FULL BENCH.

Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, Mr. Justice Prinsep, Mr. Justice Ghose, Mr. Justice Harington and Mr. Justice Brett.

SATI PRASAD SEN

v.

JOGESH CHANDRA SEN.*

1904

March 18.

Limitation Act (XV of 1877) art. 136 and art. 138—Transferee of auction-purchaser—Possession—"Vendor," meaning of.

Art. 138 of the Limitation Act (XV of 1877) applies to the case of a person claiming through the auction-purchaser and not merely to the auction-purchaser alone.

The expression "vendor" in art. 136 means a vendor other than the auction-purchaser mentioned in art. 138.

Mohima Chunder Bhuttacharjee v. *Nobin Chunder Roy*(1) overruled.

REFERENCE to the Full Bench by Maclean C. J. and Geidt J.

The Order of Reference was in the following terms:—

"The plaintiff's vendor was an auction-purchaser at an auction sale held in certain execution proceedings on the 15th of March 1887, of the property now in dispute. The sale to the auction-purchaser was confirmed on the 26th of July 1887, and the present suit was instituted on the 22nd July 1899. At the date of the sale, the judgment-debtor was in possession of the property. A question of limitation now arises, the defendant contending that the plaintiff's suit is barred, and that question depends upon whether Article 136 or Article 138 of the second schedule of the Limitation Act applies. If Article 136 applies it has not been contested that the suit is just within time: if article 138 applies, the suit is barred.

In the case of *Mohima Chunder Bhuttacharjee* v. *Nobin Chunder Roy* (1), it was held by a Divisional Bench of this Court, in a case where the facts were substantially identical with the present, that Article 136 applied, and that the period of limitation commenced to run from the date when the vendor of the plaintiff first became entitled to possession, that is to say when the sale was confirmed, and consequently that the suit was not barred. That view has not been accepted either by

* Reference to Full Bench in Appeal from Appellate Decree No. 1797 of 1900.

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the High Court of Madras or by that of Bombay. In the case of *Arumuga* v. *Chockalingam*(1), it was held that Article 133 was applicable to a suit brought by the transferee of a purchaser of land at a Court sale, to obtain possession of the land and the same view was taken by the same High Court in the case of *Pullayya* v. *Ramayya* (2) and in the case of *Govind* v. *Gangaji* (3), it was also held that Article 138 and not Article 136 applied; and in the latter case, the view taken by the Madras High Court in the cases I have referred to was preferred to that of the Calcutta High Court. And incidentally, the latter case was again disapproved of in a subsequent decision of the Bombay High Court, *Gopal* v. *Krishna Rao* (4).

The inclination of my opinion is strongly in favour of the view expressed by the Madras High Court and the Bombay High Court, upon the short ground that the transferee from an auction purchaser cannot be for this purpose, in a better position than the auction-purchaser himself. The former stands in the latter's shoes, and Article 138 obviously applies to the case of an auction-purchaser when the judgment-debtor, as here, was in possession at the date of the sale. As at present advised, I am not disposed to adopt the view held by the Calcutta High Court.

There must be a reference to a Full Bench, and the question for determination is: whether, under the circumstances of the present case, Article 136 or Article 138 of the second schedule of the Limitation Act applies? As the question arises on a Second Appeal, the appeal must be referred, but it is admitted that the above is the only point which arises."

Babu Mohendro Nath Roy (*Dr. Ashutosh Mookerji* and *Babu Tara Kishore Chowdry* and *Sarashi Charan Mitter* with him) for the appellant. The construction placed upon Article 138 in *Mohima Chunder Bhuttacharjee* v. *Nobin Chunder Roy*(5) is erroneous. "Purchaser" in that article includes his heirs and transferee. Art. 138 applies to the present case. If art. 136 applied then the transferee would get the benefit of a longer period of limitation than the transferor. Art. 136 applies where the vendor's title has not been derived from an auction-purchaser. *Arumuga* v. *Chockalingam*(1), *Pullayya* v. *Ramayya*(2), *Govind* v. *Gangaji* (3) and *Gopal* v. *Krishna Rao* (4). Under art. 148 a mortgagee has been taken to include an assignee from a mortgagee; similarly "purchaser" in art. 138 should include "assignee from a purchaser."

