

application is made to a Court to file an award, an order granting the prayer and an order refusing the prayer are both decrees. We must hold that there was an appeal to the Subordinate Judge. The Subordinate Judge has found that the award has determined a matter not referred to arbitration. If this can be shown to be the case it follows that, under the provisions of sections 520 and 526 of the Civil Procedure Code, the Subordinate Judge was bound to refuse to file the award. It is shown that in the two muchilikas in which the parties referred the matter in dispute between them to the arbitrator the western boundary of the land in dispute is stated to be certain land belonging to the plaintiff. The arbitrator, however, in the award altered this and mentioned a certain channel as the western boundary. This he was clearly not entitled to do. The result is that he has decided the right to some 20 gulies of land regarding which no reference was made to him. Such being the case we are of opinion that the Subordinate Judge was bound to refuse to allow the award to be filed and we accordingly dismiss this second appeal with costs.

THIRU-
VENGA-
DATH-
IENGAR
v.
VAIDI-
NATHA
AYYAR.

APPELLATE CIVIL.

*Before Sir Arnold White, Chief Justice, and Mr. Justice
Subrahmania Ayyar.*

RAMAKRISHNA AYYAR AND ANOTHER (PLAINTIFFS NOS. 2
AND 3), APPELLANTS,

v.

SUBRAHMANIA AYYEN AND OTHERS (DEFENDANTS NOS 1
TO 11), RESPONDENTS.*

1905
December 21.

*Transfer of Property Act IV of 1882, s.55—Limitation Act XV of 1877, sch. II, arts.
182, 111—Article 132 applies to suits to enforce the charge created by s. 55
of the Transfer of Property Act.*

The statutory charge which an unpaid vendor obtains under section 55 of the Transfer of Property Act is different in its origin and nature from the vendor's lien given by English Courts of equity, to an unpaid vendor.

* Second Appeal No. 2543 of 1903, presented against the decree of F. D. P. Oldfield, Esq., District Judge of Tanjore, in Appeal Suit No. 962 of 1902, presented against the decree of Syed Tajuddin Sahib, District Munsif of Negapatam, in Original Suit No. 451 of 1900.

RAMA-
KRISHNA
AYYAR
v.
SUBRAH-
MANIA
AYYER.

Webb v. Macpherson, (I.L.R., 31 Calc., 57), referred to and applied.

The article of the Limitation Act applicable to a suit to enforce such charge is article 132 of schedule II and not article 111.

Natesan Chetti v. Soundararaja Ayyangar, (I.L.R., 21 Mad., 141), overruled.

Avuthala v. Dayamma, (I.L.R., 24 Mad. 233), overruled.

Subrahmania Ayyar v. Poovan, (I.L.R., 27 Mad., 28), overruled.

THE facts were that the plaintiff owned the lands in schedule A; one Subrahmania Ayyar had a mortgage on them, and four items of land in schedule B. To discharge it, plaintiff sold the whole of B schedule to first defendant's father (who was succeeded by first defendant) for a small sum in cash, and an undertaking to pay off various debts including that due to Subrahmania Ayyar. The lands were eventually resold, and came through the hands of second and third defendants into the hands of the other defendants as their vendees, only a portion of Subrahmania Ayyar's debt having been paid. Eventually to save the lands in schedule A from sale for which Subrahmania Ayyar sued, plaintiff paid him the amount due on the mortgage. He now sued to recover it from the defendants, or by sale of the lands in their hands.

Both the lower Courts held that the suit was barred under article 111 of schedule I of the Limitation Act.

Plaintiffs Nos. 2 and 3 preferred this second appeal.

T. R. Ramachandra Ayyar and *G. S. Ramachandra Ayyar* for appellants.

The Hon. *Mr. P. S. Sivaswami Ayyar* for third to seventh respondents.

K. S. Ramaswami Sastri for second respondent.

JUDGMENT.—On the authority of the judgment of the Privy Council in *Webb v. Macpherson*(1) which is since the decision of the lower Appellate Court in this case, we must hold that the District Judge was wrong in his view that the case was governed by article 111 of the schedule to the Limitation Act. It is pointed out in the judgment of the Privy Council that the charge which a vendor obtains under section 55 of the Transfer of Property Act is different in its origin and nature from the vendor's lien given by English Courts of Equity to an unpaid vendor. The charge in the present case is not the vendor's lien contemplated by article 111, but the statutory charge which arises by virtue of the

(1) I.L.R., 31 Calc., 57.

provisions of section 55 of the Transfer of Property Act. The article applicable is article 132 and not article 111 and the suit is not barred by limitation. It was argued by the respondents that if this be the right view, no case could arise to which article 111 would be applicable. This may or may not be so. For the purpose of the present case it is enough for us to hold that the period of limitation in this case is twelve years from the date of the sale. Having regard to the decision of the Privy Council it would seem that *Natesan Chetti v. Soundararaja Ayyangar*(1), *Avuthala v. Dayumma*(2), and *Subrahmania Ayyar v. Poovan*(3), can no longer be regarded as binding authorities in so far as this point is concerned. We must set aside the decrees of the lower Courts. There will be the usual decree for sale for Rs. 900 with interest at six per cent. per annum from the date of plaint to the date of payment with proportionate costs out of the sale-proceeds of the properties in schedule B. The respondents will bear their own costs throughout.

RAMA-
KRISHNA
AYYAR
v
SUBRAH-
MANIA
AYYEN.

The time for payment will be three months from this date.

APPELLATE CIVIL.

Before Mr. Justice Boddam and Mr. Justice Moore.

UTHANDI MUDALI (FIRST DEFENDANT), APPELLANT,

v.

RAGAVACHARI AND OTHERS (PLAINTIFF AND DEFENDANTS
NOS. 2 TO 4), RESPONDENTS.*

1965.
December 13

Mortgage—Whether sale followed by agreement to reconvey amounts to—Contract creating personal right not transferable.

Three brothers sold certain properties by a duly executed sale-deed. The vendee, more than two months after the sale, executed an agreement in favour of one of them in the following terms:—

" You shall, on 29th January 1901, without obtaining from others and by your own earnings, pay me the sum of Rs. 350 and obtain the right of purchase from

(1) I.L.R., 21 Mad., 141.

(2) I.L.R., 24 Mad., 233.

(3) I.L.R., 27 Mad., 28.

* Second Appeal No. 1059 of 1903, presented against the decree of K. O. Manavedan Raja, Esq., District Judge of North Arcot, in Appeal Suit No. 2 of 1903, presented against the decree of M.R.Ry. V. Ranga Rau, District Munsif of Chittoor, in Original Suit No. 93 of 1901.