Courts, but on appeal to the High Court, it was remitted to the Principal Sudder Ameen, and ultimately decided in plaintiff's favor, from which decision the fourth Appeal, No. 464 of 1868, was brought.

4. It is very doubtful whether the successor to the Poliem would have any *locus standi* to carry on these suits, his estate being not a continuing one derived from his predecessor, but a new estate derived from the grant of Government; and I am informed by Mr. Mayne that, on the Appeals coming on for hearing, the Court expressed an opinion to that effect, and threw out a suggestion that Government, if so advised, might institute suits to recover the villages in question before a successor was appointed to the Poliem; an additional reason for adopting this course is, that as regards the question of limitation, Government would stand in a much more favorable position than the Poligar—(*vide* Regulation XXXI. of 1802, Section 8; and Act XIV. of 1859, Section 17).

5. I would, therefore, suggest that the Collector be requested to inquire into the subject matter of these suits, and what was the real nature of the transactions by which the disputed villages came into the possession of the persons now occupying them, and to report thereon, with a view to the decision of the question whether,

in the interests of Government, suits should be instituted for the recovery of these villages. In some of the cases the defendants contended that the grants by former Poligars had been confirmed by Government, in which case the validity of such grants could hardly now be disputed by Government.

6. All four Appeals are posted for hearing on the 16th instant. I shall endeavour to obtain an adjournment, but think it likely that the Court will hold, in accordance with their previously expressed opinion, that the cause of action in these suits does not survive to any person, and consequently that the suits must abate, and the Appeals come to an end, and fresh suits must be brought by any parties claiming to recover the villages, the subject of the suits.

No. 432. From J. W. HANDLEY, Esq., Government Pleader, Madras, to the Acting Secretary to Government, Revenue Department, Fort Saint George, dated Madras, 16th April 1869, No. 261.

Dated 13th April 1869, No. 257.

In continuation of my letter, marginally noted, I have the honor to report that the four Special Appeals therein referred to came on for hearing this day before the Chief Justice and Mr. Justice Innes, when I applied, as instructed, for a postponement, pending the decision of the question of succession to the Polliem. The Vakeel for the appellant in Special Appeal No. 464 of 1868 consented to that case being postponed, but the Vakeel for respondent in Special Appeals Nos. 466 and 494 objected to any further postponement. The Court ordered that all the Appeals should stand over until the 1st day in June next, when the same two Judges sit together, in order to allow of an application being made by any person to carry on the Appeals as the representative of the late Poligar; but that if before that time no such application should be made, the suits must abate.

2. I have this day reported this result to the Acting Secretary to the Board of Revenue.

No. 433. ORDER THEREON, 20th April 1869, No. 1,077.

Miscellaneous.

COMMUNICATED to the Board of Revenue, with reference to their Proceedings, under date 5th instant.

2. The Right Honorable the Governor in Council, in accordance with the suggestion made by the Government Pleader, desires that the Collector of Salem may be called upon for information of the nature alluded to in paragraph 5 of Mr. Handley's first letter.

(True Extract.)

(Signed) R. A. DALYELL,
Acting Secretary to Government.

To the Board of Revenue.
,, the Government Pleader.

Exd. F. R. Bantleman.

Principal Sudr Amin & ultimately Moonsiff in Plaintiff's favour, from which decision the 4th Appeal No. 484 of 1868 was brought.

4. It is very doubtful whether the decision of the Collector would have any Consequence to carry on these suits, his estate being not a continuing one derived from his predecessor but a new estate derived from the grant of Government & I am informed by Mr. Thayne that on the Appeals coming on for hearing the Court expressed an opinion to that effect & therefore it is suggested that Government, if so advised, might institute suits to recover the villages in question before a Moonsiff or Principal Sudr Amin; and Collector would for adopting this course so that as regards the question of limitation, Government would stand in as much more favourable position than the Collector (Vide Reg. XXII of 1802 Sec. 8 & Act XII of 1859 Section 17).

5. I would therefore suggest that the Collector be requested to enquire into the subject matter of these suits & what was the real nature of the transactions by which the Pushtu Village

---

Govt. of {1869} Madras.

REVENUE.

To

THE BOARD OF REVENUE

&c &c &c

Dated April, 29th.

Read

G. O. 29th April 1869, No. 1077.

From Mr. 27 July/69 Con 2581

APRIL.

Nos. 431—433.

Adoosagheri Special Appeal Suits—Government Pleader's letters on this subject, communicated to the Board of Revenue, in view to the Collector of Salem being called upon to furnish the required information

came into the possession of the persons now occupying them & to report thereon with a view to the decision of the question whether in the interests of Government suits should be instituted for the recovery of these villages. In some of the cases the defendants contended that the grants by former Poligars had been confirmed by Government in which case the validity of such grants could hardly now be disputed by Government.

6 All four appeals are posted for hearing on the 16th inst. I shall endeavour to obtain an adjournment but think it likely that the Court will hold in accordance with their previously expressed opinion that the cause of action in these suits does not survive to any person & consequently that the suits must abate & the appeals come down and fresh suits must be brought by any parties claiming to recover the villages the subject of the suits.

I have the honor &c
Sir
Your most obedient Servant

J. M. Handley

Government Pleader

4

DECREE.

Suit No. 655 *of* 1864.

In the Court of the District Munsif of Oossur.

Plaintiff.	*versus*	*Defendants.*
Appurayar, Poliagar.		1. Akachi Ammaniar.
		2. Chetti Sambangu Ramaiyen.
		3. Venkitanarainaiyen.

The suit is for establishing the plaintiff's right to, and recovery of, the villages described below, paying a revenue of rupees 343-12-8, and which belong to his palayapet (the estate of a poliagar).

1. The village Narikunpur of the polaypet of Ankusakire paying a beris revenue of..... Rs. 210 3 3
2. The villge of Idibelli do. do 133 9 5

Rs. 343 12 8

DECREE.

As the plaintiff's suit cannot be heard by the settling of issue, it is dismissed with costs. The costs of the 2nd defendant will be paid by the plaintiff.

(Here enter costs.)

(Signed) MAHOMMED JAMALUD-DEEN,

19*th April* 1865. *Munsif.*

Suit No. 655 *of* 1864.

In the Court of the District Munsif of Oossur.

PRESENT:—MOULAVI MAHOMMED JEMALUD-DEEN SAIB, *Munsif.*

Plaintiff.	*versus*	*Defendants.*
Appurayar, Poliagar.		1. Akachi Ammaniar.
		2. Sambangu Rama Chetti.
		3. Venkitanarainaiyen.

1. The suit is for setting aside the public sale of the villages mentioned in the plaint effected to the prejudice of the plaintiff's right thereto, and for their recovery.

2. The plaint sets forth that the said villages belong to the plaintiff's palayapet; that the land of the said villages, excepting the peramboke land, was assigned by the former poliagar for the maintenance of the 1st defendant and was accordingly enjoyed by her; that to the effect a Parikat deed was executed by the 1st defendant to the former poliagar; (3) that the village No. 1 was put up to auction in satisfaction of the judgment sum in the decree of this Court in Suit No. 1078 of 1862, passed against the 1st defendant and was *obtained* by the 2nd defend-

ant, and village No. 2 was obtained by the 3rd defendant under a lease; that these are thus enjoyed by them (2nd and 3rd defendants); that the 3rd defendant instituted Suit No. 315 of 1864 (about the said villages); (4) that these are illegal acts, and the plaintiff is not willing that the villages should thus be held and is prepared to pay ready money for (1st defendant's) maintenance; and that (the 1st defendant) is not authorized so to deal with the villages; and (5) that the plaintiff prays that a decree as mentioned in para. 1 may be passed.

