

THEYYA-
VELAN
v.
KOCHAN.

JUDGMENT.—Section 317 of the Code of Civil Procedure debars a suit against a ‘certified purchaser’ by a person claiming to be the real purchaser or deriving title from the real purchaser.

The contending parties here do not occupy the positions contemplated in the section, as the first defendant is not the certified purchaser, but an assignee of the certified purchaser. The assignment by the certified purchaser to the first defendant does not clothe him with the certified purchaser’s right to object to the maintainability of a suit as if it had been brought against himself. The protection given to the certified purchaser cannot be transferred by him. The first defendant did not therefore stand in the certified purchaser’s shoes as the Subordinate Judge has held. We must accordingly reverse his decree and remand the appeal for disposal upon the merits.

Costs will abide the result.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Boddam.

1897.
October 21.

KRISHNAN NAMBIAR AND OTHERS (DEFENDANTS NOS. 2, 7),
AND 9 TO 12), APPELLANTS,

v.

KANNAN AND ANOTHER (PLAINTIFF AND DEFENDANT NO. 8),
RESPONDENTS.*

Limitation Act—Act XV of 1877, sched. II, arts. 115, 116—Covenant implied in registered sale-deed—Transfer of Property Act—Act IV of 1882, s. 55—Implied covenant for title—Damages for breach—Civil Procedure Code, s. 13—‘Res judicata.’

On 8th February 1889 the defendant sold to the plaintiff, under a registered conveyance containing no express covenant for title, land of which he was not in possession, and the purchase money was paid. The plaintiff and the defendant sued to recover possession, but failed on the ground that the vendor had no title. The plaintiff now sued on 7th February 1895 to recover with interest the purchase money and the amount of costs incurred by him in the previous litigation :

Held, that the suit was not barred by limitation, that the defendant was not entitled to give evidence of his alleged title, and that the plaintiff was entitled to the relief sought by him.

SECOND APPEAL against the decree of B. Macleod, Acting District Judge of North Malabar, in Appeal Suit No. 344 of 1895,

* Second Appeal No. 1138 of 1896.

modifying the decree of P. J. Itteyerah, District Munsif of Cannanore, in Original Suit No. 49 of 1895.

KRISHNAN
NAMBIAR
v.
KANNAN.

On 8th February 1889 the plaintiff purchased certain land from defendant No. 2 as karnavan of the tarwad, to which he and the other defendants belonged. The land was then in the occupation of third parties. Accordingly the vendor and purchasers jointly sued for possession, but they failed to prove that the vendor had any title to the land, the issue being finally determined on 19th December 1892.

The plaintiff instituted the present suit on 7th February 1895 to recover the purchase money with interest, and the amount of costs incurred by him in the previous suit, and the amount recovered from him in execution of the decree therein.

The District Munsif dismissed the suit as being barred by limitation. On appeal the District Judge passed a decree for the purchase money with interest only.

The defendants preferred this second appeal.

The Acting Advocate-General (Hon. V. Bhashyam Ayyangar) for appellants.

Sankaran Nayar and *Ryru Nambiar* for respondent No. 1.

JUDGMENT.—The learned Advocate-General on behalf of the appellants argues that, as the covenant of title was not embodied in words in the sale-deed, but is implied by law under section 55 of the Transfer of Property Act, it cannot be regarded as a contract in writing registered, and therefore does not fall under article 116 of the second schedule of the Limitation Act, but under article 115.

With that contention we cannot agree. The contract of sale being in writing and registered, all terms which the law implies, or reads as part of the contract, must also be regarded as part of the registered writing.

This view was that adopted by Parker, J., in *Chinna Narayana Reddi v. Peda Rama Reddi* (1). The suit was therefore not barred by limitation.

The only other ground urged is that the Lower Courts were wrong in deciding that the tarwad's title to the property was not a question to be gone into in the present suit, as it had been decided in the former litigation.

(1) Appeal against Order No. 82 of 1890 reported in 1 Mad. L.J., 479.

KRISHNAN
NAMRIAB
v.
KANNAN.

In that litigation the present plaintiff and the second defendant (as representing the tarwad) were joint plaintiffs, and it was then found as between each of them and the persons in possession of the property that the second defendant and his tarwad had no title to the property. The title to the property is therefore *res judicata* as between the persons in possession and the second defendant and his tarwad. It is idle to contend that, in these circumstances, and useful purpose was, or could be, served by admitting evidence as to the tarwad's alleged title.* On both grounds then the second appeal fails and is dismissed with costs.

The plaintiff files a memorandum of objections to so much of the decree as disallows his claim for costs of the former litigation, viz., Rs. 527-15-2 plus Rs. 69-11-0 and for interest on the purchase money prior to the plaint.

On both points we think the objections are valid. The costs of the litigation which resulted from the breach of covenant of title are proper damages and not too remote. The omission as regards interest is clearly a clerical error. We allow the memorandum of objections with costs in the Lower Appellate Court and in this Court, and modify the decree accordingly. The rate of interest will, however, be 6 per cent. as allowed by the District Judge, not 12 per cent. as claimed. We allow interest at 6 per cent. on the costs of the former litigation.

APPELLATE CIVIL.

Before Mr. Justice Shephard and Mr. Justice Subramania Ayyar.

GANAPATI AYYAN AND ANOTHER (PLAINTIFFS), APPELLANTS,

v.

SAVITHRI AMMAL AND ANOTHER (DEFENDANTS), RESPONDENTS.*

Hindu Law—Agreement on adoption—Charitable endowments—Civil Procedure Code, s. 30—Interest sufficient to support a suit relating to charity.

A Hindu shortly before his death directed his wife and mother to employ part of his property for the maintenance and upkeep of a charitable institution, being a choultry where Jajpta Brahmans and travellers were fed, and at the same time empowered his wife to make an adoption, declaring that the adopted son should have no interest in the property devoted to the charitable purpose. On

* Appeal No. 90 of 1896.