

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Bhashyam Ayyangar.

RAMAN NAIDU (THIRD DEFENDANT), APPELLANT,

1903.
March 17.

v.

BHASSOORI SANYASI AND OTHERS (PLAINTIFF AND DEFENDANTS
Nos. 4, 5 AND 6), RESPONDENTS.*

Revenue Recovery Act (Madras)—Act II of 1864, s. 59—Suit by person aggrieved by proceedings under the Act—Limitation—Wrongful sale by Revenue officer of property—Application of section.

Section 59 of the Revenue Recovery Act, which provides that nothing in that Act shall prevent parties deeming themselves aggrieved by any proceedings under the Act from applying to the Civil Court for redress, applies to a suit to cancel a revenue sale on the ground that a Revenue officer wrongfully sold the property in collusion with the purchaser. Such a suit must therefore be brought within the period of limitation specially provided by that section.

STIR to cancel a revenue sale of land and to recover the land. The sale was held on 14th June 1897 and was confirmed on 11th July 1897, and the present suit was filed on 13th July 1898, on the ground that the sale had been brought about by fraud on the part of the Revenue Inspector and third defendant, the purchaser.

The District Judge found that fraud had been proved, and set aside the sale.

Plaintiff preferred this appeal on the ground that the suit was barred by section 59 of the Revenue Recovery Act, 1864, which provides that a Civil Court shall not take cognizance of any suit instituted by persons deeming themselves aggrieved by proceedings under the Act unless such suit be instituted within six months from the time at which the cause of action arose.

P. R. Sundara Ayyar for appellant.

V. Krishnaswamy Ayyar for first respondent.

JUDGMENT.—In this case, the revenue sale was held on the 14th June 1897 and was confirmed on the 14th July 1897. The present suit for redress on the ground that the sale was brought

* Second Appeal No. 1174 of 1900, presented against the decree of J. H. Robertson, District Judge of Vizagapatam, in Appeal Suit No. 278 of 1899, presented against the decree of E. Hanumantha Row, District Munsif of Razam, in Original Suit No. 253 of 1898.

about by fraud on the part of the Revenue Inspector and the third defendant was brought on the 13th July 1898.

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The District Judge found that the fraud alleged was proved, and set aside the sale.

The appellant appeals on the ground that the suit not having been brought within six months from the date of confirmation of sale was barred by section 59 of the Madras Revenue Recovery Act, 1864. We think that the appeal is well founded.

It is contended for the respondent that, as a tender of the arrear was made before the sale took place and was fraudulently not accepted, there was no default in payment of the revenue and the Revenue officers had no jurisdiction to proceed under the Act, and that therefore the provisions of the Act, including section 59, had no application and the only law of limitation is the general law, article 12 of schedule 2 of the Limitation Act, which allows one year.

Under section 6 of the Limitation Act, any period of limitation prescribed by special or local law is not affected by anything contained in that Act (*Venkata v. Chengadu*(1)). The only question therefore is whether section 59 applies to a suit for redress sought upon the facts stated above. The facts alleged as the ground for impeaching the sale do not show that the Revenue officer had no jurisdiction to proceed under Act II of 1864, and to bring the property to sale, as in the case of *Raman v. Chandan*(2), but that he ought not to have exercised his jurisdiction to sell as the arrears were tendered in due time and he ought to have abstained from selling the property.

The suit is one for obtaining redress because the Revenue officer, instead of stopping the sale, wrongfully sold the property in collusion with the purchaser. This is clearly a suit which falls within the terms of section 59, and to which the special period of limitation prescribed in that section applies.

We set aside the decree of the lower Appellate Court and dismiss the suit with costs throughout.

(1) I.L.R., 12 Mad., 168.

(2) I.L.R., 15 Mad., 219.