6. The notice issued to the 1st defendant could not be served upon her.

7. The 2nd defendant contends that the villages sued for with all rights thereto were, on a division, allotted to the 1st defendant by the late poliagar; that the 1st defendant accordingly enjoyed them with all the peramboke land attached thereto; (8) that with reference to Suit No. 1078 of 1862, instituted against the 1st defendant, the said villages were temporarily attached in 1862 and were regularly attached in 1863; that neither on this occasion nor on the occasion of the public sale held at the village where the plaintiff lived, nor before the sale was confirmed and property put in his (2nd defendant's) possession, did he (plaintiff) take any legal proceedings, but he remained quiet for a long time; that his doing so now and without producing the important document the Parikat deed, mentioned in para. 2, is entirely irregular; (9) that there is no reason for cancelling his (2nd defendant's) purchase of the village No. 1 in dispute, made at an auction publicly conducted under the direction of the Court, and duly confirmed; that he (2nd defendant) purchased the village together with the Puramkode land and got the property in his possession after paying down the purchase money in Court, in evidence of which he produced exhibits I and II; and (10) that therefore he (2nd defendant) prays for the dismissal of the suit.

11. The 3rd defendant did neither appear nor defend the suit.

12. On a perusal of all the papers in the case, it appears that the chief contention of the plaintiff is that excepting the poramboke and jari-nam land, the village sued for was given by the late Poliagar to the 1st defendant for her maintenance; that she then executed a Parikat deed and notwithstanding this, she allowed the whole of the village No. 1 to be attached and to be purchased at the auction by the 2nd defendant; that village No. 2 was obtained by the 3rd defendant under a lease; and that therefore he (plaintiff) seeks for cancelment of the said public sale and lease.

The 1st defendant is a principal party in this suit, and it is necessary to get her statement and no decree could be passed without obtaining it. It was the duty of the plaintiff to point out her (1st defendant's) place of residence, but he has failed to do so.

The Parikat deed, mentioned above, is the principal document for the plaintiff's claim. He ought to have produced it with his plaint according to (the rules of) procedure and decrees. He did not produce it but his vakil states that the document being filed in another suit was before a higher Court and on presenting a petition for the same, a reply was given to the effect that it had been forwarded to the High Court; that the vakil in the High Court wrote that on presenting an application there, a reply was given to the effect that it was not in that Court, and was sent back to the Civil Court; and that on presenting a second petition to that Court, an order was passed to the effect that the said document was not to be found in the record. The petition now presented stating that it is still in the higher Court and praying (this Court) to send for it, is not be entertained. It is the duty of the plaintiff to produce the document, and this Court is not required to send for it.

The village in dispute was laid under an injunction in 1862 with reference to Suit No. 1078 of 1862, was regularly placed under attachment in 1863, was publicly put up to auction before Court in the same year, and was regularly purchased by the 2nd defendant at the auction which was confirmed by the superior Court on appeal. During all this time the plaintiff did

make no objection whatever. Though the plaintiff's vakil states that no objection was made because there was then a suit pending before the High Court respecting the Palayapet, the Court sees no obstacle to the plaintiff's presenting a petition for postponing the sale. To demand the surrender of the village which the former Poliagar set apart for the 1st defendant's maintenance on the ground that he (plaintiff) is prepared to pay ready money for her maintenance, is entirely unwarranted.

For these reasons, it is decreed that the suit be dismissed as not capable of being regularly heard by settling issues, and that the 2nd defendant's costs be paid by the plaintiff.

(Signed in Persian characters.)

MOHAMMED JEMALUDDEEN,

19*th April* 1865. *Munsif.*

Appeal Suit No. 139 *of* 1865.

Original Suit No. 655 *of* 1864, *on the file of the District Munsif of Oossur.*

In the Court of the Principal Sadr Amin, Salem.

PRESENT:—C. LATCHMIAH NAIDU.

Appurow. *Plaintiff.* *Appellant.*

versus

1. Sambangyramien.....
2. Vencatanaranappan... } *2nd and 3rd Defendants.* *Respondents.*

Grounds of Appeal.

I. That the villages in question belong to the plaintiff's Palliaput; that the peishcush due upon them is paid by him; that these villages cannot be alienated; and that such alienation is invalid, as ruled by the Court of Sadr Adalut in Special Appeal No. 70 of 1855.

II. That this suit cannot be dismissed on the ground that no claim was preferred by plaintiff to the villages at the time of attachment.

DECREE.

Decree below affirmed, and appeal dismissed with costs.

(Signed) C. LATCHMIAH,

20*th October* 1866. *Principal Sadr Amin.*

Appeal Suit No. 139 *of* 1865.

Original Suit No. 655 *of* 1864, *on the file of the Oossur District Munsif.*

In the Court of the Principal Sadr Amin, Salem.

PRESENT:—C. LATCHMIAH NAIDU.

JUDGMENT.

1. This is an appeal from the decree of the District Munsif, dismissing the plaintiff's suit to recover possession of two villages of Nariganapully and Eadigapully attached to the Augusagiri Paliaput.

2. The circumstances of the case as stated in the plaint are that the villages in question were assigned to the 1st defendant for her maintenance, and a document obtained from her by the former Polaigar; that one of the villages was sold for the judgment debt against the 1st defendant in Original Suit No. 1,078 of 1862, and was purchased by the 2nd defendant; that the other village was leased out to, and has been held by, the 3rd defendant, and that as the plaintiff is now prepared to allow money allowance for the 1st defendant's support, he seeks to recover the villages.

3. The plaintiff bases his suit upon a document said to have been executed by the 1st defendant. He relies upon that document as evidence in support of his claim, but has failed to produce the same in Court either at the time the plaint was filed or afterwards.

4. In consequence of the absence of the document sued on, the Lower Court was precluded from proceeding with the trial of the suit, and was justified in rejecting the plaint filed by the plaintiff.

5. The Principal Sadr Amin therefore affirms the judgment below, and dismisses the appeal with costs.

(Signed) C. LATCHMIAH,
Principal Sadr Amin.

29th October 1866.

MEMORANDUM OF SPECIAL APPEAL.

Before the District Munsif, Original Suit No. 655 *of* 1864.

Before the Principal Sadr Amin's Court of Salem, Appeal Suit No. 139 *of* 1865.

Before the High Court of Madras, Special Appeal No. 63 *of* 1867.

	In the Court of First Instance.	*In the Lower Appellate Court.*	*In the High Court.*
Appoorow.....	*Plaintiff.*	*Appellant.*	*Special Appellant.*
versus			
Sumbangy Ramien and 2 others.....	*Defendants.*	*Respondents.*	*Special Respondents.*

Plaintiff appeals to the High Court of Madras against the decree of the Principal Sadr Amin of Salem, dated 29th October last, on the ground that it was wrong in law and for defective procedure in that,—

1. Independently of any agreement by the 1st defendant, the plaintiff was entitled to succeed.

2. The document had been filed in Original Suit No. 1 of 1862 of the Civil Court and was lost and secondary evidence ought to have been admitted.

3. The 1st and 3rd defendants were *ex-parte*, and never denied the existence and genuineness of the document.

29th January 1867.

JOHN D. MAYNE.

Decree passed by the District Munsif's Court of Oosur in Salem Zillah.

On the 6th December 1867.

Original Suit No. 206 *of* 1865.

Plaintiff.	*versus*	*Defendant.*
Masti Mummadi Appurayar. Poligar of Perigai.		Surappasetti.

