APPELLATE CIVIL.

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

1893.
February 10.
September 17.
October 23.

NARAYANAN NAMBUDRI AND OTHERS (PLAINTIFFS AND FIRST PLAINTIFF'S REPRESENTATIVE), APPELLANTS,

v.

DAMODARAN NAMBUDRI AND OTHERS (DEFENDANTS Nos. 1 AND 3 to 5, 7, 8, AND sixth DEFENDANT'S HEIR), RESPONDENTS.*

Sale of land for arrears of revenue—Revenue Recovery Act—Madras Act II of 1864, *s.* 36, *cl.* 2 *and s.* 59—*Sale irregular by reason of not being duly notified—Limitation—Alleged fraud affecting sale—Limitation Act—Act XV of* 1877, *s.* 8.

When there are arrears of revenue so as to give jurisdiction to the Collector to sell under Madras Act II of 1864, the sale, however irregular, is a proceeding under that Act, for purposes of limitation, and is valid not only as between the Collector and the defaulter ,but as between the Collector and the purchaser at the sale. *Venkata* v. *Chengadu*(1) and *Nilakandan* v. *Thandamma*(2) followed.

The mere fact that one of the plaintiffs, in a suit brought to set aside a sale under Madras Act II of 1864, is a minor is not sufficient to save the limitation bar under s. 59 of Madras Act II of 1864, when an alleged fraud affecting the sale came to the knowledge of the other plaintiffs who are majors and are jointly interested with the minor more than six months prior to ho institution of the suit, s. 8 of the Limitation Act being inapplicable to such cases.

SECOND APPEAL against the decree of E. K. Krishnan, Subordinate Judge of South Malabar, in appeal suit No. 513 of 1890, affirming the appeal of P. Govinda Menon, District Munsif of Betutnad, in original suit No. 367 of 1889.

The facts of this case appear sufficiently for the purpose of this report from the following judgments of the High Court.

Both the Lower Courts decreed in favour of the defendants. The plaintiffs preferred this appeal.

Subramanya Ayyar and *Sundara Ayyar* for appellants.

Govinda Menon for respondent No. 6.

This second appeal coming on for hearing before Shephard and Best, JJ., on Friday the 10th day of February 1893, the Court made the following

---

* Second Appeal No. 1872 of 1891.

(1) I.L.R., 12 Mad., 168.

(2) I.L.R., 9 Mad., 460.

NARAYANAN NAMBUDRI v. DAMODARAN NAMBUDRI.

ORDER.—" The Subordinate Judge has not considered the "question whether the sale was notified as required by the Act "which was the fourth ground of appeal before him. The Dis- "trict Munsif considered this point and found on it in favour of the "defendants.

"We must ask the Subordinate Judge to submit a finding on "this issue within one month from date of receipt of this order; "and seven days will be allowed for filing objections after the "finding has been posted up in this Court."

In compliance with the above order, the Subordinate Judge submitted the following

FINDING.—"I am directed to submit a finding on the point "'whether the sale was notified as required by the Act?'

"The Revenue Recovery Act II of 1864, s. 36, cl. 2, pre- "scribes the mode of notifying sale under the Act. A notice of "the sale in English and in the language of the district shall be "fixed up one month at least before the sale in the Collector's "office, in the taluk cutcherry, in the nearest police station and "on some conspicuous part of the land. There is no evidence "whatever to prove such publication. Instead of producing the "process server's return or other record to show that copies of the "sale notice were affixed to the above-mentioned four places, the "seventh defendant's vakil refers me to a number of documents "and to the depositions of witnesses which do not support his case. "The exhibits referred to contain no evidence on the point. "The evidence of the Menon and the Adhikari (eighth defendant) "examined as plaintiffs' witnesses 15 and 18 is insufficient and "unreliable. The Menon makes the vague statement that 'there "was a regular attachment.' The Adhikari (eighth defendant) "deposes that a copy of the notice of sale was affixed to a con- "spicuous place, though he cannot say where. Bearing in "mind that this defendant, whom the plaintiff accuses to be the real "purchaser, took care not to affix to the land the copy of the attach- "ment notice, his statement that the sale notice had been affixed "'in some conspicuous place' is not entitled to weight. Defen- "dants' second and sixth witnesses are the Revenue Inspector and "village peon respectively. The former does not depose regarding "the sale notice. The latter states that he served the notice by "affixing a copy presumably to the plaintiffs' house. This is all "the evidence referred to by the vakils.

"The plaintiffs' vakil points out that the attachment was not "effected in the only legal mode in which it could be effected under "section 7 of the Act, viz., by affixing a copy of the notice to the "land attached and by notifying it by public proclamation on the "land as well as in the *District Gazette*. The omission to affix "the copy to the land is admitted by the Adhikari, the eighth "defendant. There is no evidence that it was posted on the land. "Plaintiffs' vakil contends that there can be no valid notification " of sale without the preliminary process of attachment, but I "hardly think this objection can be considered in deciding the "point referred to me for a finding, viz., whether the sale was "*notified* as required by the Act.

"I find that the sale was not notified as required by the Act."

