(1924) 08 MAD CK 0040

In the Madras High Court

L.R. Maddirala Ramanamma — APPELLANT

Vs

Karri Bhimaraju and Another — RESPONDENT

Date of Decision : 01-08-1924

Acts Referred:
Limitation Act, 1908 — Section 18

Citation : (1924) 47 MLJ 535

Hon'ble Judges : Jackson, J

Bench : Division Bench

Judgement

Jackson, J.—Appeal from the order of the Additional Subordinate Judge of Cocanada in Appeal No. 17 (a) of 1922 in C.M.P. No. 1390

of 1921 of the Court of the District Munsif of Ramachandrapur.

2. Petitioner applied to set aside the sale of property sold under the decree in O.S. No. 554 of 1912 of the Cocanada District Munsif''s Court. So

far as his share is concerned, the lower Courts allowed the application. Counter-petitioner appeals.

3. The petitioner had been exonerated from the decree, but nevertheless his property was sold and there must admittedly be restitution unless his

application can be shown to be time-barred. The sale was in 1915 and the application in 1921. There can be no doubt in the light of Rajagopala

Aiyar v. Ramamijarhariar ILR (1923) M 288 : 46 MLJ 104. that Article 181 of the Limitation Act applies and petitioner will be time-barred unless

he has pleaded and established facts which save him from the bar. I agree with the appellant that he cannot set up a new case in appeal but the

point for determination is whether that was actually done, and whether a case u/s 18, Indian Limitation Act, has been established. In the 5th paragraph of his petition, the petitioner sets forth that in spite of the compromise which exonerated him from the decree, the counter-petitioner

fraudulently proceeded against the entire property without serving notice on the petitioner. As notice was thus fraudulently suppressed the

petitioner only came to know of the sale in August, 1921. This contains all that is necessary to attract the provisions of Section 18, Indian

Limitation Act, to petitioner''s case, and I cannot hold it to be a fatal Haw that he has not specifically referred to this section. The counter-petitioner

then contends that even supposing there was fraudulent suppression of notice at the time of the sale, no subsequent fraud is alleged and therefore

petitioner was not fraudulently kept out of knowledge of the sale. This point was taken in the lower appellate Court and I agree with the learned

Subordinate Judge that there was a continuing fraud up to the date of petitioner''s knowledge. The case cited by appellant, Payidanna v.

Lakshminarasamma ILR (1914) M 1076 hardly helps him. There at the time of the sale, a minor was treated as major, a circumstance which did

not exactly keep the minor from knowledge of the sale.

4. Accordingly I see no reason to differ from the finding of the lower Courts, but appellant asks that the order may apply to the share of the 2nd

defendant only, that of 1st defendant having been validly sold. There seems to be no objection to this modification, and I order accordingly.

5. Costs to 2nd defendant.

