

RANGASAMI
NAIDU
v.
VIRASAMI
CHETTI.

JUDGMENT.—In our opinion there is in this case no question of a retrospective effect being given to a new provision of law. When the Act V of 1894 came into effect there was no purchaser in existence. The new law was passed before the purchase was made and the purchaser must take subject to its provisions.

We agree with the opinion expressed by Petheram, C.J., at the end of his judgment in *Girish Chundra Basu v. Apurba Krishna Dass*(1).

We must reverse the order of the Judge and remand the matter for disposal.

The respondent must pay the appellant's costs.

APPELLATE CIVIL.

Before Mr. Justice Shephard and Mr. Justice Best.

NARASIMHA NAIDU (DEFENDANT No. 2), APPELLANT,

v.

RAMASAMI AND OTHERS (PLAINTIFFS AND DEFENDANT No. 1 AND FIRST PLAINTIFF'S REPRESENTATIVE), RESPONDENTS.*

Limitation Act—Act XV of 1877, sched. II, art. 12—Suit to set aside Court sale—Suit for land sold in execution as property of third parties.

The plaintiffs sued in 1893 to recover possession of land of which their family had been in possession till 1884. The land had been sold to the defendant in 1881 in execution of a decree against the plaintiffs' cousins, but the sale had not been confirmed. A decree was passed as prayed in respect of a moiety of the land which represented the plaintiffs' share:

Held, that the decree was right.

Quare: whether the suit would have been barred under the one year's rule of limitation if the sale had been confirmed. *Suryanna v. Durgi* (I.L.R., 7 Mad., 258) doubted.

SECOND APPEAL against the decree of G. T. Mackenzie, District Judge of Kistna, in appeal suit No. 328 of 1893, affirming the decree of K. Rama Rau, District Munsif of Bezwada, in original suit No. 96 of 1892.

Suit for possession of land. The land in question had belonged to the family of the plaintiffs which remained in possession till 1884. In 1881 it was attached and brought to sale in execution of a decree against some members of the family who were cousins of the plaintiff and was purchased by defendant No. 2 to whom defendant No. 1, a tenant on the land attorned in 1884. The sale to defendant No. 2 was not confirmed and no certificate was issued to him.

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The District Munsif held that the plaintiffs were entitled to a moiety of the land in question and passed a decree accordingly. The District Judge affirmed this decree.

The defendant preferred this second appeal.

Pattabhirama Ayyar for appellant.

Narayana Rau for respondent No. 4.

JUDGMENT.—We think it must be taken to be found that the property originally belonged to the plaintiff's family and that it remained in their possession till 1884. It is true that there is no explicit finding on this latter point by the Lower Appellate Court, but this objection is not taken in the memorandum of appeal to this Court, and even in the Lower Appellate Court the contention raised in the fourth ground of appeal is consistent with the facts above stated. In 1881 in execution of a decree against some members of the plaintiffs' family the property was sold and purchased by the defendant who now appeals, and it is contended that the suit falls under the 12th article of the Limitation Act, and is therefore barred by limitation. We are referred to *Suryamma v. Durgi*(1) in which it seems to have been held that a stranger to the decree whose property is sold in execution of it must bring his suit within the year. If it were necessary to decide the question, we should refer it to a Full Bench, for the decision seems to us doubtful and we are inclined to think that the reasoning in *Parekh Ranchor v. Bai Vakhat*(2) is more correct. A stranger whose property is sold behind his back without any authority does not need to have the sale set aside.

There is, however, nothing to show that the sale was ever confirmed and therefore the point does not arise.

The appeal is dismissed with costs.

(1) I.L.R., 7 Mad., 258.

(2) I.L.R., 11 Bom., 119, 123.