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been applied to the present case, and that therefore the decree of the District Judge, though passed on wrong grounds, may be sustained. We modify the decree by allowing the plaintiff further interest at the rate of 6 per cent. from date of decree till date of payment, and otherwise dismiss the appeal with costs.

APPELLATE CIVIL—FULL BENCH.

Before Mr. Justice Kernan, Mr. Justice Muttusami Ayyar, Mr. Justice Parker and Mr. Justice Wilkinson.

1888. Sept. 7. Oct. 23.

VENKATA (PLAINTIFF), APPELLANT IN S.A. 1140 OF 1886,

and

CHENGADU AND OTHERS (DEFENDANTS), RESPONDENTS.

MUNUSAMI (PLAINTIFF), APPELLANT IN S.A. 1141 OF 1886,

and

MUNIGADU AND OTHERS (DEFENDANTS), RESPONDENTS.

VENKATA (PLAINTIFF), APPELLANT IN S.A. 1142 OF 1886,

and

RAUTHU REDDI AND OTHERS (DEFENDANTS), RESPONDENTS.*

Limitation Act—Act XV of 1877, s. 6, sch. II, arts. 12, 95—Revenue Recovery Act (Madras)—Madras Act II of 1864, s. 59—Suit to set aside a sale for arrears of revenue—Fraud—Limitation.

Suit, in July 1885, to set aside a sale of land of the plaintiff, sold in July 1884 as if for arrears of revenue under Act II of 1864 (Madras), on the ground that the sale had been brought about by fraud and collusion between the purchaser and the village officers; the plaintiff had knowledge of the alleged fraud more than six months before suit:

Held, that the law of limitation applicable to the case was s. 59 of Act II of 1864, and not s. 95 of the Limitation Act, and that the suit was therefore barred.

Venkatapathi v. *Subramanya* (I.L.R., 9 Mad., 457) explained, *Baij Nath Sahu* v. *Lala Sital Prasad* (2 B.L.R., Full Bench., 1), and *Lala Moharuk Lal* v. *The Secretary of State for India* (I.I.R., 11. Cal., 200) considered.

SECOND appeal, No. 1140 of 1886, against the decree of H. T. Knox, Acting District Judge of North Arcot, in appeal suit

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* Second Appeals Nos. 1140 to 1142 of 1886.

No. 97 of 1886, affirming the decree of T. Sami Rau, District Munsif of Chittore, in original suit No. 273 of 1885.*

This was a suit to set aside a sale for arrears of revenue under Madras Revenue Recovery Act, Act II of 1864.

The plaintiff's brother acquired the land in question from the first defendant and died. After his death the plaintiff succeeded to his brother and entered into enjoyment of the land and paid the Government kist thereon, but the patta remained in the name of defendant No. 1. On the 18th July 1884 the land was sold for arrears of revenue accrued due in respect of other lands of defendant No. 1, and purchased by defendant No. 2, who obtained a certificate of sale on 1st September. According to the allegations of the plaintiff, the sale was fraudulently brought about by defendant No. 2 in collusion with the karnam and monigar of the village; there was at the date of the sale no arrear of revenue due on the land, and neither the plaintiff nor defendant No. 1 was served with notice to pay any sum by way of revenue. It was further alleged that the sale was not duly proclaimed and various irregularities were committed with reference to it.

The plaintiff took proceedings under s. 38 of the Revenue Recovery Act, and the sale was set aside by the Deputy Collector on 28th January 1885. The Collector, however, reversed this decision on 26th March 1885.

The plaint in the suit was filed in the District Munsif's Court on 10th July 1885, the Secretary of State being joined as defendant No. 3. Defendant No. 1 was *ex-parte*. Defendant No. 2 pleaded, *inter alia*, that the plaintiff's suit was barred by s. 59 † of Madras Act II of 1864, that the Deputy Collector had no authority to cancel the sale, that the plaintiff's application to cancel the sale was of no effect, and that s. 14 of the Limitation Act XV of 1877 had no application to this suit. It was contended for defendant No. 3 also, that the suit was barred by s. 59 of Madras Act II of 1864; that the Deputy Collector's action in annulling the sale

* Second Appeals Nos. 1141 and 1142 were similar to Second Appeal No. 1140 of 1886.