The plaintiff states that the nanja and punja lands in Sokkanathapuram village in the obali of kattusolai are, together with all privileges belonging thereto, attached to his palayapat and are subject to the peshkash paid to the Government; that while so, the defendant took possession of the same in an auction sale made thereof by the Court, and has been enjoying the same since 10 months; that such enjoyment is against the Regulations and Sastras, and the plaintiff does not in consequence agree to the same being enjoyed by others as hitherto done, and that the plaintiff should be put in possession of the said village.

Particulars of the village in dispute.

Ayakkattu lands in Sokkanathapuram village in the said obali.

Punja lands kulis 6,060½.

Nanja lands kulis 230¼.

Out of the above the lands under cultivation are as follow :—

Punja land kulis 2,822⅛ assessed at rupees 81-0-8.

Nanja land kulis 165 assessed at rupees 15-14-5.

Total 2,987⅛ assessed at rupees 96-15-1.

DECREE.

It is decreed that the defendant do put plaintiff in possession of the village in question and pay him his costs.

(Signed) GANAPATI AIYAR,
District Munsif.

Original Suit No. 206 *of* 1865.

On the file of the District Munsif's Court of Oossur

PRESENT :—T. GANAPATI IYER.

Plaintiff.	*versus*	*Defendant.*
M. Appu Row.		Chetti Surappa Chetti.

Plaintiff the poligar of Ankusagheri brings this suit to recover possession of a village attached to his poliput stating that that village is subject to the peishcush he pays to Government; that about 40 years ago Nunjappier who was then head sheristadar of the district obtained it as a present from one of the late poligars; that since then the village in question had been in the

possession of himslf and his successor and was in 1864, sold at a public auction in satisfaction of a judgment debt due to a third party by one of the said Nunjappier's successors; that defendant purchased it at the auction and was put in possession; that the gift in question is not sustainable at law, and that plaintiff is not disposed to recognise it.

2. Defendant contends that the village in question is not suuject to the peishcush plaintiff pays to Government; that one Subbian's ancestor obtained it in gift as sarvamaniem about 70 years ago from one of the late poligars, and he and his forefathers had been enjoying it till fusli 1227, when the Government appointed the Collector of the district to enquire into the state of the inams in Oossoor and Denkenecottah taluqs, ; that thereupon the poliput with all the maniems appertaining to it was attached, but that the Government released the village in question from zuft on the said Subbien shewing his title thereto and granted him a sunnud in fusli 1231, (1821,) authorizing him to enjoy the village in question as maniem; that ever siuce it has been in the possession of the said Subbien and his heirs; that at a public auction defendant purchased it for rupees 1,121; that the Inam Commissioner recognized the right of the then holder (Chedambrien) of the village and gave him a title deed; and that the plaintiff's claim is barred, inasmuch as the village had been for a long time in the possession of the donee and his successors, and as the plaintiff cannot question the grant which was made by a person whom he has succeeded as his daughter's son.

3. In his reply plaintiff's vakil observed that the cause of action arose from the date on which plaintiff obtained the poliput.

4. The following issues were settled :—

1st. Whether the cause of action should be computed from the date on which the plaintiff obtained the poliput.

2nd. Whether the gift is sustainable at law.

3rd. Whether the gift in question has been recognized by Government.

4th. Whether the village in question is included among those villages of the poliput for which plaintiff pays peshcush.

5. This suit relates to a village attached to the unsettled polliems of Ankusaghery. The terms on which such polliems are held are too well known to need any enumeration of them, but however, it may be said here that the polliam is held at the will of the Government; that it lapses to them on failure of heirs, and that the Government select persons to succeed to it on the demise of the incumbent. Plaintiff the present poligar, similarly selected, brings this suit to obtain possession from defendant of a village attached to the poliaput. Defendant contends that the village was conferred as an inam on the ancestor of one Chedambarien in satisfaction of whose judgment debt it was sold in auction and purchased by him, and that the plaintiff cannot question the grant made by one of the late poligars several years ago.

6. From the Government proceedings put in this case marked H, it would appear that only such grants as were made prior to the year 1799, are to be respected by the succeeding poligars. That this principal* which guides the poligars in the resumption of the villages alleged to have been given away is not denied by the other side will appear from the arguments of the defendant's vakil at the final hearing.

7. The question therefore for consideration here is, whether the grant in question was made prior to 1799, or subsequently. For the determination of this question the accounts for fusly 1212, (1802,) are the most important, being the only accounts in existence to show the grants made before 1799. These accounts were sent for from the taluq regards* and perused. The village in question named "agraharum" also called "Chockanadapurum" is entered in them

* Sic in origine.

against the name of a Sudra by name Munigan. The name of Chedumbarien's ancestor does not appear in them though the names of other donees do appear. I was assured that Captain Graham's sannad of fusli 1209, (1799,) clearly recognized only those grants which were made prior to 1799, and not those since made by the poligars, but that sannad has not been within my reach. It is therefore thus seen that the grant in question was not made before 1799, and if made that it would have appeared in the accounts for fusli 1212. The arguments advanced by the other side to shew that the grant was made before 1799, are that Subien to whom it was made fled the country during the time of war leaving the original sannad of grant and other documents in his house to take care of themselves, and thereby lost them; that owing to his absence, his name was not entered in the accounts for fusli 1212 but that he, however, on his return resumed possession of the village which with the other villages of the poliput was subsequently atrached by the Collector of the District, and when released was restored to one Pedda Subien on his representing to the Collector of the loss of the original sannad, and on his proving to him that the grant was actually made, and that the Collector thereupon issued a sannad to him. In support of this position the defendant relies on three documents, the Collector's sannad itself and two kafyats one given by village people, and the other by the then poligar. All these 3 documents are marked respectively VI, II and III. The sannad does not relate to the village in question. The object of defendant's vakil in putting it in is to shew that Subien "went and joined the Company's territories" therefore perhaps to infer that he fled the country as asserted. If this act of Subien's would lead to such an inference, what else would not, supposing that he is the identical man,—there may have been other reasons for his joining the Company's territories. The first and foremost of them may have been his relations stay in the Company's territories as sheristadar of the district or as tahsildar (vide 1st witness's deposition). No. I is copy of a statement given by a few villagers stating that the village of agraharam was conferred on Subbien by poligar Kumappa Gounden as Sarvamanien; that the poligar's sannad was lost, and that Perua Subbien is enjoying the village. What opportunities the attestors of this statement had of knowing the different occurrences they narrate have not been tested. The then poligar whose right this document affects does not seem to have been a privy to it. No. III document is headed in the words details of inam and jodi villages attached to Ankusagherry poliput as learnt from the poligar."* This document does not bear the signature of the Poligar nor does it shew how the information has been obtained from him. The latter document plaintiff's vakeel contended were fraudulently got up by Nunjapier, the head sheristadar in favor of his relative. On the other hand defendant's vakil equally contended that they could not have been got up 30 years ago in anticipation of the present litigation. That Nunjappier was head sheristadar of the district and that the person in whose favor the grant is alleged to have been made was his nearest relative, are admitted by defendant, an inference, that he favored his relative in getting up these documents, knowing as he must have been,* that grants obtained subsequent to 1799 will not be held valid would not have been rashly drawn. Granting that these documents are genuine, I cannot grant that they would have affected the then poligar, much more so his successors, as it does not in any way appear that that poligar was a party to them. It might be argued here that if the transaction had been actually a fraudulent one, the then poligars* or his successors might have subsequently exposed it. True if one poligar or set of poligars had been foolish enough, I don't see why the present poligar who obtained the poliput from the Government should be so. There is not even one public document to shew that either Subien or his successor enjoyed the village in question prior to fusli 1230 to justify the Collector in his proceedings. If there had been enjoyment on either Subier's or his successor's part that would have surely appeared in public accounts in the same way as the enjoyment of other parties appears. For these reasons these documents irrespective of the poligar having been no party to them are in my opinion open to grave suspicion. Again granting for the sake of argument that they are genuine and valid documents, it is of utmost importance to notice whether the Collector Mr Cockburn had any authority from Government to issue as he liked sannads of grant to parties who applied for them. It appears that the Govern-

* Sic in origine.

ment at the suggestion of the Collector placed the 3 poliputs in this taluq under attachment with a view to collect the arrears of kist—document (I). Para 2 of document G shews that the Government directed the rest oration of the poliputs on the same conditions on which they were originally held by the poligars. It is therefore clear from these two documents that the Collector had no authority. His proceedings consequently are illegal and unwarranted. The conclusion at which I now arrive is, that the grant if it ever took place is subsequent to the year 1799. This being my opinion, it is unnecessary for me to notice the different documents from A to G, and the arguments adduced by plaintiff's vakil regarding them.

