

## APPELLATE CIVIL.

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

RAMAN (PLAINTIFF), APPELLANT,

*v.*

CHANDAN AND OTHERS (DEFENDANTS), RESPONDENTS.\*

1891.  
November 23.

*Revenue Recovery Act—Act II of 1864, (Madras), s. 59—Abkari notification referring to that Act—Sale to recover sum due from an abkari renter—Limitation for suits to recover land so sold.*

The right of selling toddy at certain places was put up to auction by the Collector under a notification which required that payments should be made at fixed periods and that the purchaser should take out licenses as therein provided, failing which the shops concerned might be resold and any loss accruing to Government recovered under the Revenue Recovery Act, Madras. The plaintiff bid at the auction and his bid was accepted. He sought to withdraw from the contract, but the sale to him was confirmed, and on his failure to make the payments above referred to the rights purchased by him were resold at a lower price, and his house was attached and sold as under the Revenue Recovery Act to realise the loss occasioned to Government by the resale. In a suit, in 1888, to recover the house from the defendant who had purchased it and been placed in possession in June 1886 :

*Held*, (1) that the suit was not barred as having been brought more than six months after the date of the sale ;

(2) that the sale was *ultra vires* ;

(3) that the plaintiff having brought his suit within the twelve years' period of limitation was entitled to recover.

SECOND APPEAL against the decree of J. P. Fiddian, Acting District Judge of North Malabar, in appeal suit No. 246 of 1890, reversing the decree of S. Subramanya Ayyar, District Munsif of Cannanore, in original suit No. 165 of 1888.

Suit to recover possession of a house.

In March 1885 the plaintiff made a bid for the right of selling toddy at certain places in Cannanore for the following twelve months, and his bid was accepted; the Collector's notification under which the auction was held contained, among others, the following provisions :—

“ As soon as the result of the auction is declared, the deposits made by the unsuccessful bidders will be returned to them. The

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persons whose bids are accepted shall at once deposit a further sum of Rs. 15 for each shop other than the first shop knocked down to them; and shall within ten days from the date on which the acceptance of their bids is notified to them, deposit such further sum as, with the original deposit of Rs. 15 per shop, will make up an amount equal in each case to two months' rent. They shall also take out licenses on the conditions hereinafter set forth, failing which the shops may be resold at their risk or be otherwise disposed of, and any loss accruing to Government thereby shall be recoverable from them under (Madras) Act II of 1864."

The plaintiff subsequently sought to withdraw from the sale, but the sale to him was confirmed. He did not make the payments required by the above notification; and the sale to him having been on that account cancelled, a fresh auction was held, at which the right in question was purchased for a smaller sum. In June 1886 the house now in question was attached and sold by the Collector as under the Revenue Recovery Act, 1864, to realise the difference between the amount of the plaintiff's bid and the price paid by the second purchaser, and defendant No. 3 purchased it.

The District Munsif passed a decree as prayed. On appeal the District Judge reversed the decree on the ground that the suit was brought after the expiry of the six months period prescribed by the Revenue Recovery Act, 1864, for suits to set aside a sale for arrears of revenue.

The plaintiff preferred this second appeal.

The *Acting Advocate-General* (Hon. Mr. Wedderburn) for appellant.

Respondents were not represented.

JUDGMENT.—The District Judge was in error in holding that section 59 of Act II of 1864 applied to the suit, inasmuch as the sale by the Collector was not a proceeding under the Act, as there is no provision in Act II of 1864 for treating the sum payable for plaintiff as revenue. The sale was *ultra vires*, and plaintiff had twelve years within which to bring his suit. We set aside the decree of the Lower Appellate Court and restore that of the Munsif. Appellant will be entitled to his costs in the Lower Appellate Court.

There will be no costs in this Court.