† "Nothing contained in this Act shall be held to prevent parties deeming themselves aggrieved by any proceedings under this Act, except as hereinbefore provided, from applying to the Civil Courts for redress: provided that Civil Courts shall not take cognizance of any suit 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."

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was *ultra vires*, and that his decision was rightly reversed by the Collector on appeal.

Both the District Munsif and the District Judge held that the suit was barred by the law of limitation in s. 59 of the Revenue Recovery Act.

The District Judge observed:

"It is no doubt the case that the plaintiffs and the Revenue Officers, who first dealt with the application, and the defendants, who appealed to the Collector, had an erroneous idea that the Collector had power to set the sale aside, and that the plaintiffs were doing their best to bring their grievance before the proper tribunal. Still the defendants cannot be prevented from pleading the limitation which has arisen in their favor by the common mistake of the parties, which has resulted in the discovery by the plaintiffs of the proper Court, when it is too late for that Court to investigate their case."

The plaintiff preferred this second appeal.

Mr. *Kernan* for appellant relied on *Venkatapathi* v. *Subramanya*(1), and argued that the limitation bar was saved by s. 95 of the Limitation Act, which was not excluded by the Revenue Recovery Act, and cited *Golap Chand Nowluckha* v. *Krishto Chunder Dass Biswas*(2), *Nijabutoola* v. *Wazir Ali*(3), and *Guracharya* v. *The President of the Belgaum Town Municipalities*(4).

The Government Pleader (Mr. *Powell*) and *Bhashyam Ayyangar* for respondents.

The Court (Parker and Wilkinson, JJ.) made the following Order of Reference to the Full Bench:

The plaint lands were acquired by plaintiff's undivided brother, Kristna Reddi, but the patta was allowed to remain in the name of defendant No. 1. After the death of Kristna Reddi, the plaintiff continued to pay kist for the lands, but for an arrear which accrued upon other land in the patta of defendant No. 1 these lands were attached and sold under the Revenue Recovery Act. There can be no doubt as to their liability to be so sold, standing as they did in the patta of defendant No. 1, but plaintiff seeks relief on the ground that defendant No. 2, the purchaser, has colluded with defendant No. 1, and the monigar and karnam of the village in order to deprive him of the land.

(1) I.L.R., 9 Mad., 457.
(2) I.L.R., 5 Cal., 314.
(3) I.L.R., 8 Cal., 910.
(4) I.L.R., 8 Bom., 529.

The sale took place on 18th July 1884; the sale certificate was granted the defendant No. 2 on 1st September 1884; the Deputy Collector purported to set aside the sale on 28th January 1885, but his order was reversed by the Collector on 25th March 1885. Notice of suit under s. 424 of the Civil Procedure Code was given to the Collector on 10th April 1885, and the suit was finally brought on 16th July 1885.

The Courts below found that the suit was barred under s. 59, Act II of 1864, and that the time ran from the date of the sale (18th July 1884). Appellant's counsel contends that the suit is to set aside the sale on the ground of fraud; that the suit is governed by art. 95, sch. II of the Limitation Act and refers to *Venkatapathi* v. *Subramanya* as a conclusive authority.

The facts of that case appear to have been exactly similar to the present, but the point argued before the Bench which decided that second appeal seems to have been whether art. 12 or art. 95 of the Limitation Act applied. It appears to have been assumed in second appeal that the provisions of the general Limitation Act were applicable, and there is nothing to show that the point was taken that the shorter limitation provided by the special law was the one which would apply. The point was, it is true, taken in the Courts below; the District Munsif holding that even if the limitation of s. 59 of the Revenue Recovery Act did not apply, the suit was barred under art. 12, while the Subordinate Judge was of the same opinion and considered it unnecessary to decide whether s. 59 of the Revenue Recovery Act barred the suit. The plaintiff appealed, but there is nothing to show that the respondent in second appeal relied upon s. 59, Act II of 1864, or that the point was argued.