8. A consideration of the issues recorded in the case becomes now necessary. The 1st issue is, whether the cause of action should be computed from the date on which the plaintiff obtained the poliput. I should certainly think that the period of limitation should be calculated only from the date on which the plaintiff assumed charge of the poliput, he being a nominee selected by Government to whom the property escheats on failure of heirs. The doctrine therefore that plaintiff is bound by the act of his ancestors, done several years ago, granting that the act for reasons already shewn is not open to suspicion, does not apply to the present case where the plaintiff is a creature of Government, and who in his own interest is bound to see that he does not unnecessarily pay tirva on a village which he does not at all enjoy. Defendant's vakil contended that Chedumbarien ought to have been made a party to the suit, and that plaintiff ought to have urged his claim at the time the village in question was sold. I think that both was necessary because defendant stands to plaintiff in the position which Chedumbarien did.

9. The 2nd issue is, whether the gift is sustainable at law. It is not sustainable for the reasons already given.

10. The 3rd issue is, whether the gift in question has been recognized by the Government. There is not one iota of evidence to shew that it has been, unless the word Government used in this case be construed to mean the Collectorate of Salem presided over by Mr. Cockburn having his sheristadar for his councellers.* Great stress is laid by defendant's vakil on the title-deed issued by the Inam Commissioner to Chedumbarien. Recent decisions of the High Court have shewn what value is to be attached to such title-deeds in a Court of justice.

11. The 4th issue is, whether the village in question is included among those villages of the poliput for which plaintiff pays peishcush. That it is included there can be no question as the poligar pays the same amount of peishcush originally fixed on the entire poliput. This fact is admitted by defendant's vakil at the final hearing.

Under these circumstances I adjudge that defendant do put plaintiff in possession of the village in question and pay him his costs.

6th *December* 8167, (Signed) T. GANAPATY,
District Munsif.

In the Civil Court at Salem.

23*rd day of April* 1868.

PRESENT:—C. F. CHAMIER, J.

Regular Appeal No. 64 *of* 1868.

(*Defendant*) *Appellant.* *versus* (*Plaintiff*) *Respondent.*

Chetti Surappa Chetti. Masty Mummudy Appu Row.

Regular appeal against the decree of the District Munsif of Oossoor, in original suit No. 206 of 1865.

* Sic in origine.

Memorandum of Appeal.

I. The plaintiff's claim is barred by the statute of limitation, since the disputed village has been held by the inamdars for a length of time previous to the year 1860 as admitted by the plaintiff and the Lower Court.

II. The plaintiff is not competent to dispossess the defendant, inasmuch as the grant of the disputed village as survamaniem has been made previous to 1799.

III. The disputed village is not subject to the peishcush which plaintiff pays to Government. It has been a survamaniem village ever since 1821 under the confirmation of Government.

IV. The Lower Court was in error in disbelieving the public documents filed by the defendant,—the Lower Court has not paid proper attention to the above evidence.

V. The document A filed by the plaintiff's second witness is a fabrication. Chokai Gounder was not a poligar on the date on which it is said to have been passed,—the said document as well as the rest have been manufactured by the said witness and plaintiff in collusion.

VI. The plaintiff though fully aware of the village in dispute being long held under attachment and of its subsequent sale, has started no objection.

VII. The Government have conferred this poliput on this plaintiff, as the son of the previous poligar's daughter.

VIII. The disputed village has been registered in the name of the enamdar, and the quitrent is paid by the defendant himself.

IX. Under the orders of Government, the poliput has been placed in plaintiff's possession in the same state in which it was at the time of the deceased poligar.

DECREE.

This regular appeal coming on for hearing: Upon perusing the memorandum of appeal, the judgment and decree of the Court of First Instance, and the material papers in the suit, and upon hearing the arguments of Narasier, pleader for the plaintiff, and of A. Daivasagayem Pillai, pleader for the defendant; this Court doth order and decree that the decree of the Court of First Instance be, and the same hereby is reversed, and the suit dismissed; and this Court doth further order and decree that the plaintiff do pay the costs of the defendant in both Courts.

MEMO.

The village in dispute is permanently settled. The annual revenue is rupees 12.

(Signed) C. F. CHAMIER,
Civil Judge.

In the Court Civil Court at Salem.

23*rd April* 1868.

PRESENT:—C. F. CHAMIER, J.

Regular Appeal No. 64 *of* 1868.

(*Defendant*) *Appellant.* *versus* (*Plaintiff*) *Respondent.*

Chetti Surappa Chetti. Masty Mummady Appu Row.

Regular appeal against the decree of the District Munsif of Oossur, in original suit No. 206 of 1865.

This regular appeal coming on for hearing this day, the Court delivered the following

JUDGMENT.

The Lower Court appears to have begun at the wrong end in dealing with the points in dispute in this case. It is a work of supererogation to enter into the question of the validity of the grant, unless the suit can be entertained. The most material point is to ascertain the time at which the cause of action arose. The time fixed upon by the Lower Court is certainly about as vague and indefinite as it could possibly be. If it only arose when the plaintiff was granted the poliem, then there have been several causes of action during the time that the late owners were in possession; that is, the accession of each successive polygar has created a fresh cause of action without any reference to the tenure on which the village has been held by the persons though* whom the defendant claims. These persons have been in possession, avowedly, as inamdars under a sunnud or title granted by the Collector of the district for forty-four years before suit brought. It is admitted that during the whole of this time they have paid no rent. Whatever changes have taken place in the personnel of the poliem they have maintained their position as independent owners and absolute proprietors of the village. I am not aware of any law, or usage having the force of law, under which their long possession can be disturbed. I think the cause of action arose when the Collector in 1821, renewed their sunnud. If he then in fact granted a sunnud to a person who was no before an inamdar, the polygars' right were manifestly* invalid and he ought to have brought his suit within twelve years from such time, or if he died within that period, such suit should havebeen brought by his successor. Where property changes hands, I fancy the new possessor is liable to all the rules affecting the exercise of the rights of the party through whom he claims and that it is immaterial in what manner the change is effected. I can find no provision which gives the plaintiff a new period of limitation from the time of his accession to the poliem. I therefore hold the suit to be barred by lapse of time, and, reversing the decree of the Lower Court, dismiss the suit. The plaintiff will pay the costs of the defendant in both

(Signed) C. F. CRAMER,
Civil Judge.

MEMORANDUM OF SPECIAL APPEAL.

Before the District Munsif's Court of Oossur, *Original Suit No.* 206 *of* 1865.

Before the Civil Court of Salem, Appeal Suit No. 61 *of* 1868.

Before the High Court of Madras, Special Appeal No. 466 *of* 1868.

