

1868
July 3.

Before Mr. Justice Kemp and Mr. Justice E. Jackson.

GOPAL CHANDRA DEY v. PEMU BIBI.*

*Limitation Act (XIV of 1859), s. 10—Fraud—Act VIII. of 1859, s. 206—
Regulation VII. of 1799.*

See also
Act XV. of
1877—2nd
Sched. 95.

A. sold a decree obtained by him under Regulation VII. of 1799 to B., but after the sale realized the decree from the judgment-debtor. On application by B. for execution, on 2nd January 1862, the fraud was discovered, and B. was referred by the Collector to the Civil Court. On 2nd October 1866, B. brought his suit for recovery of his purchase-money from A. *Held*, that the period of limitation ran from the discovery of the fraud. The suit was not barred.

Section 206 of Act VIII. of 1859 does not apply to decrees under Regulation VII. of 1799.

On the 2nd of October 1866, the plaintiff instituted this suit, for recovery of the consideration-money paid by him to defendant, on the 25th of Kartik 1265 (November 1858) for the purchase of a decree obtained by defendant against one Debi Charan Dey. The defendant, it appeared, had realized the amount of the decree, and in consequence thereof the Collector in whose Court an application was made to execute the decree, on the 2nd January 1862, refused to do so, and referred the plaintiff to his remedy in the Civil Court.

The defendant contended *inter alia* that the plaintiff's claim was barred by limitation.

The Moonsiff held that the cause of action arose from the date of the Collector's order, and as the suit was not based on contract, the period of limitation was not three years but six years, according to clause 16, section 1 of Act XIV. of 1859. He further held, that it was proved that the defendant did realize the amount of the decree from the judgment-debtor, and gave a decree for the plaintiff.

On appeal the Judge held, that the suit was barred; that any payment made to the defendant was illegal, and could not give the plaintiff a cause of action for a refund of the purchase-money. The alleged payment was illegal as made out of Court,

Special Appeal, No. 222 of 1868, from a decree of the Judge of West Bardwan, reversing a decree of a Moonsiff of that district.

and not communicated to the Court. He, therefore, dismissed the plaintiff's suit.

1363

GOPALCHANDRA
DEB DEY
v.
PEMU BIBI.

The plaintiff appealed.

Baboo *Ananda Chandra Ghosal*, for the appellant, contended, that limitation did not run from date of the purchase, inasmuch as plaintiff could not have sued defendant for the amount without endeavoring to execute the decree against the judgment debtor ; that the cause of action accrued from the discovery of the fraud of the defendant in realizing the amount after sale to plaintiff ; that the payment to defendant of the amount of the decree was not illegal because made out of Court, inasmuch as section 206 of Act VIII. of 1859 did not apply to adjustment of a decree under Regulation VII. of 1799.

Baboo *Kali Krishna Sen*, for respondent, contended, that the case had not been tried on its merits.

The Judgment of the Court was delivered by

KEMP, J.—The decision of the Judge in this case is clearly wrong. The plaintiff's cause of action did not arise from the date of his purchase of the decree, but from the date of the order of the Collector referring him to a civil suit, or to such remedy as he might think proper. Moreover the conduct of the defendant being fraudulent, the period of limitation would run from the time of the discovery by the plaintiff of such fraud. The suit was well within time from that date.

On the merits, section 206 of Act. VIII. of 1859 has nothing to do with this case, which is a case under Regulation VII. of 1799. The defendant, after selling to the plaintiff his rights in the decree obtained under the above Regulation, and after substituting the plaintiff's name in his place as decree-holder, fraudulently received from the judgment-debtor certain monies under that decree, subsequent to the sale by him to the plaintiff. The plaintiff is, therefore, entitled to recover the amount claimed in the suit. The decision of the Judge is reversed, and the decision of the Court of first instance, which is correct in all respects, confirmed with costs in all the Courts.