

1898.

MURIGEYA

v.
HAYAT
SAHEB.

in the case between the same parties reported at I. L. R., 10 Bom., p. 34, though it deals with other lands of the *math* is applicable to these lands, the title to which rests upon exactly the same basis. The decision of the Subordinate Judge in this case is undoubtedly correct, and it is only by a clear error of law that the Assistant Judge has come to a different finding.

We reverse the decree of the lower appellate Court and restore that of the Court of first instance, with costs throughout on the respondents.

Decree reversed.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

GOVIND (ORIGINAL PLAINTIFF), APPELLANT, v. GANGAJI
(ORIGINAL DEFENDANT), RESPONDENT.*

1898.

March 22.

Limitation Act (XV of 1877), Sch. II, Art. 138—Article applicable to suits by assignees of auction-purchaser—Assignee of auction-purchaser.

Article 138 of the Limitation Act (XV of 1877) is not limited to suits by the auction-purchaser himself but applies also to suits by his assignees.

Limitation runs from the date of the sale.

Mohima Chunder v. Nobin Chunder⁽¹⁾ dissented from.

SECOND appeal from the decision of Ráo Bahádur Thakurdas Mathuradas, Assistant Judge of Ratnágiri.

The defendant Gangaji Anaji Ghane was the owner of certain land which was sold on the 5th March, 1884, in execution of a decree obtained against him. It was purchased by one Atmaram Janardhan Desai.

The sale was confirmed on 30th May, 1884, but Atmaram was not put into possession.

On the 19th July, 1890, Atmaram sold his rights as auction-purchaser to the plaintiff.

On the 29th May, 1896, plaintiff filed the present suit to recover possession of the land from defendant.

The Court of first instance dismissed the suit as barred by limitation under article 138, Schedule II, of Act XV of 1877, as

* Second Appeal, No. 1187 of 1897.

⁽¹⁾ (1895) 23 Cal., 49.

the suit was filed more than twelve years after the date of the court-sale (5th March, 1884).

This decision was upheld, on appeal, by the Assistant Judge. His reasons were as follows:—

“The question is whether the period of limitation is to be counted from the date of sale under article 138 of Schedule II of the Limitation Act, 1877, or from the date of the confirmation of the sale, that being the date on which the plaintiff alleges that his vendor became entitled to get possession of the property in suit. Neither the plaintiff nor his vendor was ever put into possession of the property under the sale-certificate, and the possession has all along remained with the judgment-debtor, *viz.*, the defendant. In the case of *Mohima v. Nobin* (I. L. R., 23 Cal., 49) the Calcutta High Court held that the period was to be computed, in a case like this, from the date of the confirmation of the sale, the suit not being by an auction-purchaser, but by an assignee from him. On the other hand, the Madras High Court held that the period was to be calculated from the date of the sale under article 138—*Arunuga v. Chockalingam* (I. L. R., 15 Mad., 331). In the opinion of the Calcutta High Court, the assignee of the auction-purchaser became first entitled to possession when the sale was confirmed and the period of twelve years was to be counted from that date under article 136. With every respect for the Judges who decided the case of *Mohima v. Nobin*, I am of opinion that there is no reason why article 138 should apply to the auction-purchaser and article 136 to his assignee suing for possession. I think both should be governed by article 138, and hold that the suit is barred.”

Against this decision plaintiff preferred a second appeal to the High Court.

V. G. Bhandarkar, for appellant.

There was no appearance for the respondent.

PARSONS, J.:—We prefer the decision of the Madras High Court, *Arunuga v. Chockalingam*⁽¹⁾, to that of the Calcutta High Court, *Mohima Chunder v. Nobin Chunder*⁽²⁾. We think that the learned Judges of the latter Court construed the article (138) of the Limitation Act too strictly when they held that it was limited to suits by the purchaser himself and did not apply to suits by his assignees. We can see no valid reason why it should not include his assignees, who stand in his shoes and ordinarily have, as such, no rights greater than that possessed by him. The same line of reasoning apparently would exclude his heirs also. We dismiss the appeal.

(1892) 15 Mad., 331.

(2) (1895) 23 Cal., 49.