

## APPELLATE CIVIL.

*Before Mr. Justice Subramania Ayyar and Mr. Justice Davies.*

NATESAN CHETTI AND OTHERS (DEFENDANTS NOS. 2 TO 4),  
APPELLANTS,

1897.  
August 24.  
September 2.

v.

SOUNDARARAJA AYYANGAR AND ANOTHER (PLAINTIFF  
No. 1 AND DEFENDANT No. 1), RESPONDENTS.\*

*Limitation Act—Act XV of 1877, sched. II, art. 111—Enforcement  
of vendor's lien.*

In 1887 the plaintiff sold land to defendant No. 1 who in 1894, while part of the purchase money remained unpaid, sold it to the defendants Nos. 2 to 4, who had notice of this fact. The plaintiff now in 1895 sued to enforce his vendor's lien:

*Held*, that the suit was barred by Limitation Act, 1877, schedule II, article 111.

SECOND APPEAL against the decree of T. M. Horsfall, District Judge of Tanjore, in Appeal Suit No. 499 of 1895, reversing the decree of N. Sambasiva Ayyar, District Munsif of Tiruvadi, in Original Suit No. 82 of 1895.

In 1887 the plaintiff sold certain land to defendant No. 1, it being agreed that as part of the price defendant No. 1 should pay a sum named to a creditor of his vendor. In 1894, defendants Nos. 2 to 4 who had notice of this arrangement and of the fact that defendant No. 1 had not carried it out, purchased the land from him. The plaintiff now sued in 1895 to recover the amount remaining unpaid asserting a lien on the land. The District Munsif passed a personal decree against defendant No. 1 only. On appeal the District Judge following *Virchand Lalchand v. Kumaji*(1) held that the plaintiff's lien for unpaid purchase money was still enforceable under the twelve years' rule in Limitation Act, 1887, schedule II, article 132, and accordingly modified the decree of the District Munsif and passed a decree as prayed.

Defendants Nos. 2 to 4 preferred this second appeal.

*Pattabhirama Ayyar* for appellants.

*Krishnasami Ayyar* for respondent No. 1.

JUDGMENT.—This is a suit to enforce the lien possessed by a vendor of immovable property in respect of unpaid purchase

\* Second Appeal No. 1333 of 1896.

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money. The Court of First Instance decided that the case fell within article 111 of the Limitation Act. But the Lower Appellate Court, following *Virchand Lalchand v. Kumaji*(1), held that article 132 applied.

Now article 111 refers solely and in unmistakable terms to suits such as the present, while article 132 deals with suits for money charged upon immovable property generally. In the case cited above, no reasons were stated as to why the learned Judges arrived at the conclusion that article 111 was inapplicable to cases similar to this, and that conclusion is opposed to the well established canon of interpretation that, as a rule, general provisions do not derogate from special provisions, but that the latter do derogate from the former. *Generalia specialibus non derogant, specialia derogant generalibus*. It is scarcely necessary to observe that, if article 111 does not apply to such suits as the present, it is impossible to see to what suits it would apply. With all deference therefore to the very learned Judges who decided the case which the Lower Appellate Court followed, we must hold that the class of suits to which the present belongs, falls under the special provision, viz., article 111, and that class is excluded from the comparatively general article 132 applicable to cases of money charged on immovable property not specially provided for in the Act.

In this view, the suit, having been brought after the expiry of 3 years from the date mentioned in column 3 of article 111, was clearly barred. We therefore allow the appeal, reverse the decree of the Lower Appellate Court and restore that of the District Munsif. The respondents must pay the appellants' costs in this and in the Lower Appellate Court.

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(1) I.L.R., 18 Bom., 48.

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