We do not feel any doubt that the plaintiff is a "party deeming himself aggrieved by proceedings under the Revenue Recovery Act," and therefore under the provisions of s. 59 should sue within six months from the time at which the cause of action arose.

Act II of 1864 is a local law applicable to the recovery of arrears of revenue in the Madras Presidency, and s. 6 of the general Limitation Act declares that when a period of limitation is specially prescribed by such a law for any suit, appeal or application, nothing in the general Limitation Act shall affect or alter the period so prescribed. The cases that have been quoted

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at the Bar merely go to show that the provisions of the general Limitation Act are to be applied in computing such period, but are not authorities for the *alteration* of such period. *Reference under Forest Act V of* 1882(1), *Golap Chand Nowluckha* v. *Krishto Chunder Dass Biswas*, *Nijabutoola* v. *Wazir Ali*, *Guracharya* v. *The President of the Belgaum Town Municipalities*.

Were it not for the decision in *Venkatapathi* v. *Subramanya*, we should have had no hesitation in dismissing this second appeal, especially as we find that in a later case, *Vellaya* v. *Viraya*(2), a suit to redress a grievance caused by proceedings under Act II of 1864 has been held to be barred under s. 59, but the point is an important one, and inasmuch as the decision in *Venkatapathi* v. *Subramanya* lays down in terms that such suits such as the present are governed by art. 95, sch. II of the general Limitation Act, we will refer to the Full Bench the question "Is the suit governed by the special limitation prescribed in s. 59, Act II of 1864, or by the provisions of the general Limitation Act?"

Mr. *Kernan* for appellant.

The case is governed by art. 95, sch. II of the Limitation Act. See *Venkatapathi* v. *Subramanya*, which governs the present case. The cases cited before the Division Bench show that notwithstanding the special period of limitation prescribed by special Acts the Courts have applied the provisions of the Limitation Act so as to extend the period beyond the specified time; similarly the Court should apply the general provisions of the Limitation Act relating to fraud to the Revenue Recovery Act. Section 59, Revenue Recovery Act, does not apply to the case because the plaintiff was not a "party" within this section. The word party denotes a plaintiff or defendant and present before the Court in the proceeding—such as a defaulter, see s. 6, Revenue Recovery Act —a destrainer or tenant paying arrears, s. 11, or claimant under s. 17. The legislature would have used the word 'persons' if its intention was to give the section the more general scope.

Section 59, Revenue Recovery Act, does not apply because the proceedings were not taken under the Act. No notice was given to plaintiff or first defendant. No proclamation of sale was made. The steps to be taken under the Revenue Recovery Act were not taken. The sale was held secretly. See also *Baij*

(1) I.L.R., 10 Mad., 210. (2) I.L.R., 10 Mad., 62.

Nath Sahu v. *Lala Sital Prasad*(1), *Lala Mobaruk Lal* v. *The Secretary of State for India*(2), *Sadhusaran Singh* v. *Panchdeo Lal*(3), *Bhoobun Chunder Sen* v. *Ram Soonder Surma Mozoomdar*(4), in which it was held that non-compliance with s. 6, Act XI of 1859, was not a mere irregularity but that sale was *null* and *void*. See also distinction between s. 59 and s. 60 of Revenue Recovery Act. The former refers to proceedings under the Act, the latter to anything done or *purporting to be* done under the Act; from which it should be inferred that Legislature in s. 59 contemplated proceedings validly and regularly held under Act and not to colorable proceedings as in s. 60. See also Standing Order of the Board of Revenue, No. 109.*

The Government Pleader (Mr. *Powell*), and *Bhashyam Ayyangar* for the respondents *contra*.

