

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Ghose.

GOBIND CHUNDR A MAJUMDAR (JUDGMENT-DEBTOR) v. UMA CHARAN SEN AND ANOTHER (DECREE-HOLDERS).*

1887
July 21.

Civil Procedure Code (Act XIV of 1882), ss. 311, 312—Sale in execution, Application to set aside—Limitation Act (XV of 1877), s. 18, and Sch. II, Art. 166—Fraud.

An application under s. 311 of the Civil Procedure Code to set aside a sale cannot be made after the expiry of thirty days from the date of such sale and after such sale has been confirmed, even though it be alleged that the sale was fraudulently kept from the knowledge of the applicant until after such confirmation.

Semble, that if before such sale had been confirmed an application had been made, although after thirty days from the date of the sale the Court would possibly have been justified in granting the application and extending the period of limitation if sufficient cause under s. 18 of the Limitation Act were made out.

THIS was an appeal from an order refusing to set aside a sale in execution of an *ex parte* decree.

On the 22nd December, 1886, one Gobind Chundra Majumdar (judgment-debtor) applied under the provisions of s. 311 of the Code of Civil Procedure to set aside a sale held on the 21st September, 1886, which sale had already been confirmed on the 20th November, 1886. It was alleged by the applicant that the purchaser and the decree-holder had fraudulently kept him in ignorance of the sale until the 17th December, 1886, and that therefore he was entitled to make the application at any time within thirty days from the discovery of this fraud. The Munsiff held that the application was barred under Art. 166 of Schedule II of the Limitation Act, and that s. 312 of the Civil Procedure Code did not admit of any such application after the sale had been confirmed. The judgment-debtor appealed to the High Court.

Baboo *Guru Dass Banerjee* (with him Baboo *Srinath Das*, Baboo *Rash Behari Ghose* and Baboo *Troylokhonath Mitter*), for the appellant contended that, the sale having been fraudulently

* Appeal from Order No. 88 of 1887, against the order of Baboo L. K. Bose, Rai Bahadur, Munsiff of Goalundo, dated the 26th of February, 1887.

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concealed from his client until the 17th December, he was entitled to the benefit of s. 18 of the Limitation Act, and that therefore the application was not barred.

Baboo *Grija Sunkur Mozoomdar* for the respondents,

The judgment of the Court (PETIERAM, C.J., and CHOSE, J.) was as follows:—

This appeal arises out of an application made by the appellant before us on the 22nd of December, 1886, under the provisions of s. 311 of the Code of Civil Procedure, to set aside a sale which had been held on the 21st of September, 1886. This sale was confirmed on the 20th November, 1886, and the application that was made to the lower Court to set it aside has been refused upon the ground that it is barred by limitation under Art. 166 of the second schedule of the Limitation Act. It appears to us that the view taken of the matter by the lower Court is right. The sale in question having taken place on the 21st September, 1886, it was open to the judgment-debtor to apply to the Court to set it aside upon the grounds mentioned in s. 311 within thirty days from the date of the sale, that being the period prescribed by Art. 166 of the second schedule of the Limitation Act. If such an application had been made within thirty days it would have been the bounden duty of the Court to entertain it and to determine whether or no there were sufficient grounds within the meaning of s. 311 to set aside the sale. But no such application was made; and it became the duty of the Court to confirm, as it did confirm, the sale under s. 312 of the Procedure Code. The present application was not made until some time after, and therefore it would be barred under Art. 166 of the Limitation Act already referred to. But then it is contended by Baboo Guru Dass Banerjee that, under s. 18 of the Limitation Act, his client is entitled as a matter of right to an extension of time, because the main ground of the application was, and is, that the decree under which the sale took place and all the proceedings taken in execution of that decree are fraudulent, and that his client is, therefore, entitled to thirty days from the time when he, for the first time, became aware of a fraud having been practised upon him. It appears to us that this contention cannot be maintained. Section 18 of the Limitation

Act, so far as it bears upon this case, could not be invoked in favor of the applicant after the sale had been confirmed. If, before the sale was confirmed, an application had been made, although after thirty days from the date of the sale the Court would possibly be justified in granting the application and extending the period of limitation if sufficient cause under s. 18 of the Limitation Act were made out. But, as I have already said, the sale was confirmed under s. 312 on the 20th November, 1886, no application having been made to set it aside; and it, therefore, appears to us that no application could be entertained under s. 311 of the Code. If the sale was really a fraudulent sale it is open to the judgment-debtor to bring a suit to set it aside upon the ground of fraud; but we are not concerned with that matter on the present occasion. All that we have to consider is whether the application that was made to set aside the sale under s. 311 is within time; and we are of opinion that it is not. We are informed that an application has been made by the decree-holder to set aside the decree itself upon the ground of fraud, and that the said application has been allowed, but that the order passed in that matter is now the subject of an appeal to a higher Court. If it be found that the decree has been fraudulently obtained, the decree-holder in the present case being the purchaser at the sale, there will be no difficulty in the way of the present applicant getting back his property; but, perhaps, it is not necessary in this case for us to express any opinion upon the subject.

The appeal will be dismissed. We make no order as to costs.

T. A. P.

Appeal dismissed.

Before Mr. Justice Tottenham and Mr. Justice Norris.

RAM NARAIN DUT (PLAINTIFF) v. ANNODA PRASAD JOSHI AND OTHERS (DEFENDANTS). *

1887
June 10.

Multifariousness—Misjoinder of causes of action—Misjoinder of parties.

The plaintiff, a talukdar, obtained a decree under s. 52 of the Rent Act (Bengal Act VIII of 1869) to eject his tenant for arrears of rent and to obtain

* Appeal from Appellate Decree No. 2400 of 1886, against the decree of Baboo Mohendro Nath Mitter, Subordinate Judge of Burdwan, dated the 13th of August, 1886, reversing the decree of Baboo Debendra Lal Shome, Munsiff of Burdwan, dated the 17th of July, 1885.