

1878
 HERRA LALL
 PRAMANICK
 v.
 BARIKUNNISSA
 BIBER.

The judgment of the High Court will, therefore, be reversed, and the judgment of the District Court restored with costs in both Courts.

Appeal allowed.

Before Mr. Justice L. S. Jackson and Mr. Justice Cunningham.

1878
 Feby. 26.

CHUNDER NATH CHOWDHRY (PLAINTIFF) v. TIRTHANUND
 THAKOOR AND ANOTHER (DEFENDANTS).*

*Suit for Possession—Fraud—Limitation Act IX of 1871, sched. ii, art. 95—
 Sale for Arrears of Government Revenue.*

Art. 95 of second Schedule to Act IX of 1871 was not intended to apply to suits for possession of immoveable property when fraud is merely a part of the machinery by which the defendant has kept the plaintiff out of possession. That article has reference to cases where a party has been fraudulently induced to enter into some transaction, execute some deed, or do some other act, and desires to be relieved from the consequences of such act.

THIS was a suit for possession of certain lands. One Juggadanund, the paternal grandfather of the plaintiff, and Nobo Kishore, were uterine brothers, and were jointly entitled to the property in question. On the death of Nobo Kishore, his widow Annopoorna Chowdrain became entitled to a life-interest in her husband's share of the joint estate. On the 24th Bysakh 1269 B. S. (6th May 1862) Annopoorna Chowdrain granted to one Kharoo Lall Thakoor, the father of the first and second defendants, a patni lease of the property in dispute, in which she was jointly entitled with Gournath Chowdhry, the father of the plaintiff. A dispute took place, and the Collector made a settlement with Gournath and Annopoorna as widow of Nobo Kishore. Gournath Chowdhry thereupon brought a suit contesting the validity of the patni lease, and by a decree of the 7th August 1867, it was declared the patni lease should enure only during the lifetime of the widow. Subsequently, on execution of a money-decree obtained against Annopoorna Chowdrain, the right, title, and interest of the judgment-debtor in the lands in

* Special Appeal, No. 1052 of 1877, against the decree of J. D. Ward, Esq., Judge of Zilla Purneah, dated the 5th April 1877, affirming the decree of S. Wright, Esq., Subordinate Judge of that district, dated the 10th January 1877.

dispute were purchased by Koomar Ali, a mooktear. Again, in execution of another money-decree obtained against Gournath Chowdhry, the first defendant caused to be sold, and himself purchased, the reversionary right of the judgment-debtor to the property in which Annopoorna Chowdrain enjoyed a life-interest. Annopoorna Chowdrain survived Gournath Chowdhry, and on her death on 21st February 1869, Kharoo Lall, the father of the defendants, who had for some time previous been in sole possession of the property in dispute, made default, it was alleged through fraud, in the payment of Rs. 33 due as Government revenue. At the Government sale the lands were purchased by one Shib Persaud, the third defendant, and a cousin of the other defendants. The plaintiff's allegation being that such purchase was in reality made on behalf of the defendant himself. He, accordingly, brought this suit as heir and reversioner under the Hindu law after the death of Annopoorna, against Tirthanund Thakoor, his younger brother, and Shib Persaud. The first two filed a joint written statement, and the third defendant, a separate one. In both written statements it was contended that third defendant was an independent person distinct from the other defendants, and had purchased the property for himself. They further urged that as the sale had been for arrears of Government revenue it could not be impeached. It further appeared that, when default was made in payment of the Government revenue, the plaintiff had come forward to pay the same, but the Collector refused to receive it. The Court of first instance dismissed the suit on the ground that the claim was barred, inasmuch as the plaint under art. 95, sched. ii of Act IX of 1871 had not been filed within three years of the discovery of the alleged fraud. The lower Appellate Court dismissed the appeal, holding that the Government sale was a bar to all further suits.

The plaintiff now filed a special appeal to the High Court.