The further arguments adduced in this case appear sufficiently for the purpose of this report from the judgment of Muttusami Ayyar, J.

Muttusami Ayyar, J.—This is a reference to the Full Bench, and the facts which have given rise to it are shortly these. The land, forming the subject of this litigation, originally belonged to the plaintiff's undivided brother, Krishna Reddi, and upon his death it vested in the plaintiff by right of survivorship. The patta relating to it, however, stood in the name of the first defendant, Mala Chengadu, and the land was sold under Act II of 1864 for arrears of revenue which accrued upon some other land included in the same patta but belonging to Chengadu.

The sale took place on the 18th July 1884, and the present suit to set it aside was brought on the 16th July 1885. The ground of claim was that the second defendant, the purchaser, colluded with the karnam and the monigar of the village and fraudulently brought about the sale, in order to deprive the

(1) 2 B.L.R., Full Bench, 1. (2) I.L.R., 11 Cal., 200.
(3) I.L.R., 14 Cal., 1. (4) I.L.R., 3 Cal., 300.

* It is undesirable that lands transferred by a registered holder, however informally, to another party, and on which no arrears are due, should be sold for arrears of revenue due by the registered holder on other lands which are not brought to sale. Collectors are directed not to sell lands in possession of alienees, until all the other lands and property in possession of the registered holder are first sold unless the arrear due is caused by the default of the alienee. Whether the lands to be sold are in the possession of the registered holder or not, and whether the arrear is due by the registered holder or by the alienee on the portion alienated, should be ascertained by local inquiry.

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plaintiff of his land. The plaint stated that the second defendant was the plaintiff's enemy, that the assessment due on the land in dispute for fasli 1291 was not in arrear, that it was sold for arrears amounting to Rs. 4-6-2 due by the pattadar on some other land, and that it was purchased for Rs. 12-4-0, whilst it was worth Rs. 200. It was alleged further that neither the pattadar nor the plaintiff was served with notice to pay the arrears, that the sale was not duly proclaimed, that it was held secretly, and that the provisions of Act II of 1864 were not duly complied with. The defendants pleaded, *inter alia*, limitation in bar of the claim and relied on s. 59 of the Revenue Recovery Act. The District Munsif, and on appeal, the District Judge upheld the contention and the plaintiff preferred a second appeal from their decision. The Divisional Bench that heard the second appeal alluded to the decision in *Venkatapathi* v. *Subramanya*, and observing that it laid down in terms that such suits as the present were governed by art. 95, sch. II of the general Limitation Act, referred to the Full Bench the following question :—

"Is the suit governed by the special limitation prescribed in s. 59, Act II of 1864, or by the provisions of the general Limitation Act?"

It is contended for the appellant that s. 59 of Act II of 1864 is not applicable to cases of fraud, and it can only apply when the procedure prescribed by the Act has been duly followed and when the sale can properly be termed to be a sale held under it. Our attention is drawn to Act XI of 1859, to the decisions in *Baijnath Sahu* v. *Lala Sital Prasad*, *Lala Mobaruk Lal* v. *The Secretary of State for India in Council*, *Sadhusaran Singh* v. *Panchdeo Lal*, *Venkatapathi* v. *Subramanya*, *Yellaya* v. *Viraya*, and to the Standing Order of the Board of Revenue, No. 109. On the other hand it is argued for respondents that the suit is governed by s. 59 of Act II of 1864, and reliance is placed on ss. 5 and 6 of the general Limitation Act and on the decisions reported in *Raj Chundra Chuckerbutty* v. *Kinoo Khan*(1), *Reference under Forest Act V of* 1882, *Behari Loll Mookerjee* v. *Mungolanath Mookerjee*(2), *Golap Chand Nowluckha* v. *Krishto Chunder Dass Biswas*.

