# D. Veerappa Vs. Bangarappa

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**SooperKanoon Citation** : sooperkanoon.com/374777

**Court** : Karnataka

**Decided On :** Dec-14-1959

**Reported in** : AIR1960Kant297; AIR1960Mys297

**Judge** : K.S. Hegde, J.

**Acts** : Code of Civil Procedure (CPC), 1908 - Sections 115 - Order 21, Rule 90; Limitation Act - Sections 18 - Schedule - Article 166

**Appeal No.** : Civil Revn. Petn. No. 356 of 1958

**Appellant** : D. Veerappa

**Respondent** : Bangarappa

**Judgement** :
ORDER

(1) The auction-purchaser in R. E. P. 484 of 1954 in the Court of the Civil Judge at Shimoga, is the petitioner in this Court. The Court sale held in that case was set aside by the trial Court on an application filed by one of the judgment-debtors under Rule 90 of Order 21, C.P.C., on the ground that the sale in question was vitiated by material irregularity and fraud and it has occasioned substantial loss to the judgment-debtors. The decision of the trial Court was confirmed by the learned District Judge at Shimoga in Mis. Appeal No. 2/1957. Aggrieved by these decisions, the petitioner, the Court-auction-purchaser, ahs come up in revision to this Court under S. 115 of the Civil Procedure Code - Section 115 - Order 21, Rule

90.

(2) It is argued that the executing Court was wrong in entertaining the application for setting aside the sale as the same was long barred by time. Admittedly, the said application was filed more than 30 days from the date of the sale in question. But the respondent relies on S. 18 of the Limitation Act - Section 18 to get over the bar of limitation under Schedule Article 166 of the Limitation Act. The Courts below have concurrently come to the conclusion that because of the fraud practised by the decree-holder, the respondent judgment-debtor was kept out of the knowledge of the sale and consequently his application was within time.

(3) The learned counsel appearing for the petitioner, contends that a fraud played by the decree-holder would not be sufficient to extend the period of limitation under S. 18 of the Limitation Act, if the property has been purchased by a third party. According to him, no application under O. 21, R. 90, C.P.C. can be entertained beyond the period of limitation fixed, if the property is purchased by a third party unless the auction-purchaser is a party to the fraud. He says that, in the instant case, the Courts below have not held that the auction-purchaser was a party to the fraud and consequently S. 18 does not come into operation. But according to the respondent, he can avail of the benefit of S. 18. Section 18 of the Limitation Act reads:

'Where any person having a right to institute a suit or make an application 'has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded', or where any document necessary to establish such right has been fraudulently concealed from him, the time limited for institution a suit or making an application.

(a) 'against the person guilty of the fraud or accessory thereto', or

(b) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of concealed document, when he first had the means of producing it or compelling its production.' (Underlining (herein single quotation--Ed.) is mine).

The first part of the section is general in terms. It does not stipulate that the fraud in question should have been practised by any Particular individual. But clause (a) speaks of an application against 'the person guilty of the fraud or accessory thereto'. Hence before S. 18 can be made applicable, the person against whom the application is filed must be guilty of fraud or he must be an accessory thereto. But, then every application under O. 21, R. 90, C.P.C. is directed both against the decree-holder and the auction-purchaser, both of them being necessary parties to the application. The application is one and indivisible. If the application is maintainable as against the decree-holder, it must also be maintainable as against the auction-purchaser, as it is not possible to differentiate the case of the auction purchaser from that of the decree-holder. In other words, the sale cannot be set aside as against the decree-holder and confirmed as against the auction-purchaser. The sale as such has to be either set aside or confirmed.

(4) At this stage, we may examine R. 90 of O. 21, C.P.C. That rule reads as follows :

'Where any immovable property has been sold in execution of a decree, the decree-holder or any person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of material irregularity or fraud in publishing or conducting it : Provided that no sale shall be set aside on the ground of irregularity or fraud unless upon the facts proved the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity of fraud.'

Material irregularity or fraud referred to in this provision must relate to the publishing or conducting of the sale. Generally speaking, at the stage of publishing or conducting of the sale, the auction-purchaser is not likely to be in the picture. Hence, this provision has in view the fraud or material irregularity committed by the decree-holder. We have to read S. 18 of the Limitation Act along with O. 21, R. 90, C.P.C. If so read, it is clear that the legislature had in mind the fraud of the decree-holder also.

(5) Now, turning to the decided cases on this point, Mukherjea J. (As he then was) held in the case of Mahipati Haldar v. Atul Krishna, AIR 1949 Cal 212, that S. 18 of the Limitation Act can be availed of to extend the period of limitation for an application under O. 21, R. 90 C.P.C. where fraud is proved to have been committed by the decree-holder, though not by the stranger-auction-purchaser. His Lordship further observed.

'It is clear from the language of O. 21, R. 90, C.P.C. that for setting aside a sale under that rule on the ground of fraud in publishing and conducting the sale it is not necessary to prove that the auction-purchaser was a party to the fraud. It is also well settled that the fraud contemplated by S. 18, Limitation Act, is not confined to fraud committed at the inception of the cause of action but may include fraud committed before that date. Where fraud has been committed by the decree-holder in bringing the property of the judgment-debtor to sale, the fraud though committed during execution proceedings would have a continuing influence and would retain its power of mischief so long as that influence is not ended and the party affected has not clear knowledge of the fact constituting the fraud.' (As summarised in the Head Note)

The same view was taken by Krishnaswamy Naidu J. in P. Venkanna v. C. Venkanna, : AIR1950 Mad509 . The view of Krishnaswamy Naidu J. was upheld by a Bench of the Madras High Court in Karuppanna Goundan v. Ponnuthayee, AIR 1956 Mad 198. It is true that the decision in : AIR1950 Mad509 is in conflict with the decision of the same High Court in Gulam Kadir v. Municipal Council, Negapattinam, : AIR1950 Mad460 . But the decision in Gulam Khadir's case, : AIR1950 Mad460 was not relied on by the Bench in Karuppanna Goundan's case. AIR 1956 Mad 198.

The view of the old Mysore High Court as expressed by a Bench of that High Court in Kala v. Javaramma, AIR 1952 Mys 47, is the same as expressed by Mukherjea J.in Mahipati Haldar's case, AIR 1949 Cal 212. As against these decisions, the learned counsel for the petitioner has 'invited my attention to the decision of the Madras High Court in Gulam Khadir's case : AIR1950 Mad460 to which reference has already been made. He also invited my attention to two decisions of the Calcutta High Court, one reported in Mihirlal v. Panchkari Santra, : AIR1950 Cal520 and the other reported in Majibar Raman v. Rahu Bux, : AIR1954 Cal604 . These two decisions have taken a view different from the one taken in Mahipati Haldar's case AIR 1949 Cal 212. Both on principle and on preponderance of Judicial authority, it appears to me that the correct view is that S. 18 of the Limitation Act is applicable where the fraud in question is Practised either by the decree-holder or by the auction purchaser.

(6) Even if the view taken by the Courts below is considered as wrong in law, the same is not liable to be revised under Section 115 of the C.P.C. Before a petition under S. 115, I.P.C., can be properly entertained, some facet of lower Court's jurisdiction as detailed in that section must come up for consideration. A wrong decision on law by itself is not sufficient to invoke the jurisdiction of the Court under S. 115 of the C.P.C.

(7) In the result, this petition fails and the same is dismissed with costs.

(8) Petition dismissed.