

## APPELLATE CIVIL.

*Before Sir Arnold White, Chief Justice, and Mr. Justice Davies.*

RANGA REDDI (FIRST DEFENDANT), APPELLANT,

1905.  
March 10.

v.

NARAYANA REDDI AND OTHERS (PLAINTIFF AND DEFENDANTS  
Nos. 2 AND 3), RESPONDENTS.\*

*Limitation Act XV of 1877, sched. II, arts. 44, 144—Suit for cancellation of deed of sale and for possession.*

A suit for cancelling a deed of sale executed by the plaintiff's guardian on the ground of fraud and misrepresentation and for recovery of possession of the properties comprised therein, falls within article 44 and not within article 144 of schedule II of the Limitation Act.

*Unni v. Kunchi Amma*, (I.L.R., 14 Mad., 26), distinguished.

*Kamakshi Nayakan v. Ramasami Nayakan*, (Second Appeal No. 929 of 1895, unreported), distinguished.

Suit instituted by plaintiff on 23rd September 1901 to cancel a deed of sale executed by his mother, acting as his guardian, in favour of the defendants, on 29th August 1892, on the ground of fraud and want of consideration and to recover the properties in possession of the defendants under such sale. The defendants pleaded, *inter alia*, that the suit was barred by limitation.

The District Munsif held that, under article 144, schedule II, of the Limitation Act, the suit was within time; but dismissed the plaintiff's suit on the ground that the sale deed was valid and binding on him. On appeal the District Judge upheld the decision of the District Munsif on the question of limitation but reversed his decree on the ground that the sale was not binding on the plaintiff.

The first defendant preferred this second appeal.

*C. Venkatasubbaramiah* for appellant.

*P. Nagabhushanam* for first respondent.

JUDGMENT.—We cannot accept the view taken by the District Munsif and accepted by the District Judge that the prayer for the cancellation of the sale deed was merely auxiliary to the prayer for

\* Second Appeal No. 350 of 1903, presented against the decree of R. D. Broadfoot, Esq., District Judge of South Arcot, in Appeal Suit No. 191 of 1902, presented against the decree of M.R.By. T. S. Thiagaraja Ayyar, District Munsif of Tirukkoyilur, in Original Suit No. 880 of 1901.

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possession. In our opinion, on the case which the plaintiff set up in the plaint, and which he sought to make out by evidence at the trial, he could not establish his right to possession without first obtaining an order for the cancellation of the sale deed. His case was not that the mother went beyond her powers as guardian in executing the sale deed, but that the sale deed was brought about by fraud and misrepresentation on the part of the defendant. On this ground the present case may be distinguished from the case of *Unni v. Kunchi Amma*(1) and the case of *Kamakshi Nayakan v. Ramasami Nayakan*(2). Further, in neither of these cases does there appear to have been any prayer for the cancellation of the document. In the present case there was such a prayer, and such a prayer was essential. The lower Courts were of opinion that the article of the second schedule to the Limitation Act which was applicable in the present case was article 144, on the ground that the case fell within the decision in *Unni v. Kunchi Amma*(1). For the reasons we have stated, we do not think this decision applies, and in our opinion the article of the schedule to the Limitation Act which is applicable is article 44.

There is what was apparently intended to be a finding by the District Munsif as to the age of the plaintiff at the date of the institution of the suit. But there is no finding by the lower Appellate Court as to this. The case must go back to the lower Appellate Court for a finding on the question as to the age of the plaintiff at the date of the suit. Fresh evidence may be taken. The finding is to be submitted within four weeks. Seven days will be allowed for filing objections.

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(1) I.L.R., 14 Mad., 26.

(2) S.A. No. 929 of 1895 (unreported).