	In the Court of First Instance.	*In the Lower Appellate Court.*	*In the High Court.*
M. Mummady Appu Row	*Plaintiff.*	*Respondent.*	*Special Appellant.*
versus			
Chetty Surappa Chetty	*Defendant.*	*Appellant.*	*Special Respondent.*

Plaintiff appeals specially to the High Court of Madras, against the decree of the Civil Court of Salem, dated 23rd April 1868, on the ground that the plaintiff's suit is maintainable and is not barred by the Act of Limitation.

19*th October* 1868.

P. O'SULLIVAN
for
J. D. MAYNE,
Counsel for Special Appellant.

* Sic in origine.

7

2-2-94
1-5-94.

Rec'd 11/85/69.
Issued 12/5/69.

2

HIGH COURT.

SPECIAL APPEAL.

No. 466 *of* 1868.

From Zillah Salem.

Masty Mummudi Appu Row,
(Plaintiff) Special Appellant.

By Mr. Mayne.

versus

Chetti Suruppa Chetti,
(Defendant) Special Respondent.

Presented 19*th October* 1868,
with three Enclosures.

Filed 2nd November 1868.

Vide S. A. No. 465 of 1868.

To be heard on

Decree passed by the District Munsif's Court of Oossur in Salem Zillah.

On the 6th December 1867.

Original Suit No. 250 *of* 1865.

Plaintiff. *versus* *Defendants.*

asii Mummadi Appurayar.

1. Buchchannaiya *alias* Venkata Narayanasami.
2. Keritappan.
3. Rangappan.
4. Chikkappaiyan.
5. Seshagirirayar.

Plaintiff sets forth that the defendants 1 to 4 have illegally, unfairly been holding the enjoyment of the undermentioned Sokkapuram village attached to the Palayapat of Ankusagiri, to which the plaintiff is entitled; that while so, as the same was (also) zafted in satisfaction of the amount due by the 1st defendant to the 5th defendant under a judgment passed in suit No. 20 of 1862, on the file of the Principal Sadr Amin, the said zaft should be removed, and the village be put in the possession of the plaintiff.

Particulars of the disputed village. Total extent of ayakuttu lands at Sokkapuram.

Punja land kulis 7,229 $\frac{5}{8}$ assessed at rupees	216	1	7
Nunja land kulis 417$\frac{3}{4}$ assessed at rupees.....	63	0	3
Total kulies 7,647 $\frac{1}{8}$ assessed at rupees.....	279	1	10

Out of the above, the lands under cultivation are as follow—

Punja land (kulies) 4,702 $\frac{3}{8}$ assessed at rupees.....	209	1	2
Punja land do. 348 $\frac{1}{8}$ assessed at rupees.....	53	0	1
Maruvali Tirva.....	0	0	8
Total kulis 5,050 $\frac{3}{8}$ assessed at rupees.....	262	1	11

DECREE.

It is decreed that the village in question should be released from attachment and put in plaintiff's possession; that the 1st defendant should pay the plaintiff's costs, and that the 5th defendant cannot get his costs.

(Signed) E. GANAPATI,

District Munsif.

Original Suit No. 250 of 1865.

On the file of the District Munsif's Court of Ossoor.

PRESENT :—T. GANAPATY IYER.

Plaintiff. *versus* *Defendants.*

Appu Row.

1. Bu'chien *alias* Vencatanarayanasimy.
2. Kiritappan.
3. Rungappen.
4. Chekkapayen.
5. Sashagherry Row.

1. Plaintiff the poligar of Ankusagerry states that the village in question is attached to his poliput and subject to the peishcush he pays to Government; that defendants 1 to 4 have illegally held it for the last 30 years; that it has been attached by a precept of the Principal Sadr Amin's Court at Salem in satisfaction of a judgment debt due to 5th defendant by the 1st, and that this suit is therefore to get the village released from attachment and to recover possession of the same.

2. After taking some preliminary objections, 1st defendant's vakil urged that the village in question is not now attached to the plaintiff's poliput; that about 60 years ago it was conferred on 1st defendant's father as inam by the then poligar Kemp Gounden; that ever since it continues in the possession of the family of defendants 1 to 4, that the assignment appears on the Government records relating to the poliput, and was duly reported to the Government, and that the plaintiff's claim is barred.

3. Defendants 2 to 4 were tried *ex-parte*.

4. 5th defendant supports the 1st and adds that the village in question should be held liable to his debt.

5. In his reply plaintiff's vakil observed that the gift is not sustainable at law, and that cause of action for plaintiff arose from the date he got the poliput.

6. The following issues were settled:—

1st. Whether the suit is barred.

2nd. Whether the grant pleaded by 1st defendant was made and whether it can be held good at Law.

3rd. Whether the village in question is subject to the peishcush which plaintiff pays to Government.

7. At the final hearing though the vakil for 1st defendant attempted to draw some presumptions to shew that the grant was made prior to 1799 as such grants only the plaintiff as poligar is bound to respect, yet he clearly admitted that it was made in 1801.

8. The plaintiff's polliem is an unsettled one, and the Government at the demise of each incumbent selects a person and confers the poliput on him. He enjoys the poliput at the will of Government. The plaintiff was similarly selected, and he is therefore in his own interest not bound by the acts of his predecessor. For these reasons the suit is not barred.

9. The length of possession by 1st defendant's family of the village in question certainly leads to the conclusion that the grant was made, but it being a grant made subsequent to 1799, it is not sustainable.

10. From the Government proceedings dated 9th April 1861, No. 794, a copy of which 1st defendant's vakil shewed me, it appears that of the 168 villages comprised in the poliput, only 93 are in the poligar's enjoyment, the other villages with the exception of 4, being held by third parties on sarva maniem tenure; that the annual revenue of the whole estate is computed at rupees 20,000, and that the peishcush amounts to rupees 7,910-13-4. That the poligars pay this amount of peishcush which was fixed on the entire estate during the time of Tippu Sultan, is not denied by 1st defendant. There can therefore be no doubt, that the village in question is subject to the peishcush plaintiff pays to Government since the Government have not relieved the plaintiff from paying assessment on such villages as are held by 3rd parties. It is therefore preposterous to contend that the plaintiff who pays tirwah on villages he does not enjoy cannot bring this suit to recover the possession of one of such villages, the grant of which is admitted to have been made subsequent to the year 1799. Defendants' vakil observed that the grant has been recognized by the Government, but no document was produced in support of it,—even granting the recognition the plaintiff to whom it is prejudicial has a right to question it.

I therefore direct that the village in question be released from attachment and be put in plaintiff's possession, and that 1st defendant pay plaintiff's costs. 5th defendant will bear his costs.

(Signed) T. GANAPATY,
District Munsif.

6th December 1867.

In the Civil Court at Salem.

23rd April 1868.

PRESENT:—C. F. CHAMIER, *Judge.*

Regular Appeal No. 65 of 1868.

Plaintiff. *Respondent.*

Masty Mummady Appu Row.....

versus

1st Defendant. *Appellant.*

Batch'en *alias* Vencatanaranasawi.....

Regular appeal against the decree of the District Munsif of Oossur, in original suit No. 250 of 1865.

Memorandum of Appeal.

I. The suit is barred by the statute of limitation since the enjoyment of the disputed village is vested in defendant for so long a period as sixty years.

II. The poliem has descended to the plaintiff as the son of the daughter of Kempiah Gounden by whom the grant of the said village had been made. The plaintiff is not therefore competent to recall the grant in question.

III. The above mentioned grant is valid under the Regulations.

IV. The disputed village is not subject to the peishcush paid by plaintiff. The village has been registered in the accounts as serva maniem previous to fusli 1212.

V. The grant of the disputed village has received the confirmation of the Government.

VI. The plaintiff has not advanced his right for one year during which the disputed village was under attachment.

DECREE.

