

Suryanna Vs. Durgi

Suryanna Vs. Durgi

SooperKanoon Citation : sooperkanoon.com/788228

Court : Chennai

Decided On : Dec-17-1883

Reported in : (1883)ILR7Mad258

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

Appellant : Suryanna

Respondent : Durgi

Judgement :

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

1. I do not see on what grounds it can be held that the assignment of the Government revenue alters the character of the payments to which the revenue payer was liable or releases the land from its liability to the charge. The assignee is not entitled to have recourse to the summary remedies to enforce the charge under Act II of 1864, which are conferred by the law on Collectors only, but by ordinary suit he is competent to enforce the payment as a charge upon the land. If, however, he adopts this procedure, he must, in order to affect the interest of the persons who for the time being are owners of the land, implead them, and inasmuch as the respondent was not a party to the Suit 192 of 1876 in which a decree was passed for the sale of the land, the portion to which she was entitled should not have been sold. But in fact it was sold in pursuance of a direction in the decree and at a public auction; and the question arises whether the present claim

is not barred by limitation. The twelfth clause of the second schedule of the Limitation Act prescribes one year from the date on which the sale is confirmed as the period within which suits must be brought to set aside a sale in execution of a decree of a Civil Court. There is nothing in this provision to indicate that it applies only to parties to suits. Where a sale has been made of the right, title, and interest of a party to the suit, it has been held that a stranger to the suit is not bound to sue within one year for the recovery of property which the purchaser may claim to have acquired under the sale. This is not because the stranger was not a party to the suit, but because the Court did not profess to sell his interest in the property.

2. In Venkata Narasiah v. Subbamma I.L.R. 4 Mad. 178 the sale was in execution of a mere money-decree passed under Act VIII of 1859, and the sale extended only to the right, title, and interest of the judgment-debtor.

3. In Sadagopa v. Jamuna Bhai I.L.R. 5 Mad. 54 the Court held that the decree under which the sale then impugned took place was passed by a Court which had not jurisdiction. Here the property itself was sold and the suit was in my judgment barred by limitation.

4. The decrees of the Court of First Instance and of the Lower Appellate Court should, in my judgment, be reversed and the suit dismissed with costs.

Hutchins, J.

5. I agree with the Chief Justice on both points,

6. As to the first I only wish to point out that it is not necessary in this case to consider the rights of farmers of revenue. Act VIII of 1865 includes farmers of revenue as. land-holders under that Act, and it may be that they are only entitled to levy as rent the monies which become due to them. The plaintiff in the suit of 1876 was not a farmer of revenue, but the assignee of 7 rupees out of 35 rupees, which was the revenue due on certain land including the plot now sought to be recovered from the purchaser.

7. With regard to the second point the distinction seems to be this. Where the sale is limited to the right, title, and interest of the judgment-debtor, a third party need not, and indeed cannot properly, claim to set it aside in a suit to establish his own rights in the property sold. Such a suit, therefore, is in no way affected by the period of limitation prescribed for a suit framed to set aside a sale. Where, however, the property itself has been sold and the sale purports to pass the property absolutely, and would pass it unless set aside, it can only be set aside within one year from the date of confirmation. Now the suit of 1876 was instituted against the manager of this plaintiff's family, to which the land belonged, to recover money which the law has declared to be a charge on the land. The defence was that the land had been divided, but the Court held the plea bad against the temple, because it would have been bad against Government, and that the land was all liable and must be sold. It seems clear, therefore, that the land itself was sold and that the plaintiff's suit is barred.

8. The result is that the decrees of the Courts below must be reversed and the original suit dismissed with costs throughout.