

Singarappa and ors. Vs. Sanjivappa

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Court : Chennai

Decided On : Nov-16-1904

Reported in : (1905)15MLJ228

Appellant : Singarappa and ors.

Respondent : Sanjivappa

Judgement :

1. The plaintiff on the 1st June 1895, executed a sham sale-deed in favour of his illegitimate sons, the defendants, neither party intending that it should be acted upon.

2. Possession of the property sold remained with the plaintiff. The defendants sometime about February 1899 began to set up a claim to ownership on the strength of the deed. On the 3rd August, 1900 the plaintiff brought this suit for the cancellation of the deed of sale.

3. The question for decision is whether the suit is barred by Article 91 of the Second Schedule to the Limitation Act of 1877. That article provides that such a suit must be brought within three years from the time when the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him. The facts which would entitle a person to bring such a suit are stated in Section 39 of the Specific Relief Act (Act I of 1877) which provides that any person against whom a written instrument is void or voidable who has reasonable apprehension

that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable and the court may in its discretion so adjudge it or order it to be delivered up and cancelled. In the present case the plaintiff did not entertain any apprehension that the instrument would injure him until the defendants began to set up a title Under it as if it evidenced a real sale to them.

4. The plaintiff's cause of action, therefore, arose within three years prior to the suit and the District Judge rightly held that it was not barred.

5. This view is in accordance not only with the case quoted by him Tawangar Ali v. Kura Mai I.L.R. 3 A. 394 but also with the decision of this court in the case of Sundaram v. Sithammal I.L.R. 16 M. 311 approved in Vithai v. Hari I.L.R. 25 B. 78. See also Meda Bibi v. Imaman Bibi I.L.B. 6 A. 207 and Janhi Kunwar v. Ajit Singh I.L.R. 15 C. 58.

6. We dismiss the second appeal with costs.

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