

## APPELLATE CIVIL—FULL BENCH.

Before Mr. Justice Davies, Mr. Justice Benson and Mr. Justice  
Blashyam Ayyangar.

AHAMED KUTTI (DEFENDANT No. 19), APPELLANT,

v.

RAMAN NAMBU DRI (PLAINTIFF), RESPONDENT.\*

1900.  
October  
18, 19.  
1901.  
October  
2, 3, 4.

*Limitation Act—Act XV of 1877, sched. II, art. 134—Inapplicability to case of  
involuntary sale.*

Where, in execution of a money-decree, immoveable property of a judgment-debtor, in which his real interest is only that of a mortgagee, is attached and brought to sale, the auction-purchaser is not a purchaser from the mortgagee within the meaning of article 134 of schedule II of the Limitation Act, even though the property was sold as the property of the judgment-debtor without any limitation of his interest therein. Article 134 only applies to cases in which the mortgagee disposes of the property voluntarily. *Muthu v. Kambalinga*, (I.L.R., 12 Mad., 316), overruled.

*Per SHEPHARD and DAVIES, JJ.*—Where a purchase is made at a sale by the Court in execution of a decree, it is complete, for purposes of limitation, at the date of the purchase, and not at the date of its confirmation by the Court.

SUIT to redeem a kanom. Plaintiff's father, in 1864, granted a kanom in respect of certain properties to one Raman Menon deceased, the karnavan of defendants Nos. 1 to 14. Plaintiff now sued to redeem that kanom. Defendants Nos. 15 to 18 were impleaded as persons in possession of portions of the property. Defendant No. 19 denied the genuineness of the kanom and contended that the properties had formerly been the jenm of the tarwad of defendants Nos. 1 to 14, and that they had been sold at a Court sale held in execution of the decree in Original Suit No. 409 of 1880, being purchased by one Koma Panikar on 18th January 1886. Defendant No. 19 subsequently, in execution of a decree in Original Suit No. 10 of 1890, purchased, also at a Court sale, the jenm right of Koma Panikar in certain items of the property now sought to be redeemed. His defence was that inasmuch as the said items had been purchased by

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\* Second Appeal No. 1008 of 1899 against the decree of O. Chandu Menon, Subordinate Judge of South Malabar, in Appeal Suit No. 116 of 1899, modifying the decree of T. V. Anantan Nayar, District Munsif of Kutnad, in Original Suit No. 49 of 1898.

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his predecessor in title more than twelve years before suit plaintiff's claim to recover possession of them was barred by article 134 of the Limitation Act. The suit was filed on 25th January 1898.

The District Munsif held that the kanom demise of 1864 was a genuine one and that plaintiff was entitled to recover all the properties except those claimed by defendant No. 19. With regard to these he held, following *Muthu v. Kambalinga*(1), that plaintiff's claim was barred under article 134 of the Limitation Act.

Plaintiff appealed to the Subordinate Judge who held that the period of limitation should be computed from the date of the confirmation of sale and not from the date of actual sale. The date on which the sale to Koma Panikar was confirmed by the Court was 19th March 1886. He held that the suit was not barred, and gave plaintiff a decree as prayed.

Against that decree defendant No. 19 preferred this second appeal.

The case first came on for hearing before SHEPHARD and DAVIES, J.J., when their Lordships passed the following

ORDER OF REFERENCE TO THE FULL BENCH.—Assuming that article 134 of the Limitation Act applies in a case where the defendant has bought at a sale held in execution of a decree, we think that the date of the sale, and not the date of the confirmation of the sale, is the date of the purchase for the purpose of that article. From the date of the sale the person to whom the property has been knocked down is designated in the Code of Civil Procedure by no other name than purchaser. On that date he incurs obligations as purchaser and acquires an interest in the property (see *Venkatakingam v. Veerasami*(2)). We cannot suppose that the Legislature used the word purchaser in the Limitation Act in a different sense. But on the question whether article 134 applies to the case of involuntary sales made under the provisions of the Code, we are of opinion that the ruling in *Muthu v. Kambalinga*(1) cannot be supported. We do not think it is possible to say that a man who buys the property of a judgment-debtor which has been attached in execution of a decree buys that property from the judgment-debtor. With all deference

(1) I.L.R., 12 Mad., 316.

