

## Appellate Jurisdiction (a)

*Special Appeal No. 395 of 1868.*

RAMASAWMY MUDALI.....*Special Appellant.*

VALAYUDA MUDALI *alias* } *Special Respondent.*  
AIYATHORAY MUDALI... }

In a suit to recover from the defendant the amount of purchase money paid by the plaintiff upon a sale to him of certain land by the defendant's father and the costs incurred by the plaintiff in defending his title to the property against a prior purchaser for the same land from the defendant's father.

*Held*, that the period of limitation was six years.

*Held* also, that the cause of action arose on the discovery of the fraud upon the plaintiff and that there was knowledge of the fraud at all events in October 1859, the date of the judgment of the Civil Court affirming the title of the prior purchaser, notwithstanding the presentation of an appeal from that decision, and notwithstanding that the plaintiff remained in possession of the land until 1861.

The present suit, having been brought more than six years after the judgment of the Civil Court, was held to be barred.

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THIS was a Special Appeal against the decision of E. F. Elliott, the Acting Civil Judge of Tranquebar, in Regular Appeal No. 297 of 1869, reversing the decree of the Court of the Principal Sadr Amin of Tranquebar in Original Suit No. 75 of 1865.

*Synjiva Row*, for the special appellant, the defendant.

*Snell*, for the special respondent, the plaintiff.

The suit was brought for the recovery of rupees 6,318-12-11, being the amount of a deed of sale, as well as the costs of suit incurred by the plaintiff.

The plaint stated that the defendant's late father received from the plaintiff rupees 2,500, the value of 14 valies, 8 maws and 52½ gulies of nunjah, purjah lands, &c, belonging to him, and sold them to him by virtue of a deed of sale dated the 30th July 1856; that, nevertheless, one Sevarama Sastry fabricated a bill of sale as if the same lands had been sold to him by the defendant's father on a previous date, and instituted the Suit No. 44 of 1856 on the file of the late Mahomedan Sadr Amin of Combaconum against him (plaintiff) and the defendant's father, and notwithstanding

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the latter's admission of both the sales, the Appellate Court gave preference to the sale to Sevarama Sastry in its decision in Appeal Suit No. 644 of 1857, and this decision was upheld by the late Sadr Court in Special Appeal Suit No. 33 of 1860 on the 15th December of the same year, and that he (plaintiff) is reasonably entitled to the purchase money as well as the costs incurred by him in those suits, the fraudulent acts of the defendant's father having deprived him of the lands.

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Defendant, in his answer, relied upon the Statute of Limitation and denied the plaintiff's right to recover upon other grounds.

The Principal Sadr Amin dismissed the suit. Upon the question of limitation his finding was as follows:—

It is seen by the decree (C) of the late Sadr Court that the former suit, in which the plaintiff had specially appealed, was finally decided by them on the 15th December 1860, or five years previous to the date of this action, namely, the 16th December 1865, and by the execution records therewith connected, that he was not dispossessed of the lands alleged to have been sold to him, until the latter end of the year 1861,—therefore the action based upon the bill of sale A which in my opinion falls under Clause 16, Section 1, Act XIV of 1859, by which six years are allowed, is not affected by the Statute of Limitation.

The plaintiff appealed, and the Civil Judge, reversing the decision of the Principal Sadr Amin, decreed for the plaintiff for the amount sued for. He held that the suit was not barred because the date of the cause of action was the appeal decision of the late Sadr Court, exhibit C, dated 15th December 1860.

The defendant appealed specially to the High Court upon the ground that the suit was barred by the Statute of Limitation.

The Court delivered the following

JUDGMENT:—This is a suit to recover rupees 2,500, being the price paid to the defendant's father on the execution of a deed of sale by him of certain family land

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together with interest and an amount of costs incurred in defending the plaintiff's right as purchaser. The Civil Court, reversing the decree of the Principal Sadr Amin's Court, has decreed to the plaintiff the amount claimed; and the grounds of appeal relied upon are that the suit was barred by the Act of Limitations, but if not, that the plaintiff is not entitled to recover either the interest on the purchase money or the costs claimed.