Babu Golap Chundra Sarkar (*Babu Lal Mohun Das* and *Babu Prosunno Gopal Roy* with him) for the respondents. Art. 136

(1) (1892) I. L. R. 15 Mad. 331.
(2) (1894) I. L. R. 18 Mad. 144.
(3) (1896) I. L. R. 23 Bom. 246.
(4) (1900) I. L. R. 25 Bom. 275.
(5) (1895) I. L. R. 23 Calc. 49.

applies to the present case. No other article can apply without importing words into it, which are not there. An assignee has not necessarily the same period of limitation as the assignor. In *Ram Lakhi* v. *Durga Charan Sen*(1) and *Horendra Chundra Gupta Roy* v. *Aunoardi Mundul*(2) art. 127 has been construed in that way, so also s. 7 of the Limitation Act has been construed in the same way in *Rudra Kant Surma* v. *Nobokishore Surma*(3). Statutes of limitation are to be strictly construed. Maxwell on Interpretation of Statutes (2nd Ed.) p. 348. One article brings the case within the period, whilst the other, unless certain words are imported into it, excludes it. According to the rules of construction the former should be applied. In cases under section 317 of the Civil Procedure Code a similar construction has been put. *Mussumut Buhuns Kowur* v. *Lalla Buhooree Lall*(4) and *Lokhee Narain Roy Chowdhry* v. *Kalypuddo Bandopadhya*(5). In *Dukhoda Sundari* v. *Sreemuntha Joaddar* (6) a certified purchaser has been held not to include his heirs or assignee; see also the case of *Raj Chunder Chuckerbutty* v. *Dina Nath Saha*(7) under s. 36, Revenue Sale Law (Act XI of 1859).

Even if art. 138 be held to apply to this case, the period should run from the date of confirmation of sale. "Date of sale" means date of confirmation of sale. See *Matangini Chaudhurani* v. *Sreenath Das*(8) where it was held that the words "date of sale" in s. 169(1) cl. *c*. of the Bengal Tenancy Act means date of confirmation of sale. "Sale" means transfer of ownership; s. 77 of the Contract Act and s. 54 of the Transfer of Property Act; and ownership is not transferred, until there has been a confirmation of sale.

Babu Mohendro Nath Roy was not called upon to reply.

MACLEAN C.J. The question which has been referred is whether in the circumstances of the present case, Art. 136 or

(1) (1885) I. L. R. 11 Calc. 680.
(2) (1887) I. L. R. 14 Calc. 544.
(3) (1883) I. L. R. 9 Calc. 663.
(4) (1872) 14 M. I. A. 496, 527.
(5) (1875) L. R. 2 I. A., 154.
(6) (1899) 3 C. W. N. 657.
(7) (1898) 2 C. W. N. 433, 447.
(8) (1903) 7 C. W. N. 552.

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Art. 138 of the Limitation Act applies. There is a decision of this Court, *Mohima Chunder Bhuttacharjee* v. *Nobin Chunder Roy*(1) in favour of the view that Art. 136 applies, whilst there are decisions in the High Courts of Madras and Bombay to the opposite effect. I quite subscribe to the view enunciated by the learned vakil for the Respondent that, in construing the Limitation Act, we must construe it strictly; but in construing an Act such as the present, where there are a variety of articles dealing with a variety of particular cases, we must try so to construe those articles as to make them harmonious and consistent. It is contended for the Respondent that Art. 138 does not apply, because the auction-purchaser alone is mentioned, and not a transferee from him, and that the latter comes within the strict language of section 136. Undoubtedly the case of an auction-purchaser falls within Art. 138, and the question is, whether his assignee, who stands in his shoes, is not in the same position. I think he is: and that the expression "vendor" in Art. 136 means a vendor other than the auction-purchaser, mentioned in Art. 138. In this way, effect is given to both articles. It may be said that this construction necessitates the introduction into Art. 136 of words which are not there, but looking at Arts. 136, 137 and 138, and reading them together, I think that Art. 138 applies to the case of a person claiming through the auction-purchaser, and not merely to the auction-purchaser alone.

The result is that the appeal must be allowed and the suit dismissed with costs in all Courts, including the costs of this reference.

PRINSEP J. I am of the same opinion.

GHOSE J. I agree.

HARINGTON J. I agree.

BRETT J. I agree.

(1) (1895) I. L. R. 23 Calc. 49.