I have no hesitation in holding that the suit before us is governed by s. 59 of Act II of 1864. That section saves the

(1) I.L.R., 8 Cal., 329. (2) I.L.R., 5 Cal., 110.

right of parties deeming themselves aggrieved by any proceedings under that Act to apply to the Civil Courts for redress and provides that such Courts "shall not take cognizance of any suit 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." The sale impugned by the appellant was a proceeding under Act, and as it had taken place more than six months before the suit, it would be clearly barred but for the alleged fraud. Does fraud then make any difference? The answer to this question is that suggested by Mr. Bhashyam Ayyangar, the Pleader for the second respondent, viz., that the cause of action would then arise from the date on which the fraud was discovered, but that the period of limitation would still be six months. It is provided by s. 18 of Act XV of 1877 that "when any person having a right to institute a suit has, by means of fraud, been kept from the knowledge of such right, the time limited for instituting a suit shall be computed from the time when the fraud first became known to the person injuriously affected by it." Though this provision is contained in the general Act of Limitations, and Act II of 1864 is a special law applicable to Revenue sales, yet it applies to the case before us, as s. 6 of Act XV of 1877 directs only that the period of limitation, prescribed by the special Act, shall not be affected by that enactment. This view however does not help the plaintiff; for the District Judge observes that the plaintiff had knowledge of the alleged fraud more than six months before suit. I am unable to accede to the suggestion of the appellant's Counsel that the sale in the case before us is not a proceeding under Act II of 1864 within the meaning of s. 59. The true import of the expression "Aggrieved by any proceedings under the Act" is not that the proceedings should be in accordance with the Act and therefore perfectly legal, but that the proceedings, though defective and irregular and therefore not in strict conformity to the provisions of the Act, should be taken professedly under it. If the suggestion of the appellant's Counsel were to prevail, there would be no grievance at all to be redressed by a Civil Court. The section presupposes that certain proceedings were professedly taken under the Act, and that there might possibly be a valid claim to redress on the ground that they were not in accordance with the provisions of the Act and then directs that the claim shall not be adjudicated upon the

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merits, unless it is preferred within six months from the time when the cause of action arose.

It may be an open question whether the proceedings contemplated in s. 59 are those which are vitiated by mere errors of procedure or include those taken without jurisdiction and, therefore, not within the purview of the Act. For instance, there may be a sale when there are no arrears of revenue, or the land sold may not be included in the patta or holding liable to be sold for the purpose of liquidating them. Though in the case before us there was no arrear of revenue on the plaintiff's land, yet there was an arrear on other land included with it in one patta, and it has already been held that one part of a holding is liable to be sold for the arrear due on another portion of the same holding. It is therefore not necessary for the purposes of this reference to determine the question whether, when there are no arrears for which the land in dispute is liable to be sold under Act II of 1864, the sale is a proceeding under the Act.

Another point pressed upon us is that neither the pattadar nor the plaintiff had, according to the plaint, a demand served upon him, and that neither of them was a party to the proceedings held under the Act. It is true that the Collector is bound under s. 25 to cause a written demand to be served on the defaulter and that he can only proceed to recover the arrears under s. 26 by the attachment and sale of the land after the demand has been served on the defaulter, and he has neglected to pay the arrears pursuant to the terms of the demand; but, under s. 5, the Collector has power to sell the land when there is an arrear due upon it, and ss. 25 and 26 only regulate the mode in which that power is to be exercised. The omission to conform to the prescribed procedure is certainly always an irregularity and may also at times be a material irregularity, but I see no sufficient reason to say that the proceeding, however irregular it may be, is not a proceeding under the Act. A distinction should be made for purposes of limitation between a sale in fact and a valid sale; and whenever there has been a sale in fact and it has been made in the professed exercise of the power conferred by the Act, the provision inserted for the limitation of suits must be taken to refer rather to the *factum* than to the validity of the sale, and the sale, however irregular, must be considered to be a proceeding under the Act.

