

Haji Vs. Mussa

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Court : Chennai

Decided On : Jul-08-1884

Reported in : (1883)ILR7Mad512

Judge : Charles A. Turner, Kt., C.J. and ;Hutchins, J.

Appellant : Haji

Respondent : Mussa

Judgement :

Charles A. Turner, Kt., C.J.

1. On referring to the plaint we find that we were misinformed as to the nature of the suit, and that the plaintiffs claimed not a declaratory decree, but a decree for the surrender of the land granted on kanam. The suit as brought therefore was not barred as to the kanam as we at first supposed. This claim it was the intention of the Court of First Instance to award. The decree has not been drawn up in conformity with the judgment, but the decree may now be corrected unless the plaintiffs' suit fails upon other grounds.

2. The fourth defendant claims under this kanam only, but the land has been purchased by the fifth defendant, subject to the kanam, and if these defendants can show that the tarwad have lost their right to question the sale, they have no longer any interest in the land which will entitle them to dispute the kanam.

3. The sale at which the fifth defendant purchased took place on the 20th October 1879 and was confirmed on the 21st November 1879. The present suit to have it declared not binding on the tarwad was instituted on the 8th December 1880, or more than a year from the confirmation of the sale. It is argued however on behalf of the plaintiffs that the suit is not barred, 1st, because the sale could not legally be confirmed until sixty days after it took place; 2ndly, because they were not parties to the suit.

4. The first contention was allowed by the Court of First Instance. It is based on the fact that, under Act XII of 1879, which was in force at the dates both of the sale and confirmation, the 149th form in the 4th schedule of the Civil Procedure Code had been amended and seemed to require that sixty days should elapse between a sale and its confirmation. Section 644 provides that these forms shall be used, but with such variations as the circumstances of each case require. Section 311 provides for applications to set aside sales for irregularity and Article 1661 of the Limitation Act requires that such applications be made within thirty days.

5. Section 312 requires the Court to confirm the sale, 'if no such application as is mentioned in the last preceding section be made.' Section 313 allows a purchaser to apply to set aside the sale on the ground that the judgment-debtor had no saleable interest therein, and Article 1722 of the Limitation Act allows sixty days for such applications, but there was no provision that the Court shall wait for sixty days to see if any such application may be filed. We do not think that the 149th form, as it stood under the Act of 1879, can be construed to render inoperative, or postpone the effect of a sale, confirmation of which was made after thirty, but before sixty days had elapsed.

6. The second question has been discussed in *Suryanna v. Durgi* I.L.R. 7 Mad. 258 which we heard at the same time as this second appeal.

7. If the decree under which the sale was held had been passed against the karnavan of the tarwad, inasmuch as a voluntary sale by a karnavan will pass all the property unless it is set aside within the statutory period, an involuntary sale held under a decree against the karnavan must have the same effect, and it would have been incumbent on the other members of the tarwad to set aside the sale

within the period prescribed by Article 12, viz., one year from its confirmation; but we find on examination of the record that the suit was not brought against the first defendant as karnavan, nor was the debt alleged to be a tarwad debt.

8. The sale then was ineffectual, and it has been found that the kanam was not made for the benefit of the tarwad.

9. The appeals fail and are dismissed with costs.

1

[Article 166:

Description of application. Period of limitation. Time from which period begins to run.

To set aside a sale in Thirty days The date of the sale.]

execution of a decree,

on the ground of

irregularity in publishing

or conducting the

sale.

2

[Article 172:

Description of application. Period of limitation. Time from which period

By a purchaser at an begins to run.

execution sale to set Sixty days The date of the sale.]

aside the sale on the

ground that the person

whose interest in the

property purported to

be sold had no saleable

interest therein.

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