

LAKSHMI
F.
KUTTUNNI.

preferential claims of decree-holders having superior rights and of the creditor, at whose cost the sale is carried out, are provided for.

These are difficulties which occur to me from the peculiar wording of s. 295 which I have above indicated; but on the whole, I am not prepared to dissent from my learned colleague in the conclusion arrived at by him, viz., that it is open to us to hold petitioner to be entitled to call the sale in question under s. 311.

I, therefore, concur in the proposed order—*Girdhari Singh v. Hurdeo Narain Singh* (1) being authority that a material error in describing the encumbrances on the property sold may be a material irregularity in publishing and conducting the sale.

(1) L.R., 3 I.A., 230.

APPELLATE CIVIL.

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

YELLAYA (PLAINTIFF), APPELLANT,

and

VIRAYA (DEFENDANT No. 2), RESPONDENT.*

1886.
July 19.
Sept. 21.

Revenue Recovery Act, s. 59—Limitation—Sale of land subject to mortgage—Suit by mortgagor.

Land which was subject to a mortgage having been sold for arrears of revenue under Act II of 1864 (Madras), the mortgagee's assignee sued to enforce the terms of the bond by sale of the land more than six months after the date of the sale of the land :

Held that the suit was barred by s. 59 of the said Act.

APPEAL from the decree of Venkata Rangayyar, Acting Subordinate Judge at Ellore (Godávári) confirming the decree of K. Venkatáchalam, District Múnsif of Ellore, in suit 759 of 1882.

The facts necessary for the purpose of this report are set out in the judgment of the Court.

Subba Ráu for appellant.

Respondent did not appear.

JUDGMENT.—The appellant Nidadávolu Yellaya is the assignee of the mortgage bond A which was executed by defendant No. 1

(1) L.R., 3 I.A., 230.

* Second Appeal 896 of 1885.

to defendant No. 4 on the 29th June 1879. By that document the mortgage debt was secured on 68½ cents of inám land now in suit. The revenue payable to Government on some jiráiti land owned by the mortgagor, defendant No. 1, for fasli 1290 fell into arrear. It was considered that if that piece of land was put up to sale, no one might purchase it and the arrear might not be recovered. The land in suit was therefore attached and sold to defendant No. 2, the respondent, under Act II of 1864. The revenue sale took place on the 24th November 1881. When the land was under attachment, the original mortgagee, defendant No. 4, brought to the notice of the tahsildár the existence of the mortgage, but he was informed that if he paid the arrear, the attachment would be raised. As he failed to do so, the land was sold, and Umidi Viraya (defendant No. 2), the respondent, became purchaser. On the 10th August 1882, the appellant accepted the assignment of the bond A, and brought this suit on the ground that what actually passed by the revenue sale was only the right of redemption which the mortgagor had at the date of the sale.

The District Munsif passed a personal decree in favor of the appellant as against the mortgagor, and also directed payment to the former of the surplus sale proceeds in the hands of the Collector of the District (defendant No. 3), but he exonerated the property in suit from all liability for the debt.

On appeal, the Subordinate Judge confirmed the decree of the District Munsif on the ground that the suit, which was instituted after the expiration of six months from the date of the sale, was barred by s. 59 of Act II of 1864, and that under s. 42 of the same enactment, the property in the land sold passed to the purchaser free of prior encumbrances.

It is urged in second appeal that both the grounds relied on by the Lower Appellate Court are not good in law. It cannot be denied that what was really intended to be sold and what was sold in fact was, not the mortgagor's right of redemption, but the entire property under mortgage. It would become necessary to determine whether more than the right of redemption was liable to be sold only in case the suit is not barred by s. 59. This section provides that "nothing contained in this Act shall be held to prevent parties aggrieved by any proceedings under this Act, except as hereinbefore provided, from applying for redress; provided that Civil Courts shall not take cognizance of any suit

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instituted by such parties for any such cause of action unless such suit shall be instituted within six months from the time at which the cause of action arose." In the case before us the sale of a larger interest than what was liable to be sold is, according to the appellant, the grievance for which he seeks redress; and the claim, therefore, that the sale was illegal so far as it purported to convey more than the right of redemption appears to us to fall under that section. It may be that the appellant does not seek to annul the sale *in toto*; but its cancelment *pro tanto*, so far as the interest conveyed is in excess of the right of redemption, is also a remedy for an injury caused by a proceeding under the Act. We are of opinion that the suit was properly held to be barred by limitation and dismiss this second appeal.

APPELLATE CIVIL—FULL BENCH.

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

1886.
Sept 3.

REFERENCE FROM THE BOARD OF REVENUE UNDER S. 46 OF THE
INDIAN STAMP ACT, 1879.*

Stamp Act, sch. II, art. 15 (a)—Receipt—Endorsement of payment on mortgage deed.

An endorsement on a mortgage, acknowledging the receipt of the sum thereby secured is exempt from stamp duty under sch. II, art. 15 (a), of the Indian Stamp Act, 1879.

REFERENCE to the High Court by the Board of Revenue under s. 46 of the Indian Stamp Act, 1879.

On the 1st April 1886 the Collector of Tanjore (J. B. Pennington) made the following reference to the Board of Revenue:—

"The Sub-registrar of Tirukattupalli has impounded an instrument which purports to be a receipt endorsed on a deed of mortgage without possession, whereby the mortgagee acknowledges the receipt of the principal of the original instrument *plus* the interest due on it.

* Referred Case No. 3 of 1886.