The material facts, according to the findings of the Civil Court, are that the plaintiff became *bona-fide* the purchaser of the land in 1856 and paid the purchase money and was at once put in possession by the defendant. Very soon after, a suit (No. 44 of 1856) to eject the plaintiff was brought in the Principal Sadr Amin's Court of Combaconum by Sevarama Sastry claiming under an instrument of sale executed by the defendant's father prior to the date of the sale to the plaintiff. In that suit the defence of the plaintiff was that the property had been sold and transferred to him, and the consideration paid 10 or 15 days before the execution of the deed of sale to Sevarama, but the defendant's father, who was also a defendant, pleaded that the sale to Sevarama had become ineffectual by reason of non-payment of the consideration money in full, that the property had been subsequently sold to the present plaintiff and he too had made default in payment of a portion of the consideration money whereby the sale had been invalidated. The decree in the suit was adverse to the plaintiff Sevarama in the Court of First Instance, but on appeal to the Civil Court that decree was reversed and a decree passed on the 11th October 1859 adjudging his right as vendee to the possession of the land, which was affirmed on the 15th December 1860 by the late Sudr Court. The plaintiff remained in possession of the property during the litigation and was not ejected by process of execution until late in 1861, and on the 16th December 1855 he instituted the present suit.

With respect to the bar of the suit two points have been raised for consideration, first, the period of limitation applicable to the suit, second, the time at which the cause of action arose. On the first point it has been argued for

the appellant that the defendant's sole liability was for a breach of the contract of sale, and consequently that the period of limitation was three years under Clause 9, Section 1 of the Act of Limitation. But that argument, we think, is not maintainable. There are terms in the deed of sale which amount perhaps to a contract for the quiet enjoyment of the property under it, and it may be that the law implied a warranty on the part of the defendant that he had the title which he professed to sell, and that a suit would have lain for the breach of one or other contract. But we give no opinion as to either liability, and will only add that the question of an implied warranty in such a case is a doubtful one, requiring a careful consideration of the different rules of English Law applicable to sales of realty and personalty.

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Assuming a breach of contract for which the plaintiff might have sued, that was clearly not his sole cause of action. The concealment and deception practised by the defendant on the execution of the deed purporting to transfer the title to the property amounted to legal and moral fraud which was of itself a ground of suit for the recovery back of the purchase money paid, and the record shews that the suit was brought and has been determined on that ground. It follows that the period of limitation applicable to the case is six years under Clause 16, Section 1 of the Limitation Act.

Then as to the second point on which the question of the bar depends. Section 10 of the Act provides that in cases founded on fraud "the cause of action shall be deemed to have first arisen at the time at which such fraud shall have been first known by the party aggrieved." Now the record certainly does not enable the Court to decide that the plaintiff's knowledge or means of knowledge before the judgment of the Civil Court in 1859 warranted more than a belief that there had been a transaction of sale with Sevarama which had come to nought, and that the property in consequence had been left in the enjoyment of the defendant, nor is any further inquiry in that respect necessary. Undoubtedly the judgment

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and decree of the Civil Court made known to the plaintiff in the most decided manner the fraud on which the suit is based, and more than six years from the date of that decree had elapsed when this suit was instituted. The period of limitation began to run at all events upon the passing of that decree, and no provision of the law warrants the exclusion of any portion of the subsequent time during which the plaintiff was permitted to hold possession of the property. The appeal from the decree was a voluntary proceeding taken at the plaintiff's own risk. For these reasons we are of opinion that the suit was barred by Clause 16, Section 1, of the Act of Limitation.

The decree of the Civil Court must therefore be reversed and the suit dismissed. The defendant's costs in this and the Lower Courts must be paid by the plaintiff.

### Appellate Jurisdiction. (a)

*Regular Appeal No. 51 of 1868.*

N. CHANDVASEKHARUDU, and another... *Appellants.*

N. BRAMHANNA, being a minor, his }  
 father CHINNA JAGANNADHAM... } *Respondent.*

A widower can make a valid adoption according to Hindu Law.

*Semle*, the Hindu Law does not prohibit an adoption by a man who has not been married.

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**T**HIS was a Regular Appeal against the decree of E. B. Foord, the Civil Judge of Berhampore, in Original Suit No. 24 of 1867.

*Sloan*, for *Snell*, for the appellants (the 1st and 2nd defendants.)

*Sanjiva Row*, for the respondent (the plaintiff.)

The facts appear in the following

JUDGMENT:—This is an appeal from the decree of the Civil Court of Berhampore adjudging the right of the plaintiff as an adopted son to recover from the 1st and 2nd defendants possession of a portion of the land claimed in

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