It is then said that the plaintiff was not a party to the proceed-

ings held under the Act, and that he could not be bound by the sale; but I am unable to accede to this suggestion either. It is provided by s. 38 that when land is purchased at a Revenue sale, the certificate of sale shall be conclusive evidence of the fact of the purchase, and by s. 39 that the legal effect of such sale is the lawful succession of the purchaser to all the rights and property of the former land-holder in the land sold. It is further enacted by s. 40 that any Court of competent jurisdiction shall put the purchaser in possession in the same manner as if the purchased land had been decreed to the purchaser by a decision of the Court. It is therefore clear that the intention of the Legislature is to treat the former land-holder as if he was a party, when a sale is held under the provisions of the Act.

The next contention is one founded on the Standing Order of the Board of Revenue, No. 109; construing it together with the provisions of Act II of 1864, I hold that it was designed to give a discretion to Collectors and thereby regulate departmental practice, but that it was not the intention to deprive them of the statutory power vesting in them under Act II of 1864, or to create a right to set aside a Revenue sale after it has been concluded, for the reason that it was held contrary to the terms of the departmental order.

With reference to the decisions cited on behalf of the appellant, none of them appear to me to support this appeal. Act XI of 1859 has no application in this Presidency, and the Full Bench decisions of the High Court at Calcutta in *Baijnath Sahu* v. *Lala Sital Prasad*, and in *Lala Mobaruk Lal* v. *The Secretary of State for India in Council* are founded upon that enactment.

In the first case a sale was professedly made for arrears of revenue, and it was shown that there were no arrears; and the Court held that the Collector had no right to sell and that it could not really be said to have been a sale under the Act, if the Collector had no right to make it. In the case before us, however, there was an arrear for which the plaintiff's land was liable to be sold.

The question raised for decision in the second case was whether non-compliance with the provisions of s. 6 of Act XI of 1859 was one of the errors of procedure intended to be cured by s. 8 of Bengal Act VII of 1868.

Mr. Justice Mitter and Mr. Justice Tottenham differed in opinion, the former holding that it was not an irregularity that

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could be so cured, and the latter holding the contrary view. The Full Court held that the error was not a mere irregularity, nor one of those errors of procedure, which were intended to be cured by s. 8 of Bengal Act VII of 1868. The learned Chief Justice delivering the judgment of the majority of the Court observed that the sale was professedly held under the Act, but that the question was whether it was a sale under the Act, if the Collector had no right to sell, and that the principle laid down in *Baijnath Sahu* v. *Lala Sital Prasad* applied. It is therefore argued for the appellant before us, that whenever it can be shown that some material error of procedure negatives the Collector's right to sell, the sale, though professedly made under Act II of 1864, is not in law a sale or proceeding under the Act. The scheme of Act XI of 1859 and of Bengal Act VII of 1868 appears to differ from that of Madras Act II of 1864, and the decisions cited proceed, with reference to that scheme, on the view that the Civil Court is at liberty to entertain a suit to set aside the sale for arrears of revenue, if it can be shown that the Collector had no power to sell, either because there were no arrears, or because there was some material irregularity, which would invalidate the sale. If we were at liberty to enter on the merits, we might come to the same conclusion, but what we are concerned with is the question of limitation, which refers, as already observed, to the *factum* rather than the validity of the sale. (Compare Act XI of 1859 and the cognate Acts with Act II of 1864.) I do not see my way to hold that, for purpose of limitation, material error of procedure stands on the same footing with the absence of power to sell. A sale, without jurisdiction to sell, may, on general principles, be said to be void *ab initio*, and therefore, legally non-existent; but a sale, where there is power to sell, but the power is not properly exercised, is only voidable and cannot be said, it seems to me, to have no legal basis nor legal existence until it is set aside by a suit instituted within the time prescribed for such suits. As for the decision in *Sadhusaran Singh* v. *Panchdeo Lal*, it affirms the ruling in *Lala Mobaruk Lal* v. *The Secretary of State for India in Council* that s. 33 of Act XI of 1859 does not bar the Civil Courts from taking cognizance of suits in which it can be shown that the Collector has no right to sell.

