
(1893) 09 MAD CK 0019
In the Madras High Court

Tamanapalli Venkatalingam	Vs	APPELLANT
Yerra Veeraswami and Others		RESPONDENT

Date of Decision : 13-09-1893

Acts Referred:

Citation : (1893) 09 MAD CK 0019

Judgement

1. The facts of the case as found by the courts below are shortly these: Appellant purchased the land in dispute at the court sale held in execution of the decree in Original Suit No. 654 of 1873 on the file of the District Munsif of Narasapur. The property was put up to sale and knocked down to appellant as the highest bidder on the 20th June 1878. it was however on the 31st March 1879 that the sale was confirmed. The sale certificate bears that date whilst this suit was brought on 1st April 1891. The question for determination is whether the courts below are right in holding that the suit was barred by Article 138 of the second schedule of the Act of Limitations. For appellant plaintiff it is urged first that there is no evidence to show that the judgment-debtor was in possession of the property in dispute at the date of the court sale and that even if that Article applied the sale referred to in the third column is not the actual sale but the sale which has been confirmed and become absolute.

2. Article 137 premises an execution sale at the time when the judgment-debtor is out of possession and Article 138 presupposes a case in which the judgment-debtor is in possession of the property sold. According to the former the time from which the period begins to run is when the judgment-debtor becomes first entitled to possession and according to the latter time runs from the date of the sale. Referring to appellant's

contention that defendants were out of possession for four years after the sale the Subordinate Judge observes that the plaint did not state so and

that the allegation in the memorandum of appeal was an after-thought The first issue fixed in this case was whether the suit was barred and it was

thus open to appellant to have proved that the judgment debtor had been out of possession for four years after the sale, but he tendered no

evidence on the point. The onus of proof was on appellant and we cannot say that the Subordinate Judge was in error in considering his allegation

as untrustworthy especially when the plaintiff himself stated before the District Munsif that he asked the defendants to quit the land in dispute until

four or five years after taking the certificate and not subsequently.

3. The next question is whether assuming that Article 138 is applicable to this suit the claim is barred. If the word sale in the third column of that

Article means actual sale the claim is clearly barred; but if it means the sale which is confirmed the suit is in time. In its plain ordinary meaning the

word sale means the auction sale itself and it is used in Article 166 in that sense. Article 12 which refers to a sale that is confirmed indicates also

that the legislature intentionally used the word without any qualification.

4. But it is argued that u/s 316 of the CPC the title to the immovable property purchased vests in the purchaser from the time when the sale is

confirmed and not before and as no purchaser can sue for possession before property passes to him, the terra sale in column 3 of Article 138 must

be taken to signify as in Article 12 the sale which is confirmed. The direction in Section 316 of the CPC concerning the date on which the title to

immovable property purchased at a court sale vests is not to be found in Act X of 1877 of which the corresponding section provides for the grant

of a certificate stating the name of the person ""who at the time of sale is declared to be the purchaser and the date of such sale."" With reference to

that section it has been held that when the sale is confirmed it relates back to the auction sale and the property vests in the purchaser from the date

of such sale. It was so held by the High Court at Calcutta in Kishori Mohu(sic) Roy Chowdhry v. Chunder Nath Pal, I. L. R 14 C 645 and by a

Pull Bench of the same court in Bhyrub Chunder Bundopadhya v. Soudamani Dabee, I. L. R 2 C 145 It was by Act XII of 1879 that the clause,

title shall vest in the purchaser from the time when the sale is confirmed"" was

introduced into Section 316. Though it was then open to the Legislature to have altered the word sale in the third column of Article 138 of the Limitation Act yet they have not done so. The same word cannot mean the actual sale in one place and the sale which is confirmed in another place in the same Act. The omission to alter the word "sale" into "sale which is confirmed" may be due to oversight but the result of the grammatical interpretation must in law prevail when there is no ambiguity. We observe also that the sale in this case took place in June 1878 whereas Section 316 was not modified till 1879.

5. We are of opinion that the courts below are right in holding that the suit is barred by Article 138 of the Indian Limitation Act and we dismiss the appeal with costs.