
(1912) 05 MAD CK 0006
In the Madras High Court

Balasubramanya Chetty

APPELLANT

Vs

Maruthamalai Gownden

RESPONDENT

Date of Decision : 02-05-1912

Acts Referred:

Citation : 16 Ind. Cas. 215

Hon'ble Judges : Ralph Benson, J;Ayling, J

Bench : Division Bench

Judgement

1. There can be no doubt that the suit as framed is one for the recovery of damages for fraud and, viewed as such, the District Munsif was right in

holding that it fell under Article 95 of Schedule I of the Limitation Act and was time-barred. The District Judge has in effect altered the frame of the

suit and elected to treat it as one for the recovery of the whole or a portion of the purchase-money on account of failure of consideration, thus

bringing it under Article 97 of the same Schedule. But, in so doing, he has overlooked the fact that such a suit would not lie, whereas in the present

case, the failure of consideration was only partial. It has been already laid down in *Sundara Gopalan v. Venkatavarada Ayyangar* 3 M.L.J. 293

and *Shanto Chandar Mookerjee v. Nain Sukh* (1901) A.W.N. 101 that the purchaser in Court auction can only sue for recovery of purchase-

money for partial failure of consideration on the ground of fraud. If fraud is alleged, the suit must, of course, be governed by Article 95.

2. The learned Vakil for the respondent has invited our attention to the Privy Council ruling in *Kala Mea v. Harperink* 6 A.L.J. 34: 9 C.L.J. 165: 5

L.B.R. 25. This, however, in no way, overrules the cases quoted above, which are not even referred to. The decision of their Lordships had no

reference to any question of limitation. They merely laid down the principle that an auction-purchaser could not be bound by a Court sale where he

had been misled on a vital point by the Court officers conducting it. We do not, for a moment, doubt that the plaintiff would have been entitled to

sue to recover the whole or a portion of his purchase-money on proof that the existence of an encumbrance had been concealed from him by the

decree-holder, but such a suit must be brought within the period of limitation prescribed by law--in this case Article 95.

3. The decree of the District Judge must be set aside and the suit dismissed, but, under the circumstances of the case, we direct each side to bear

its own costs throughout.