

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice,
and Mr. Justice Muttusámi Ayyar.

VENKATAPATHI AND ANOTHER (PLAINTIFFS), APPELLANTS,
and
SUBRAMANYA AND OTHERS (DEFENDANTS), RESPONDENTS.*

1886.
April 14.

Limitation Act, Sch. II, Arts. 12-95—Revenue Recovery Act (Madras), s. 59—Suit to set aside fraudulent revenue sale—Limitation.

Suit to set aside a sale of land, sold as if for arrears of revenue under Act II of 1864 (Madras), on the ground of fraud, and to recover possession of the land from the purchaser who was alleged to be party to the fraud:

Held, that the suit was governed by art. 95 of sch. II of the Indian Limitation Act, 1877.

Article 12 of that schedule which prescribes a period of one year for suits to set aside sales for arrears of revenue is intended to protect *boná fide* purchasers only.

APPEAL from the decree of S. Gopáláchari, Acting Subordinate Judge of Madura (East), confirming the decree of S. Krishnasámi Ayyar, District Múnsif of Dindigul, in suit 193 of 1883.

The plaintiffs, Venkatapathi and Lakshmana Náayakan, were brothers. They alleged that they bought certain land from Virannan (defendant No. 4) in 1864, enjoyed it and paid revenue on it till September 1882; that in May 1882 they learnt that the village officers, Subramanya Ayyar (defendant No. 1), late karnam, and Minakshi Ayyan (defendant No. 2), late nattamgár, had fraudulently caused the land to be sold as if for arrears of revenue and to be purchased by Sundaramayyan (defendant No. 5), brother-in-law of the karnam, for Rs. 10, the real value being Rs. 320 and without first attaching the moveable property of plaintiffs or of the registered holder (defendant No. 4) as required by the Revenue Recovery Act; that they had obtained no redress from the Sub-Collector (defendant No. 6) and that the cause of action arose in May 1882 when defendant No. 1 prevented their servants from ploughing the land.

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The plaintiff claimed to have the revenue sale set aside and to be put in possession of the land or to recover Rs. 320, the value of the land and damages. Defendant No. 4 was *ex-parte*. Defendant No. 5 denied that there was any fraud and pleaded limitation.

Defendant No. 6 pleaded that the sale was good and valid. Defendants 1 and 2 pleaded that there was no cause of action against them.

Defendant No. 3, the present nattamgár, pleaded ignorance of the sale.

The sale took place on the 8th October 1881 and the suit was brought in April 1883.

The Múnsif held that if the six months' limitation prescribed by sec. 59 of the Revenue Recovery Act did not apply, the plaintiffs not having been parties to the sale proceedings, the suit was barred by art. 12 of sch. II of the Limitation Act, 1877.

He found that the sale had been fraudulently connived in by defendants 1 and 2, that defendant No. 5 had been a party thereto, and that defendants 3, 4 and 6 were not shown to have incurred any liability.

Plaintiffs appealed, making all the defendants respondents to the appeal.

The Subordinate Judge did not consider it necessary to decide whether sec. 59 of the Revenue Recovery Act barred the suit. He held it was barred by art. 12 of sch. II of the Limitation Act. If art. 95 of that schedule was applicable, he was of opinion that plaintiffs were bound to prove that they discovered the fraud within three years of the date of suit and found that this was not proved.

The appeal was dismissed.

Plaintiffs appealed on the grounds—

- (1) that defendant No. 5 having been found to have bought benami for defendant No. 1, plaintiffs were entitled to recover the land within 12 years ;
- (2) that if it was not so, art. 95 of sch. II of the Limitation Act applied ;
- (3) that no issue was raised as to when the plaintiffs first became aware of the fraud and that the Subordinate Judge ought to have allowed evidence to be let in on the point ;
- (4) that plaintiffs were at any rate entitled to damages.

All the defendants were made respondents to this appeal.

Subramanya Ayyar for appellants.

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The Acting Government Pleader (Mr. Powell) for respondent **SUBRAMANYA.**
No. 6.

The other respondents did not appear.

The Court (Collins, C.J., and Muttusámi Ayyar, J.) delivered the following

JUDGMENT:—This is a second appeal from the decree of the Subordinate Judge of Madura, who, on appeal, concurred in the opinion of the District Múnsif of Dindigul that the appellants' claim was barred by limitation. The land in dispute originally belonged to respondent No. 4. In March 1864 he sold it to appellant No. 2 and placed him in possession. The appellants, who are brothers, have continued to hold possession, but they did not get the pattá altered to their names. They paid the assessment due on the land for faslies 1289 and 1290 to respondents Nos. 1 and 2, who were the karnam and nattangár of the village in which the land is situated. These village officers fraudulently omitted to remit the money to the taluk treasury and made it appear that there were arrears of revenue, the land was ordered to be sold and the notice of sale was served on the respondent No. 4, who was the registered holder. It was sold by public auction in October 1881 and respondent No. 5, who was the highest bidder, was accepted as the purchaser. It is found, however, by the District Múnsif, that respondent No. 5 is a relative of respondents Nos. 1 and 2, that he was also a party to the fraud and that he purchased it benami for respondents Nos. 1 and 2. But the Subordinate Judge does not distinctly record a finding on this point. He considers that, assuming that it was so, it could not save the limitation. Shortly after the sale, the appellant No. 1 endeavoured to induce the respondent No. 5 to give up the land; but as his attempt proved ineffectual, the present suit was instituted in April 1883. The Courts below relied on art. 12, sch. II of Act XV of 1877 and dismissed the suit with costs.

It is urged in appeal that the appellants had either twelve or three years to sue, and that at all events their claim to damages is not barred. The interest that was sold was the appellants' proprietary right and the sale was ordered on the supposition that the assessment due by them was in arrear. They are not entitled to a decree for possession, on the ground that the ownership was

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vested in them prior to the sale, unless they showed also that the sale was invalid. We must hold that the suit was properly held not to fall under the twelve years' rule. But we are of opinion that the suit is governed by art. 95. Art. 12 is intended to protect *bonâ fide* purchasers only, but when the purchaser is a party to the fraud, art. 95 will alone apply, otherwise the purchaser will be enabled to take advantage of his own fraud for the purposes of limitation. We shall therefore ask the Subordinate Judge to return a finding on the question whether the respondent No. 5 was a party to the fraud and whether he made the purchase really for the respondents Nos. 1 and 2. The issue will be tried on the evidence on the record and on such further evidence as the parties may adduce and the finding will be submitted within three months from this date when ten days will be allowed for filing objections.

We are satisfied, however, that respondents Nos. 3, 4 and 6 were unnecessarily made parties to this appeal and we dismiss the appeal as against them and direct the appellants to pay the costs of respondent No. 6 in this Court.

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Muttusâmi Ayyar.*

NILAKANDAN (PLAINTIFF), APPELLANT,

and

THANDAMMA AND OTHERS (DEFENDANTS), RESPONDENTS.*

Limitation Act, sch. II, art. 12—Sale of land in execution of decree—Suit by third party to recover—Adverse possession—Burden of proof.

In a suit to redeem certain land demised on kânam in 1850 by A, to the predecessor of B, C, who was in possession of the land, was made a defendant. A proved his title to the land and possession up to 1850. C pleaded title to the land and denied that B had ever been in possession. Both pleas were found to be false. It was found, however, that C had been in possession from 1869 to 1885, and that in 1876 the land had been sold in execution of a decree against C (to which A was not a party) and purchased by D who resold to C in 1879.

* Second Appeal 85 of 1886.