

**Nagappa Vs. Subba and anr.**

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**SooperKanoon Citation :** [sooperkanoon.com/792616](http://sooperkanoon.com/792616)

**Court :** Chennai

**Decided On :** Sep-06-1892

**Reported in :** (1893)ILR16Mad304

**Judge :** Arthur J.H. Collins, Kt., C.J. and ;Handley, J.

**Appellant :** Nagappa

**Respondent :** Subba and anr.

**Judgement :**

1. Strictly speaking the suit should have been dismissed, as plaintiffs sued for possession of the land and failed to make out any right to such possession. But as the District Judge has given plaintiffs a decree declaratory of their kumki right over the lands in question, we shall not interfere since it is found such right exists and defendant is not prejudiced by the declaration, because the decree expressly exempts from its operation the buildings with which alone he is concerned.
2. There is no question of limitation, for the suit is brought within twelve years from the time of defendant's interference with plaintiffs' rights. It is argued that kumki right is in the nature of an easement and, therefore, the suit is barred by Section 15 of the Easements Act, In our opinion, it is not an easement but a right exercised over Government waste by permission of Government.
3. The second appeal fails and is dismissed with costs.

4. As to the memorandum of objections, the Judge was right in holding that kumki right did not entitle plaintiffs to a decree for possession. It is a right to do certain things over Government waste. As to land No. 2, it is found to be more than 100 yards from plaintiffs' warg and, therefore, they can have no kumki right over it. This is a finding of fact which is conclusive in second appeal, as there was evidence to support it. The memorandum of objections is also dismissed with costs.

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