The next case relied on is that of *Venkatapathi* v. *Subramanya*. In that case there was really no arrear of revenue. The plaintiff

there paid the assessment to the village officers who appropriated it to their own use, and making it appear that there was an arrear, when there was none, fraudulently brought the plaintiff's land to sale and purchased it for their own benefit, though in the name of the brother-in-law of one of them. The decision rests on the ground that the plaintiff was entitled upon the facts of that case to assume that the Revenue sale was valid as against the Collector and to claim relief against the parties in possession on the ground of fraud. There the purchaser at the Revenue sale did not buy the land for himself, but bought it benamee for the village officers, who first defrauded the plaintiff by converting the assessment paid to them on account of Government to their own use, then deceived the Collector first by making him believe that there was an arrear and that he had jurisdiction to sell the land and next by putting forward the brother-in-law of one of them as the purchaser, while they really bought the land for their own benefit. On those facts the plaintiff's claim, it was considered, might be treated as one to treat the village officers as holding the land in trust for him by reason of their fraud and not as one brought to set aside the sale under s. 59 of Act II of 1864. On this view art. 95 of the general Limitation Act was considered to be applicable. It is therefore an authority for the position that if the plaintiff's claim can be decreed, in the special circumstances of a case, on the ground that the real purchaser, by virtue of his fraud in creating a jurisdiction to sell, when there is none, can be regarded as holding the land purchased in trust for the real owner, notwithstanding the Revenue sale, it is not a claim under the special Act, but a claim to relief on the ground of fraud governed by art. 95 of Act XV of 1877. It is clearly no authority in support of the contention that a Revenue sale is no proceeding under the Act, when there was an arrear for which the land might be sold under the Act.

The other cases cited are in favor of the respondents' contention.

For these reasons I would hold that the suit before us is governed by the special limitation prescribed in s. 59 of Act II of 1864, subject to the provisions of s. 18 of Act XV of 1877.

Kernan, J.—I would add to the last paragraph "and that the suit should have been brought within six months from the discovery of the fraud."

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Parker, J.—I agree that the suit is governed by the special limitation prescribed by s. 59, Madras Act II of 1864, for the reasons expressed by us in making the order of reference. The suit is therefore barred.

Wilkinson, J.—I concur.

APPELLATE CIVIL.

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

1888. Nov. 26. Dec. 18.

ABBOY (PLAINTIFF), APPELLANT,

and

ANNAMALAI AND ANOTHER (DEFENDANTS NOS. 3 and 4), RESPONDENTS. *

Lis pendens—Transfer of Property Act—Act IV of 1882, s. 52—When a suit becomes contentious—Priority of registered mortgage.

As soon as the filing of the plaint is brought to the notice of the defendant, the proceeding becomes contentious, and any alienation subsequent to that is subject to the doctrine of *lis pendens*.

A mortgage was executed on 25th June and was registered. On the same day, prior mortgagees filed a suit against the mortgagors on an unregistered mortgage of the same land: they obtained a decree and attached the mortgage property:

Held, that the registered mortgagee was entitled to priority and his mortgage was not affected by the rule of *lis pendens*.

APPEAL against the decree of E. C. Johnson, Acting District Judge of South Arcot, in appeal suit No. 209 of 1887, affirming the decree of V. Malhari Rau, District Munsif of Chidambaram, in original suit No. 553 of 1886.

This was a suit to recover Rs. 196-8-0 due on a registered mortgage-deed executed to the plaintiff by defendants Nos. 1 and 2 on 25th June 1884. Part of the consideration for the execution of this mortgage to the plaintiff was the discharge by him of a previous encumbrance. On the 4th September 1878 defendants Nos. 1 and 2 had executed a mortgage of the same lands to the father of defendants Nos. 3 and 4. This mortgage was unregistered. On the date of the execution of the registered mort-

* Second Appeal No. 647 of 1888.