Baboo *Kalimohun Dass* (with him Baboo *Juggodanund Mookerjee*) for the appellant.

Baboo *Gopal Lall Mitter* (with him Baboos *Chundermadhub Ghose*, *Hemchunder Banerjee*, and *Taraknath Sen*) for the respondents.

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NATH
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The judgment of the Court was delivered by

JACKSON, J. (who, after stating the facts of the case as above, and having observed that there could be no doubt that the purchase by Koomar Ali was made on behalf of the first defendant, and that Annopoorna having survived Gournath, the purchaser of the latter's reversionary right took nothing, proceeded as follows):—

Both the Courts below have dismissed the suit. The Judge in the third paragraph of his judgment says:—"It is quite unnecessary to go at length into the questions of limitation which the Subordinate Judge has discussed; it seems to me that the revenue sale, as a bare fact by itself, utterly bars the suit. In the first place, when it occurred it may be doubted whether Kristanund was the person responsible for the revenue, for he was merely Annopoorna's patnidar, and at the instance of the father of the plaintiff, a competent Court had declared that the patni title would only last for Annopoorna's lifetime. According to plaintiff's own allegation, she died on 21st February 1869, and the plaintiff himself was therefore rightful reversioner in 1870, when the sale took place, and the arrear fell due. But be this as it may, there is no sort of privity as between joint holders for paying their shares of the revenue of an estate; and whatever may have been Kristanund's motives, I do not think his right to default can be questioned. The plaintiff had every right and chance of coming forward and looking after himself."

The Judge has omitted to notice that, in the first place, this property was unquestionably in the hands of Kharoo Lall, father of the defendant Tirthanund, at the time of Annopoorna's death. He also has forgotten that, on the occurring of the default, when the property was sold, the plaintiff came forward and asked to be allowed to put in the Government revenue and have the sale stayed, which, for what reason it is difficult to understand, the Collector disallowed. Now it seems clear that if the plaintiff succeeded in proving that the principal defendant's father had committed default in the payment of the Government revenue with the view of bringing the property to be purchased

in the name of Sib Persaud for his own benefit, that would be such a fraud as would entitle plaintiff to the assistance of the Court, and the property ought to be reconveyed to the plaintiff. But then it is said that if the plaintiff's suit was brought on that ground, he ought to have come in, under art. 95 of the second schedule to the now repealed Limitation Act, within three years from the date of the fraud being known to the party wronged. It seems to me that that article does not apply to a case like the present. That article has reference to cases where a party has been fraudulently induced to enter into some transaction, execute some deed, or do some other act, and desires to be relieved from the consequences of those acts. In such a case he is bound to bring his suit within three years from the time when the fraud becomes known to him. In the present case, the fraud in question is merely a part of the machinery by which, if the plaintiff's case is true, the defendants have kept the plaintiff out of possession of a property to which he became entitled at the death of the widow Annopurna. Becoming so entitled he was allowed by the usual Limitation Law twelve years from the date of his right accruing to begin his suit, and it certainly could not have been the intention of the legislature that, whereas in an ordinary case the plaintiff would be allowed twelve years to bring such a suit, his period would be cut down to three years, because, in addition to wrongful possession on the part of the defendants, there had been a gross and carefully concocted fraud. That article, consequently, does not apply to the present case. It seems to me, therefore, that the lower Courts ought to have enquired whether the facts have been as alleged by the plaintiff,—that is to say, whether Kharoo Lall, defendant Tirthanund's father, had allowed the arrears to fall due with the fraudulent intention of subsequent purchase, and whether Sib Persaud is really, as contended, no other than Tirthanund himself. A conclusion to which, I am bound to say, the facts of the case appear very strongly to point, and if that be so, the plaintiff, I think, was undoubtedly entitled to a verdict. The case, therefore, must go back to the lower Appellate Court in order that these questions may be tried.

1878

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Case remanded.