

(1912) 07 MAD CK 0059
In the Madras High Court

Kumaraswami Chetty

APPELLANT

Vs

Kamakshi Ammal and Others

RESPONDENT

Date of Decision : 22-07-1912

Acts Referred:

Citation : (1912) 23 MLJ 187

Hon'ble Judges : Sundara Aiyar, J;Sadasiva Aiyar, J

Bench : Full Bench

Judgement

Sundara Aiyar, J.—This is a suit for redemption. The plaintiff had instituted a previous suit for the same relief. It was found in that suit that the defendants had obtained a complete title to the property by a sale subsequent to the mortgage sought to be redeemed in the present suit. The plaintiff alleges that the previous decree was obtained by fraud because the decision proceeded on perjured testimony adduced by the defendants. The suit has, admittedly, been instituted more than three years after the plaintiff became aware of the fraud.

2. The District Judge has held that this suit is governed by Article 95 of the Limitation Act and that it must be held to be barred by limitation. Article 95 provides a period of three years for a suit to set aside a decree obtained by fraud and the starting point is the date from which the plaintiff has knowledge of the fraud.

3. Two arguments have been urged in support of this Second Appeal. It is contended that the suit is substantially one for redemption, that any decree obtained by fraud is a nullity and may therefore be ignored by the plaintiff and that he is not bound to get it set aside. The learned vakil says that in several reported cases a decree obtained by fraud is spoken of as a nullity. Admittedly in none of those cases had the question of limitation to set aside a decree obtained by fraud to be decided. It is clear to our minds that, when there has once been an adjudication by court between parties disentitling a plaintiff to a certain relief, the same relief cannot be asked for unless the previous decree be got rid of. The decree is binding on both parties so long as it stands and it is not open to either

of the parties to ignore it. The Legislature has provided a specific article for getting a decree obtained by fraud set aside. For purposes of limitation, at any rate, Article 95 must be regarded as conclusive. A decree is not a transaction between parties and it is unnecessary to consider the difference between transactions which are voidable and those that are void. There can be no doubt that a decree by court is an impediment in the way of a party obtaining a relief inconsistent with it and this impediment has to be got rid of within the period prescribed by the Legislature. The case cited by Mr. Subramania Sastri *Mussamut Jhisoman Koonwar v. Bahoo Rup Narain Singh and Ors.* (1866) 6 W.R. 165 is in accordance with our view. There it was held that in such a case the previous decree obtained by fraud has to be set aside. There was no article in the Act of 1859 specially applicable to such a suit and it was therefore held that the period of limitation applicable was six years.

4. It is next argued that Article 95 is only applicable where the fraud by means of which the decree was obtained was a fraud upon the party and not upon the court and that in this case the fraud being the adducing of perjured testimony it was a fraud upon the court. We are entirely unable to apprehend this distinction in the case of decrees. Every fraud by means of which a decree is procured is a fraud both upon the court and upon the party unless the decree be one obtained by a compromise between the parties.

5. We are therefore of opinion that the decree of the District Judge was right. We dismiss the Second Appeal with costs.

Sadasiva Aiyar, J.

6. I wish to add only a few sentences. While third persons might be allowed to treat a decree obtained by fraud as a nullity, the parties themselves, if they had been properly represented in the suit and had the opportunity for conducting their respective cases could not treat it as a nullity. I also wish to add that I should not be understood as admitting that a plaintiff can maintain a suit to set aside a decree on the ground of fraud simply because the decree had been obtained on perjured testimony. I knew it has been so held in *Venkatappa Natch v. Subba Naick* ILR (1905) M.179 but I have grave doubts as to the correctness of that decision. It is however unnecessary to express my final opinion in this case on that question, especially as the said question has not been argued before us.

Sundara Aiyar, J.

7. I may add that I agree with the observations of my learned brother.