This regular appeal coming on for hearing: Upon perusing the memorandum of appeal, the judgment and decree of the Court of First Instance, and the material papers in the suit, and upon hearing the arguments of Narasier, pleader for the plaintiff and of A Daivasagayem Pillai, pleader for the first defendant, this Court doth order and decree, that the decree of the Court of First Instance be, and the same hereby is, reversed, and the suit dismissed; and this Court doth further order and decree, that the plaintiff do pay the costs of the first defendant in both Courts.

(Signed) C. F. CHAMIER,
Civil Judge.

In the Civil Court at Salem.

23rd April 1868.

PRESENT:—C. F. CHAMIER, *Judge.*

Regular Appeal No. 65 *of* 1868.

Puchanien *alias* Vencatanarainasamy..... 1*st Defendant.* *Appellant.*

versus

Masti Mummadi Appu Row..... *Plaintiff.* *Respondent.*

Regular appeal against the decree of the District Munsif of Osur, in original suit No. 250 of 1865.

This regular appeal coming on for hearing this day, the Court delivered the following

JUDGMENT.

I felt no difficulty in deciding in regular appeal No. 64, heard this day, that the suit was barred by lapse of time, because the inam had been recognized and renewed by the Collector forty-four years before suit, and his act seemed also to bind the Government, in whom the property in the Polliem vests and re-vests on the demise of each polygar. The circumstance of the grant in this case having been made by a former tenant of the polliem, has raised a slight doubt in my mind, whether the validity of the grant ought not to be enquired into. It is argued that, as the estate reverts to the Government from time to time, the Limitation Act is thereby prevented from running against the successive holders of the polliem except where any such holder has himself allowed more than twelve years to elapse without attempting to set aside the grant. The plaintiff contends that each polygar receives the polliem free from all incumbrances, and that even where previous holders have acquiesced in the grant, it is competent to any subsequent holder to contest its validity within twelve years from the time of his taking the polliem. The Lower Court has adopted this view. I cannot find, however, that it rests upon any sound basis. It will be time enough to consider whether the Government can, after the lapse of twelve years, dispute the validity of grants made by the life tenants, when the question is raised by the Government in a suit against the grantees. The position of the plaintiff I conceive to be this. The village was alienated at least thirty years ago, according to his own admission by one of the former polygars. The polliem has since reverted to the Government and been transferred to other polygars, and lastly to the plaintiff, without any steps having been taken either by the Government or such polygars to set aside the grant thus made. In accepting the polliem therefore, the plaintiff accepted it subject to the claims which had thus gradually ripened into rights. I am of opinion that the cause of action arose when the grant was first made, because if the grant was invalid, the right to resume the village accrued to the grantor immediately. This principle was laid down in the zemindar of Bobbily *versus* Siri Jagunti Sityamma Garu (3 H. C. R. 67) and it exactly applies to the present case. It appears to be immaterial

whether the title on which the possession was originally gained was a good or a bad title, if there has been no submission to the plaintiff's title within twelve years. I have no hesitation in holding that the right of action in this case was lost by the holders of the polliem after twelve years from the date of the grant. There is no provision of the Act which keeps the right of Section* open in such cases as the present, and therefore the period must be computed without interruption from the time the cause of action arose. The defendants having been in possession for more than twelve years on a title which they have maintained against the successive polygars, cannot now be ejected at the suit of the plaintiff. On this ground I reverse the decree of the Lower Court, and dismiss the suit. The plaintiff will pay the costs of the first defendant in both Courts.

(Signed) C. F. CHAMIER,
Civil Judge.

MEMORANDUM OF SPECIAL APPEAL.

Before the District Munsif's Court of Ossoor, Original Suit No. 250 *of* 1865.

Before the Civil Court of Salem, Appeal Suit No. 65 *of* 1868.

Before the High Court at Madras, Special Appeal No. 465 *of* 1868.

	In the Court of First Instance.	*In the Lower Appellate Court.*	*In the High Court.*
Masty Mummady Appu Row.	*Plaintiff.*	*Respondent.*	*Special Appellant.*
versus			
Butchien *alias* Venkatanaramasawmy.....	1*st Defendant.*	*Appellant.*	*Special Respondent.*

Plaintiff appeals to the High Court of Madras, against the decree of the Civil Court of Salem dated 23rd April 1168 on the ground that the plaintiff's suit is maintainable and is not barred by the Act of Limitation.

P. O'SULLIVAN,
for
J. D. MAYNE,
Counsel for Special Appellant.

19*th October* 1868.

Sic in origine.

In the District Munsif's Court of Oossur in the Zillah of Salem.

6th December 1867.

Suit No. 373 *of* 1865.

Plaintiff.	*versus*	*Defendant.*
Masti Mumahdi Appu Rayar, Palayagar of Berikai.		Venkittasami.

The plaintiff has brought this suit, stating that a proclamation was made in November of fasli 1275 in the undermentioned village of Kurianapalli, attached to the plaintiff's palayaput, and held and enjoyed by the defendant unlawfully, to the effect that all the incomes of the lands of the said village should be paid to the plaintiff; that in infringement thereof, the defendant has collected the income; and that therefore the said village may be put in the plaintiff's possession, and the plaintiff be allowed to collect the income for fasli 1275, amounting to rupees 493-5-8.

(Here enter particulars of the village.)

ECREE.

It is decreed that the defendant do give up the village in dispute to the plaintiff; that the income of the said village for fasli 1275, rupees 493-5-8, be paid to the plaintiff; and that the plaintiff's costs be paid by the defendant.

(Here enter costs, &c,.)

(Signed) E. GANAPATHY,
District Munsif.

Original Suit No. 373 *of* 1865.

On the file of the District Munsif's Court of Oossoor.

PRESENT:—J. GANAPATY IYER.

Plaintiff.	*versus*	*Defendants.*
Appoo Row.		Vencatanarayanappen,—since dead. His brother Vencatasamy.

Plaintiff the poligar of Ankoosaghery, brings this suit to recover possession of a village attached to this poliaput, and subject to the peishcush he pays to Government with rupees 493-5-8 the produce thereof for fasli 1275, stating that defendant and his deceased brother have been enjoying the village under a grant made by the late poligar Veerammany, which is not valid.

2. Defendant pleads the grant, and contends that the poliput pays the same amount of podigay which it was paying to Tippoo Sultan, that the Government took no exception to the grant when it was reported to them; that even if the village is subject to the peishcush plaintiff

2-2-94
1-5-94

HIGH COURT.

SPECIAL APPEAL.

No. 466 *of* 1868.

From Zillah Salem.

Masty Moonnady Appu Row.
(Plaintiff) Special Appellant.

By Mr Mayne.

versus

Bulchien *alias* Vencatanarayanasawmy,
(1st Defendant) Special Respondent.

Presented 19*th October* 1868,
with three Enclosures.

Filed 2*nd* November 1868.

Vide Special Appeal No. 466 of 1868.

To be heard on

pays to Government, he cannot claim it, as it has been long in the enjoyment of defendant ; that plaintiff's claim is barred, and he cannot question the grant made by his predecessor.

3. In reply, the plaintiff's vakil observed that grants made prior to 1799 are alone respected; that the Government have authorized plaintiff to resume villages subsequently granted ; and that cause of action for plaintiff only arose from the date on which he assumed charge of the poliput.

4. The following issues were settled :—

1st Whether in the suit the Statute of Limitation runs from the time the plaintiff obtained the poliput.

2nd. Whether the village in question is subject to the peishcush which plaintiff pays to Government.

3rd. Whether the grant in question is valid at law.

5. This is the 3rd suit of its kind that has been brought by the plaintiff to recover possession of a village attached to his poliput and subject to his peishcush. The issues recorded in all 3 cases are the same, and my reasons for arriving at a conclusion in favor of the plaintiff are given at length in the judgment of suits Nos. 206 of 1865 and 250 of 1865, as it is necessary that every judgment should be full by itself, I shall give some of my reasons.

