

## APPELLATE CIVIL.

*Before Mr. Justice Davies and Mr. Justice Benson.*

SINGARAPPA AND TWO OTHERS (DEFENDANTS), APPELLANTS,

vs.

TALARI SANJIVAPPA (PLAINTIFF), RESPONDENT.\*

1904.  
December  
15, 16.

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*Limitation Act XV of 1877, art. 91—Suit to set aside an instrument—Collusive sale deed not intended to be acted upon—Specific Relief Act I of 1877, s. 39.*

A suit to cancel or set aside an instrument must, under article 91 of the Limitation Act, be brought within three years from the date when the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him.

The plaintiff on 1st June 1895 executed a sham sale deed in favour of the defendants, neither party intending that it should be acted upon. The defendants in February 1899 began to set up a claim to ownership on the strength of the deed. On 3rd August 1900, plaintiff brought this suit. On its being contended that the suit barred by limitation :

*Held*, that the suit was not barred having been brought within three years from the date when the plaintiff apprehended that the defendants had set up title under the instrument.

The facts which would entitle a person to bring such a suit are stated in section 39 of the Specific Relief Act I of 1877.

SUIT to set aside an instrument. The material facts are fully set out in their Lordships' judgment. The District Munsif passed a decree in favour of the plaintiff which was affirmed on appeal by the Acting District Judge.

Defendants proffered this second appeal.

The Hon. Mr. P. S. Sivasivami Ayyar and P. S. Parthasarathy Ayyangar for appellants.

T. V. Seshagiri Ayyar for respondent.

JUDGMENT.—The plaintiff, on the 1st June 1895, executed a sham sale deed in favour of his illegitimate sons, the defendants, neither party intending that it should be acted upon. Possession of the property sold remained with the plaintiff.

The defendants some time about February 1899 began to set up a claim to ownership on the strength of the deed. On the 3rd

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\* Second Appeal No. 1535 of 1902, presented against the decree of J. W. Hughes, Esq., District Judge of Kurnool, in Appeal Suit No. 36 of 1902, presented against the decree of M.R.Ry. D. K. Viraswamy Ayyar, District Munsif of Gooty, in Original Suit No. 588 of 1900.

SINGARAPPA August 1900 the plaintiff brought this suit for the cancellation of  
 v. the deed of sale.  
 TALARI  
 SANJIVAPPA.

The question for decision is whether the suit is barred by article 91 of the second schedule to the Limitation Act of 1877. That article provides that such a suit must be brought within 3 (three) years from the time "when the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him." The facts which would entitle a person to bring such a suit are stated in section 39 of the Specific Relief Act I of 1877 which provides that "any person against whom a written instrument is void or voidable who has reasonable apprehension that such instrument if left out standing may cause him serious injury, may sue to have it adjudged void or voidable, and the Court may in its discretion so adjudge it or order it to be delivered up and cancelled." In the present case the plaintiff did not entertain any apprehension that the instrument would injure him until the defendants began to set up a title under it as if it evidenced a real sale to them. The plaintiff's cause of action therefore arose within 3 (three) years prior to the suit and the District Judge rightly held that it was not barred.

This view is in accordance not only with the case quoted by him (*Tavangar Ali v. Kura Mal*(1)) but also with the decision of this Court in *Sundaram v. Silhammal*(2) approved in *Vithai v. Hari*(3). See also *Meda Bibi v. Imaman Bibi*(4) and *Janaki Kumwar v. Ajit Singh*(5).

We dismiss the second appeal with the costs.

(1) I.L.R., 3 All., 394 at p. 396.

(3) I.L.R., 25 Bom., 78.

(5) I.L.R., 15 Cal., 58.

(2) I.L.R., 16 Mad., 311.

(4) I.L.R., 6 All., 207 (Full Bench).