

APPELLATE CIVIL.

Before Sir Owen Beasley, Kt., Chief Justice, and
Mr. Justice Bardswell.

1933,
February 23.

DEGAPUDI PULLA REDDI (PETITIONER), APPELLANT,

v.

RABALA PATTABHIRAMI REDDI AND TWO OTHERS
(RESPONDENTS), RESPONDENTS.*

Limitation Act, Indian (IX of 1908), sec. 18—Scope of—Execution sale—Confirmation of—Setting aside of—Application by judgment-debtor under O. XXI, r. 90, and ss. 47 and 151 of Code of Civil Procedure for—Applicability of sec. 18 of Limitation Act to—Fraud alleged not of decree-holder but of auction-purchaser.

The words of section 18 of the Limitation Act are sufficiently wide to include any person whose fraud has kept from the knowledge of another person his right to institute a suit or make an application.

Held, accordingly, that section 18 of the Limitation Act applied to an application put in by a judgment-debtor under Order XXI, rule 90, and sections 47 and 151 of the Code of Civil Procedure to set aside the confirmation of an execution sale even where the fraud alleged was not of the decree-holder but of the auction-purchaser.

APPEAL against the order of the District Court of Nellore, dated the 17th day of December 1930 and made in Execution Application No. 215 of 1928 in Original Suit No. 22 of 1924.

P. V. Rajamannar for appellant.

B. Somayya for respondents.

JUDGMENT.

BEASLEY C.J. BEASLEY C.J.—The facts out of which this appeal arises are as follows:—The judgment-debtor is the appellant and a decree in Original Suit No. 22 of 1924 which was a suit upon a promissory note was passed against him. His property was brought to sale in

* Appeal against Order No. 241 of 1931.

execution of the decree and was purchased by the third respondent in the sale held on 11th July 1927. It is alleged that this purchase by the third respondent was benami for respondents 1 and 2, the decree-holders. On the 13th August 1927, the sale was confirmed and then on the 9th July 1928 the appellant under Order XXI, rule 90, and sections 47 and 151, Civil Procedure Code, put in an application to set aside the confirmation of that sale. This application had to be made within thirty days and clearly, but for section 18 of the Limitation Act, if it is to be applicable to this case, was barred. The appellant alleged that his application was not barred by reason of the fact that he only discovered the fraud within the thirty days of the making of the application and that under section 18 of the Limitation Act time does not run until the fraud is discovered. Hence the appellant alleged that his application to set aside the confirmation of the sale was not barred.

The question before us now is whether section 18 of the Limitation Act applies to the case where a person alleges the fraud not of a decree-holder but of some other person, a party to the sale, such as the auction-purchaser here. In the lower Court the application was dismissed *in limine* because the Court held that section 18 of the Limitation Act does not apply to auction-purchasers. Upon this point there has been no decided case at all except *Azizannessa v. Dwarika Prasad Boral*(1), a decision of a Bench of the Calcutta High Court consisting of CHOTZNER and GRAHAM JJ. In that case this question directly arose. Beyond that decision there is no decision at all upon the point although in *Mohendro Narain Chaturaj v. Gopal Mondul*(2), *Kailash Chandra Haldar v. Bissonath Paramanic*(3) and *Nabinchandra Haldar v. Bapin Chandra Haldar*(4)

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(1) (1924) 86 I.C. 745.

(3) (1896) 1 C.W.N. 67.

(2) (1890) I.L.R. 17 Cal. 769.

(4) (1925) 87 I.C. 555.

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there are observations which support the argument put forward on behalf of the appellant before us to-day. But since in those cases this question exactly did not arise, they are mere observations although very useful ones. So far as this High Court is concerned, there is no reported decision upon the question. What we have got to consider here is whether the words of section 18 of the Limitation Act are sufficiently wide to include any person whose fraud has kept from the knowledge of another person his right to institute a suit or make an application. The words of the section are :

“ Where any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded, . . . the time limited for instituting a suit or making an application (a) against the person guilty of the fraud or accessory thereto, . . . shall be computed from the time when the fraud first became known to the person injuriously affected thereby.”

If the words of the section are to be followed, then any person whose fraud has kept from another person the knowledge of his right to institute a suit or make an application is within the provisions of that section. There has been no discussion of the merits of the case in the lower Court. But it seems to me that, if the appellant here is able to show that the auction-purchaser in this case committed such a fraud as brought about the circumstances which appear in the first part of the section, then his application to have the confirmation of the sale set aside is not barred because time would run only from his discovery of such fraud. For these reasons, this appeal must be allowed with costs and the case remitted to the lower Court for disposal according to law.

BARDSWELL J.—I agree.