(2) I.L.R., 17 Mad., 89 at p. 91.

to Mr. Justice Muttusami Ayyar, we think it is misleading to say that a simple mortgagee has a power of sale. The right to sue for sale which the mortgagee possesses is very different from a power of sale as that term is generally understood. But, however that may be, it was not any right of the mortgagee that was enforced. It was the decree-holder who was enforcing his remedy *in invitum* against the judgment-debtor, that judgment-debtor happening to be a mortgagee.

We refer to a Full Bench the question whether a purchaser at a sale in execution of a decree against a mortgagee is a purchaser of the mortgaged property from the mortgagee within the meaning of article 134 of the second schedule to the Limitation Act?

The above reference came on before the Full Bench constituted as above.

*J. L. Rosario*, for appellant, contended that the auction-purchaser (defendant No. 19) was a purchaser from the mortgagee, within the meaning of article 134 of the Limitation Act, and that the suit was barred as against him, as more than twelve years had elapsed, before the filing of the suit, since the date of the purchase, namely 18th January 1880. He referred to rule 4 of the High Court Rules of Practice, Appellate Side, under which a judgment-debtor may be examined as to his interest in property; also to *Kali Das Mullick v. Kanhya Lal Pundit*(1); *Muthu v. Kambalinga*(2); *Ambalavana Desigar v. Bappu Rao Jagadap*(3); *Pandu v. Vithu*(4); *Chintamani Mahapatro v. Sarup Se*(5).

*Sundara Ayyar*, for respondent, contended that the suit was one for redemption and that defendant No. 19 had only the rights of the mortgagee from whom he had purchased; and that article 148 was applicable and that in consequence the suit was not barred. He cited *Bhagwan Sahai v. Bhagwan Din*(6); *Pandu v. Vithu*(4); *Sundara Gopalan v. Venkatarada Ayyangar*(7); *Dorab Ally Khan v. Abdool Azeez*(8); *Whitworth v. Gaugain*(9);

(1) L.R., 11 I.A., 218; I.L.R., 11 Calc., 121.

(2) I.L.R., 12 Mad., 316.

(3) Appeal No. 129 of 1898 (unreported).

(4) I.L.R., 19 Bom., 140 at p. 144.

(5) I.L.R., 15 Calc., 703.

(6) I.L.R., 9 All., 97 at p. 103.

(7) I.L.R., 17 Mad., 228.

(8) L.R., 5 I.A., 116; I.L.R., 3 Calc., 806.

(9) 3 Hare, 416; on appeal, 1 Ph., 728.

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*Sobhagchand Gulabchand v. Bhaichand*(1); and *Ralanath Doss v. Gisborne*(2).

The Court recorded the following

OPINION.—We are clearly of opinion that when in execution of a money-decree immovable property of a judgment-debtor, in which his real interest is only that of a mortgagee, is attached and brought to sale, the auction-purchaser cannot be regarded as a purchaser from the mortgagee within the meaning of article 134 of the second schedule of the Limitation Act, even though the property was sold as the property of the judgment-debtor without any limitation of his interest therein. Article 134 is, in our opinion, intended solely to apply to cases in which the mortgagee disposes of the property voluntarily. But in the case of an involuntary sale in execution of a decree the purchaser cannot be regarded as a purchaser from the judgment-debtor. The decision in *Muthu v. Kumbalinga*(3) proceeds, we think, on the erroneous assumption that the Court in selling the judgment-debtor's property in which his interest is that of a mortgagee for the discharge of the debt due by him under the decree is exercising the power of sale which the judgment-debtor *qua* mortgagee possesses. Assuming he has such power of sale, the Court may be regarded as exercising that power in a suit which the mortgagee may bring against the mortgagor for the recovery of the mortgage debt. Such power of sale cannot be exercised for the benefit of the mortgagee to enable him to discharge a debt due by him to a third party.

The case came on for final hearing before DAVIES and BHASHYAM AYYANGAR, JJ., when their Lordships delivered the following

JUDGMENT.—Following the decision of the Full Bench on the question referred to it, this second appeal is dismissed with costs.

(1) I.L.R., 6 Bom., 193 at p. 202.

(2) 14 M.I.A., 1 at pp. 14, 16.

(3) I.L.R., 12 Mad., 316.