This second appeal coming on again for final hearing on Tuesday, the 17th ultimo, on return to the order of this Court, dated 10th February 1893, and having stood over for consideration till this day, the Court delivered the following judgment :—

MUTTUSAMI AYYAR, J.—This was a suit to set aside a revenue sale held under Act II of 1864. The sale was held in June 1888 and this suit was brought on the 12th August 1889. It is found that at the date of sale there were arrears of revenue due to the Government to the extent of Rs. 54-1-7, and it is clear that the Collector had jurisdiction to sell the land under Act II of 1864. It is found, however, by the Lower Appellate Court that the sale was not duly notified as required by the Act and to this extent the procedure followed by the Collector was irregular. Both the Lower Courts find that the seventh defendant purchased the land *benami* for the eighth and ninth defendants, of whom the former is the Adhikari of the amsom wherein the land brought to sale is situated. Appellants imputed fraud to the Adhikari, but the Courts below have negatived it. It is further found that appellants were aware of the sale and its confirmation more than six months before suit. The question for decision in this appeal is whether, upon the foregoing facts, the Courts below were correct in holding that the sale was a proceeding within the meaning of section 59 of Act II of 1864 and that the suit was therefore barred by limitation. The contention in second appeal is that the sale, though valid as between the Collector and appellants, is not so as between the latter and the purchaser on the

NARAYANAN NAMBUDRI *v.* DAMODARAN NAMBUDRI.

ground of fraud. The decision of the Lower Courts is in accordance with the principles laid down in *Nilakandan* v. *Thandamma*(1) and in *Venkata* v. *Chengadu*(2). The decision in the last-mentioned case is that of four Judges who held that the revenue sale in that case, however irregular it was, was a proceeding under the Act for purposes of limitation, as the Collector had jurisdiction to sell. It was also pointed out in that case that the decision in *Nilakandam* v. *Thandamma*(1) proceeded on the ground that there were really no arrears of revenue and that the sale was really without jurisdiction. Both decisions recognize the general principle that a revenue sale is a statutory sale and that when there are arrears of revenue so as to give jurisdiction to the Collector to sell, the sale, however irregular, must be treated as a proceeding under the Act. I am unable to reconcile the contention of appellants' pleader with the principle that statutory sales depend for their validity upon the pre-requisites prescribed by the statute and not on matters which lie outside its purview. I would decline to order any further enquiry whether the price realized was adequate and whether any substantial injury resulted from the sale not having been duly notified, and dismiss the second appeal on the ground that the sale in this case was a proceeding under section 59 of Act II of 1864 and that the suit is time-barred.

BEST, J.—The finding on the issue sent for trial is that the sale was not notified as required by Act II of 1864. This is a finding of fact which we must accept. It is contended, however, on behalf of respondents that the suit is time-barred by section 59 of the Act. The mere fact of second plaintiff being a minor is not sufficient to save the limitation bar when the alleged fraud came to the knowledge of others jointly interested with the minor more than six months prior to the institution of the suit; for, as observed in *Seshan* v. *Rajagopala*(3), section 8 of the Limitation Act is inapplicable, the object of that section being the same as that of the corresponding section 4 of the English Act, 3 and 4 William IV., Chapter 42, which, as remarked by Lord Kenyon in *Perry* v. *Jackson*(4), "was introduced into the statute in order to protect

(1) I.L.R., 9 Mad., 460.
(2) I.L.R., 12 Mad., 168.
(3) I.L.R., 13 Mad., 236.
(4) 4 T.R., 516 at p. 519.

"the interests of those persons which there was no one of competent age, competent understanding, or competent in point of "residence in the country to protect." See also *Vigneswara* v. *Bapayya*(1). As was held in *Venkata* v. *Chengadu*(2), the period of limitation for a suit such as the present is six months from the date on which the fraud was discovered, and, as the present suit was brought more than six months after the alleged fraud came to the knowledge of plaintiffs' father and also of first plaintiff himself, it is clearly time-barred.

The appeal fails therefore and is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Davies.

1893.
July 14.
August 16.

SECRETARY OF STATE FOR INDIA (DEFENDANT), APPELLANT,

v.

VYDIA PILLAI AND ANOTHER (CLAIMANTS), RESPONDENTS.*

Madras Forest Act—Act V of 1882, *ss.* 2, 4, 10 *and* 14—*Claim to percentage of forest income—The Pensions Act—Act XXIII of* 1871, *s.* 4—*'Civil Court'—Jurisdiction of Forest Settlement Officer—Jurisdiction of Appellate Court.*

A claim to a percentage of forest income is not a claim to forest produce under Madras Act V of 1882, nor is it a claim to a right specified in s. 4 of that Act,

A Forest Settlement Officer has no jurisdiction to entertain a suit in which such a claim is made, and such a suit brough by discharged forest karnams is barred by s. 4 of the Pensions Act.

A Forest Settlement Officer is a 'Civil Court' for the purposes of the Pensions Act.

If a Court of limited jurisdiction exceeds its powers and adjudicates on a claim over which it has no jurisdiction, the Court (if any) which exercises appellate jurisdiction over it is bound to entertain an appeal preferred against the Lower Court's decision and to correct the error.

A Court of competent appellate jurisdiction in such a case is not bound by an order made without jurisdiction by a Collector on an appeal to him in the same suit.

Submission by the parties to his jurisdiction cannot give a Forest Settlement Officer jurisdiction in a case where he has no inherent jurisdiction.

---

(1) I.L.R., 16 Mad., 436. (2) I.L.R., 12 Mad., 168.

* Second Appeal No. 586 of 1892.