

danger they incur if acts are done which amount to the disposal of a minor for immoral purposes, even though the ceremony of dedication to the deity be omitted. The prosecution has been carried on by a dismissed temple servant who has been convicted of theft, and who has endeavoured to support his case against his late employers by the production of records which he has stolen from the temple. Further proceedings could only tend to the gratification of private malice, and are not called for either for the protection of the girl or for the public good. I concur, therefore, in dismissing this petition.

SRINIVASA
ANNASAMI.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

ARUMUGA (PLAINTIFF), APPELLANT,

v.

CHOCKALINGAM AND OTHERS (DEFENDANTS), RESPONDENTS.*

Limitation Act—Act XV of 1877, sched. II, arts. 136, 138.

Limitation Act, 1877, sched. II, art. 138 is applicable to a suit brought by the assignee of a purchaser of land at a Court sale to obtain possession of the land.

1892.
March 11, 14.

SECOND APPEAL against the decree of R. S. Benson, District Judge of South Arcot, in appeal suit No. 95 of 1890, affirming the decree of P. Subramania Pillai, District Munsif of Virdhachalam, in original suit No. 366 of 1889.

Suit for possession of land sold to the plaintiff in 1883 by defendant No. 1, who had purchased it at a Court sale in April 1877. Neither had been in possession.

The District Munsif dismissed the suit, holding that the suit was barred by limitation. The District Judge on appeal affirmed the decree of the District Munsif.

The plaintiff preferred this second appeal.

Mr. *Subramanyam* for appellant.

Mahadeva Ayyar for respondents.

MUTTUSAMI AYYAR, J.—This was a suit by a purchaser at a private sale from the son of a purchaser at a Court sale, who had not

* Second Appeal No. 532 of 1891.

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obtained possession from the judgment-debtors. Both the Courts below held that it was barred by article 138, second schedule of the Act of Limitations. I think that the decision is correct and that the appellant's contention that article 136 governs the claim is not tenable. If the suit was brought by the auction purchaser, article 138 would clearly apply. There is no reason to think that when it is brought either by his son or a purchaser claiming under him, the article ceases to be applicable. Reading articles 136, 137 and 138 together, I think that article 136 applies to suits brought upon claims not derived from purchasers at a Court sale. I would dismiss the second appeal with costs.

BEST, J.—The only point urged before us is that the Lower Courts are in error in holding that the plaintiff's suit is barred by limitation. It is contended that article 136 of schedule II of the Limitation Act, and not article 138 as held by the Lower Courts, is applicable to this case.

Plaintiff sues as assignee of the purchaser at a sale in execution of a decree, and it is contended that, though article 138 might apply to a suit by the purchaser himself, it must be read strictly, and so read is inapplicable to such purchaser's assignee. It has been held that the term "mortgagee" in article 148 of the same schedule includes an assignee of a mortgage—*Bhagwan Sahai v. Bhagwan Din*(1), and even a co-mortgagor by whom the mortgaged property had been redeemed—*Ashfaq Ahmad v. Wasir Ali*(2), and there is no reason why the word purchaser in article 138 should be strictly construed so as to exclude the assignee of such purchaser, who of course stands in the shoes of his assignor and can have no right as such assignee greater than that possessed by his assignor.

Article 136 is intended to apply to cases in which the vendor is at the time of sale not entitled to possession of the property sold, and consequently the institution of a suit for possession has to be deferred till the right of any third person to its possession has determined. Had plaintiff's vendor purchased the property under such circumstances, no doubt plaintiff as his assignee would be entitled to the benefit of the further time allowed by article 136. But this is not plaintiff's case. His contention is merely that as his vendor was not entitled to possession of the property

(1) I.L.R., 9 All., 97.

(2) I.L.R., 11 All., 423.

purchased by him *till the sale was confirmed*, the limitation period must be counted from the date of confirmation of the sale, and not from the date of the sale itself. This is, however, opposed to the express provisions of article 138—*Kishori Mohun Roy Chowdhry v. Shunder Nath Pal*(1), *Seru Mohun Bania v. Bhagoban Din Pandey*(2).

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It is not denied that the judgment-debtors were in possession at the date of the sale at which plaintiff's vendor, the first defendant, purchased the property. The first defendant has allowed the suit to proceed *ex parte* so far as he is concerned. The other defendants who have opposed the suit are the parties in possession of the property. If this suit had been brought against them by first defendant, it would clearly have been barred under article 138, and it is similarly barred under that article when brought by plaintiff as assignee of the first defendant. This second appeal fails therefore and must be dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Best.

GOVINDA (PLAINTIFF), APPELLANT,

v.

KRISHNAN (DEFENDANT), RESPONDENT.*

1892.
Feb. 11, 15.

Malabar Law—Nambudri—Karnavan, decree against—Sale in execution.

A junior member of a Nambudri illom, of which he was held out as the manager and *de facto* karnavan, contracted a debt for the purposes of the illom. The creditor sued him on the debt, but did not implead him as karnavan, and, having obtained a personal decree, attached and brought to sale in execution property belonging to the illom. A son of the judgment-debtor now sued to set aside the sale:

Held, that the sale should be set aside.

SECOND APPEAL against the decree of J. P. Fiddian, Acting District Judge of North Malabar, in appeal suit No. 66 of 1890, reversing the decree of V. Ramen Menon, District Munsif of Kawai, in original suit No. 380 of 1888.

(1) I.L.R., 14 Cal., 644.

(2) I.L.R., 9 Cal., 602.

* Second Appeals Nos. 474 and 656 of 1891.