(1878) 02 CAL CK 0008

In the Calcutta High Court

Chunder Nath Chowdhry APPELLANT

Vs

Tirthanund Thakoor and Another RESPONDENT

Date of Decision : 26-02-1878

Acts Referred:

Citation : (1878) 02 CAL CK 0008

Hon'ble Judges : L.S. Jackson, J;Cunningham, J

Bench : Division Bench

Judgement

L.S. 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:

2. Both the Courts below have dismissed the suit. The ''fudge in the third paragraph of his judgment says: "It is quite unnecessary to go at length into the question 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 Kristammd 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 bad declared that the patni title would only last for Annopoorna''s lifetime. According to plaintiff''s own allegation, she died on 21st February 18(59, and tin 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 boon Kristanund''s motives, I do not think Ins right to default can be questioned. The plaintiff had every right and chance of coming forward and looking after himself."

3. 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. lie 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 bad committed default in the payment of the Government revenues with the view of bringing the property to be purchased in the name of Shib Persaud for his own benefit, that would bo such a fraud as would entitle plaintiff to the assistance of the Court, and the property ought to be reconvened 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 Article 95 of the second schedule to the now repealed Limitation Act, within throe 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 hound to bring his suit within three years from the time when the fraud becomes known to turn. 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 Annopoorna. Becoming so entitled ho was allowed by tire usual Limitation Law twelve years from the date of his right accruing to begin his suit, and it certainly could not have boon 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 Shib Versaud is really, as contended, no other than Tirthanund himselfa 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 hack to the lower Appellate Court in order that these questions may be tried.