6. The poliput is an unsettled one, and the plaintiff has succeeded to it, having been selected by Government. That the village in question is subject to the peishcush which plaintiff pays to Government is established beyond all doubt, though defendant's vakil attempted to show that it was not, but he, however, admits that the poligars paid the same jodegay which was fixed in the days of Tippu Sultan. The assessment on the villages alienated has not been remitted, and plaintiff is bound to pay it as well, though the villages are not in his enjoyment. He is, therefore, justified in bringing this suit, and the period of limitation should be computed only from the date on which plaintiff obtained the poliput.

7. The grant is not valid, as it was made subsequent to 1799, and the plaintiff under an order of Government put in in this case is authorized to resume villages of subsequently* grants.

8. No exception was taken to the sum claimed on account of produce.

The decree, therefore, is that defendant do put plaintiff in possession of the village sued for, and pay him rupees 493-5 8 being the income of the village for fusli 1275 and his costs.

(Signed) T. GANAPATY,
District Munsif.

6th December 1867.

In the Civil Court at Salem.

23rd April 1868.

PRESENT.—C. F. CHAMIER, *Judge.*

Regular Appeal No. 66 *of* 1868.

Plaintiff (Respondent.) *versus* *Defendant (Appellant.)*

Masty Mumahdi Appoo Row. Venketasawmy.

Regular appeal against the decree of the District Munsif of Oossur, in Original Suit No. 373 of 1865.

* Sic in origine.

Memorandum of Appeal.

I. The plaintiff's suit is barred by the Statute of Limitation, as the enjoyment of the disputed village is vested in defendant for more then 12 years.

II. The disputed village was not placed in plaintiff's possession when he obtained possession of the poliem ; the poliem on being attached was delivered to plaintiff under the orders of the Government in the same state in which it formerly was. The disputed village was not included in the poliem.

III. The grant of the said village is valid under the regulations.

IV. The village in question has been registered as an inam in the accounts for fusli 1212 filed by plaintiff. With reference to this entry, the said village has been bestowed as sarvamaniem on the defendant's uncle in the year Sowmiah (1849.)

V. The plaintiff has not proved the amount of mahasoob.

VI. The plaintiff who has obtained the poliaput under the orders of Government is bound to maintain the relatives of the former poliagars.

DECREE.

This regular appeal coming on for hearing ; upon perusing the memorandum of appeal, the judgment and decree of the Court of First Instance, and the material papers in the suit, and upon hearing the arguments of Narasier, pleader for the plaintiff, and of A. Daivasagayem Pillai, pleader for the defendant, this Court doth order and decree that the decree of the Court of first Instance be, and the same hereby is, reversed ; and the suit dismissed ; and this Court doth further order and decree that the plaintiff do pay the costs of the defendant in both Courts.

(Signed) C. F. CHAMIER,
Civil Judge.

In the Civil Court at Salem.

23rd April 1868.

PRESENT :—C .F. CHAMIER, *Judge.*

Regular Appeal No. 66 *of* 1868.

Appellant Respondent.

Venkataswamy *Defendant.*

Masty Mumahadi Appu Row. *Plaintiff.*

Regular appeal against the decree of the District Munsif of Oossur in Original Suit No. 373 of 1865.

This regular appeal coming on for hearing this day, the Court delivered the following

JUDGMENT.

This case must be decided on the same principle as Regular Appeal No 65 heard this day. The defendant having been in possession for more than twelve years on a claim of right, cannot now be ejected. The cause of action accrued when the grant was made, and no suit having been brought within the period limited for that purpose, the remedy by action has been lost. On this ground I reverse the decree of the Lower Court, and dismiss the suit. The plaintiff will pay the costs of the defendant in both Courts.

(Signed) C. F. CHAMIER,
Civil Judge.

MEMORANDUM OF SPECIAL APPEAL.

Before the District Munsif of Ossoor, Original Suit No. 373 *of* 1865.

Before the Civil Court of Salem, Appeal Suit No. 66 *of* 1868.

Before the High Court of Madras, Special Appeal No 494 *of* 1868.

	In the Court of First Instance.	*In the Lower Appellate Court.*	*In the High Court.*
Masty Mumahadi Appu Row.	*Plaintiff.*	*Respondent.*	*Special Appellant.*
versus			
Vekatasawmi.	*Defendant.*	*Appellant.*	*Special Respondent.*

Plaintiff appeals to the High Court of Madras against the decree of the Civil Court of Salem, dated 23rd April 1868, on the ground that the plaintiff's suit is maintainable and is not barred by the Act of limitation.

P. O'SULLIVAN,
for
J. D. MAYNE,
Counsel for Special Appellant.

19th October 1868.

In the High Court of Judicature at Madras.

Friday, the ninth day of August one thousand eight hundred and sixty-seven.

PRESENT:

THE HONORABLE Mr. JUSTICE COLLETT.

THE HONORABLE Mr. JUSTICE ELLIS.

Special Appeal No. 63 *of* 1867.

Appu Row.....	*Plaintiff.*	*Special Appellant.*
versus		
Akachi Ammani Ammal and 2 others.....	*Defendants.*	*Special Respondents.*

Special appeal against the decree of the Principal Sadr Amin's Court of Salem in Regular Appeal No. 139 of 1865, confirming the decree of the Court of the District Mun-if of Oossur in Original Suit No. 655 of 1864.

DECREE.

This special appeal coming on for hearing: Upon perusing the grounds of special appeal, the judgments and decree of the Lower Appellate Court and Court of First Instance, and the material papers in the suit; and upon hearing the arguments of Mr. Advocate General, Counsel for the special appellant, and of Venkatapathy Row, vakil for the 2nd special respondent, the other special respondents not appearing in person or by counsel; this Court doth order and decree that the decree of the Lower Appellate Court be, and the same hereby, is reversed, and the case remanded in order that the Lower Appellate Court may fix a reasonable time for the production of the document relied upon by the plaintiff or of secondary evidence of its contents, and that thereupon the suit be disposed of upon the merits, and this Court doth further order and decree that the costs hitherto be costs in the cause.

In the High Court of Judicature at Madras, Friday the ninth day of August one thousand eight hundred and sixty-seven.

PRESENT:

THE HONORABLE Mr. JUSTICE COLLETT.

THE HONORABLE Mr. JUSTICE ELLIS.

Special Appeal No. 63 *of* 1867.

Appu Row.....	*Plaintiff.*	*Special Appellant.*
versus		
Akachi Ammani Ammal and 2 others.....	*Defendants.*	*Special Respondents.*

Special appeal against the decree of the Principal Sadr Amin's Court of Salem in Regular Appeal No. 139 of 1865, confirming the decree of the Court of the District Munsif of Oossur in Original Suit No. 655 of 1864.

This special appeal coming on for hearing, the Court delivered the following

JUDGMENT.

We think that this case has been too summarily disposed of. It was not indeed the duty of the Courts below to send for the document relied upon by the plaintiff; but when there was, as it seems clear, every reason to believe that it was once in existence and had been filed in another suit in a Court, time ought to have been allowed to the plaintiff to apply to the Court

2-2-68
1-3-68.

Rec'd 11th Mar 68

HIGH COURT.

SPECIAL APPEAL.

No. 494 *of* 1868.

From Zillah Salem.

Masty Munadi Appu Row,
(Plaintiff) Special Appellant.

By Mr. Mayne.

versus

Venkatasami.
(Defendant) Special Respondent.

Presented 19th October 1868, *with three Enclosures.*

Filed 7th November 1868.

