(1893) 08 MAD CK 0010

In the Madras High Court

R. Iswara Patter APPELLANT

Vs

V. Karuppan alias Vella RESPONDENT

Date of Decision : 14-08-1893

Acts Referred:
Limitation Act, 1963 — Section 18

Citation : (1893) 08 MAD CK 0010

Judgement

1. A preliminary objection was taken to this appeal in that the 5th defendant, the appellant, having been found to be a benami purchaser, he had no

locus standi, but inasmuch as he is the certificated purchaser we must recognize him and overrule the objection.

2. The first point taken in the appeal, namely, that the suit is not sustainable without the Collector being made a party to it, is also overruled, for, as

it was not a point taken in either of the lower courts, we cannot consider it now.

3. The only question for our determination is by what rule of limitation the plaintiff''s suit to set aside the sale for revenue arrears was governed,

fraud being alleged and proved.

4. The District Munsif on the strength of the case of Venkatapathi v. Subramanya, I. L. R 9 M 457 held that Article 95 of the second schedule to

the Limitation Act applied, which, giving plaintiff three years from the time when the fraud became known to him, brought his suit well within time.

5. The Subordinate Judge, however, appears to have treated the suit as one falling under Article 12 of the said second schedule which allows only

a year from the date of the Collectors''s confirmation of the sale, but he found, in the absence of evidence to the contrary, that the date of

confirmation was the same as the date of the certificate of sale, and that being the 16th of November 1888, the suit brought on the 30th October

1889 was in time.

6. But we are of opinion as contended by the appellant that this case is governed by the special rule of limitation of 6 (six) months provided in

Section 59 of Madras Act II of 1864 as held in Venkata v. Chengadu, I. L. R 12 M 168 by a Full Bench. In the case at I. L. R 9 M 457 relied on

by the Munsif there were in fact no arrears of revenue and the sale was consequently void ab initio, but in the case reported at I. L. R 12 M 168

and in this case there were actually arrears of revenue, and the sale under the Act was consequently a valid sale if there were no irregularities or

fraud sufficient to have it set aside, and the judgment of the Full Bench draws this as the distinction between the two cases (pp. 178 and 179). In

ruling that the special limitation of six months was applicable to a case like this, it was further held u/s 18 of the Limitation Act that time would begin

to run only from the date of the discovery of the fraud. In this case it is not clear when the plaintiff became aware of the fraud. The Munsif says it

was on the date of plaintiff''s dispossession, which, it seems, was the 10th of July 1889. In that case the suit was within time. But there is no finding

of the Subordinate Judge on the point. We must, therefore, remit the following issue to him for trial: ""On what date did the fraudulent sale first

become known to the plaintiff ? Further evidence may be taken, if necessary.

7. In compliance with the above order the Subordinate Judge submitted his finding that the plaintiff became aware of the sale on the 11th July

1889, date of execution.

8. On return of the above finding, the court (Collins C.J. and Davies J.) accepting it held that the suit was brought in time and dismissed this appeal

with costs.