Vide S. A. Nos. 465 and 466 of 1868.

To be heard on

or Courts in which it might reasonably be supposed to be, and then on proof that it had been filed in a former suit, and was not now after due search forthcoming, the plaintiff should have been allowed an opportunity for producing secondary evidence of the contents of the document.

This error in the investigation of the case by the Courts below must now be corrected, and the case must be remanded in order that the Lower Appellate Court may fix a reasonable time within which plaintiff may apply to the Court in which the document is supposed to be; and if it cannot be found, then on proof of the former existence of the document and of its loss, the plaintiff must be allowed to go into secondary evidence of its contents, and the suit be disposed of upon the merits. The costs hitherto to be costs in the cause.

Appeal Suit No 139 *of* 1865.

Original Suit No. 655 *of* 1864, *on the file of the Oossur District Munsif.*

In the Court of the Principal Sadr Amin, Salem.

PRESENT:—C. LATCHMIAH NAIDOO.

Appoo Row..... *Plaintiff.* *Appellant.*

versus

1. Sumbungy Ramien .....
2. Venkatanaranappen..... } *2nd and 3rd Defendants.* *Respondents.*

Grounds of Appeal.

I. That the villages in question belong to the plaintiff's poliaput; that the peishcush due upon them is paid by him; that these villages cannot be alienated, and that such alienation is invalid, as ruled by the Court of Sadr Adalut in Special Appeal No. 70 of 1855.

II. That this suit cannot be dismissed on the ground that no claim was preferred by plaintiff to the villages at the time of attachment.

DECREE.

Decree below reversed and the villages sued for directed to be made over to plaintiff's possession in cancelment of the sale and lease mentioned in the plaint.

2nd defendant to pay plaintiff's costs.

MEMORANDUM.

The villages claimed in this suit are permanently settled. The annual revenue is rupees 343-12-8.

(Signed) C. LATCHMIAH,
Principal Sadr Amin.

Appeal Suit No. 139 *of* 1865.

Original Suit No. 655 *of* 1864, *on the file of the Oossur District Munsif.*

In the Court of the Principal Sadr Amin, Salem.

PRESENT:— C. LATCHMIAH NAIDU.

JUDGMENT.

1. This suit was laid to recover two villages mentioned in the plaint, and to set aside their public sale effected to the prejudice of the plaintiff's right thereto.

2. It was alleged in the plaint that the villages in question belong to the plaintiff's poliaput; that the land of the villages excepting poramboke was assigned by the former poliagar for the maintenance of the 1st defendant and was enjoyed by her; that to this effect a Faricut deed was executed by 1st defendant to the former poliagar; that one of the villages was put up to auction in satisfaction of judgment against 1st defendant in Suit No. 1073 of 1862, and purchased by the 2nd defendant; that the other village was obtained on lease by the 3rd defendant; that the 1st defendant was not authorized thus to deal with the villages; and that plaintiff is not willing that the villages should be held by 2nd and 3rd defendants, and is prepared to pay ready money maintenance to 1st defendant.

3. The notice to 1st defendant could not be served upon her.

4. The 2nd defendant contended that the villages, with all rights thereto, were, on division, allotted to the 1st defendant by the late poliagar, that the 1st defendant accordingly enjoyed them with the poramboke land attached thereto; that the plaintiff did not take any legal steps either on the occasion of public sale or on the occasion of placing the 2nd defendant in possession; and that the suit should be dismissed.

5. The 3rd defendant did not appear.

6. The Faricut deed, which formed the basis of the suit, not having been filed, the District Munsif dismissed the claim, and his award was confirmed by this Court in appeal.

7. On special appeal by the plaintiff, the High Court remanded the case, and directed this Court to fix a reasonable time for the production of the document relied on by plaintiff, or of secondary evidence of its contents, and then to dispose of the suit upon merits.

8. According to this order of the High Court, the plaintiff was allowed time to produce the document, from the Court where it was alleged to have been filed in a former suit, but instead of producing he has brought in oral and documentary evidence to show that the Faricut deed was actually in existence and was filed in Original Suit No. 1 of 1862, on the Civil Court's file, and that it was subsequently received back and was lost.

9. The existence of the document, as well as its delivery in a former suit, is proved by the exhibits A and B; while its subsequent loss is borne out by the parole testimony brought forward by the plaintiff.

10 The Principal Sadr Amin being satisfied with the authenticity of this testimony, has now to go into the evidence adduced of the contents of that document.

11. By this secondary evidence, it would appear that the two villages in question were granted by the former poliagar to the 1st defendant for her maintenance; and that the document in question was obtained from her prohibiting her alienation of them to others.

12. There is no question as to the villages being part and parcel of the Angusagiri poliaput which is permanently assessed, and there is no dispute as to the plaintiff being the poliagar.

13. The interest possessed by the 1st defendant is only a life-interest to the extent of her enjoying the profits for her individual support, and the villages cannot, therefore, be alienated from her for her private debts to the detriment of the rights of Government, and of the successors to the estate.

14. The Principal Sadr Amin, therefore, directs that the villages sued for be made over to the plaintiff's possession in cancelment of the sale and lease mentioned in the plaint.

15. The 2nd defendant to pay the costs of plaintiff.

(Signed) C. LATCHMIAH,
9th May 1868. *Principal Sadr Amin.*

MEMORANDUM OF SPECIAL APPEAL PETITION.

Before the District Munsif's Court of Salem, Original Suit No. 655 *of* 1864.

Before the Principal Sadr Amin's Court of Salem, Appeal Suit No. 139 *of* 1865.

Before the Madras High Court, Special Appeal Suit No. 464 *of* 1868.

	In the Court of First Instance.	*In the Lower Appellate Court.*	*In the High Court.*
Poliagar Appurayer.	*Plaintiff.*	*Appellant.*	*Special Respondent.*
230 *versus*			
Accachi Ammani Ammal and 2 others.	*Defendants.*		2nd *Defendant* "*Sumpengy Ramychetty.*"
		Respondents.	*Special Appellant.*

The 2nd defendant abovenamed begs to prefer this special appeal to your Honorable Court against the decision of the Principal Sadr Amin's Court of Salem, dated 9th May 1868, on the following and among other grounds :—

As being contrary to law in that .—

1. That the plaintiff had failed to produce the faricut on which he had laid so much stress
240 and that the Principal Sadr Amin was wrong in believing the secondary evidence now brought for the first time.

2. If the faricut was really in existence, it could have been produced either at the time of the two attachments, or sale and possession of the village No. 1.

3. That the 1st defendant being alive, the suit of plaintiff is not maintainable.

MADRAS, 18*th October* 1868. } C. VENCATAPATHI ROW, *Vakil.*

2-2-69
1-5-69

Rec'd 11th May 1869

To be heard on

with four Enclosures and Vakalutnamah.

Filed 2nd November 1868.

Appu Row.

(Plaintiff) Special Respondent.

verus

Sumbungy Ramien.

(2nd Defendant) Special Appellant

By Venctapathy Row.

SPECIAL APPEAL.

No. 464 of 1868.

From Zillah Salem.

HIGH COURT.

29-1077 R.D. 17

Proceedings of the Madras Govt.
Under date 20th April 1869
Read the following letters
from the Govt. Pleader
No 137 dt 16th April 1869 & 257.
& 261.

C. & Letter Board of
Revenue with reports
& their Proceedings
under date 5th Instant

2. The Rt Hon'ble the
Govr. in Council, in
accordance with the
suggestion made by the
Govt. Pleader, desires that
the Collr. of Salem may
be called upon for the
information of the nature
alluded to in para 5
of W. Handley's letter

A.f.

14 Copies to Mad. Govt. Rev. Dept. 20
1 Coby — Govt Pleader