

CASE NO.:
Appeal (civil) 2462 of 1991

PETITIONER:
RAMALINGAM CHETTIAR

Vs.

RESPONDENT:
P.K.PATTABIRAMAN & ANOTHER

DATE OF JUDGMENT: 21/02/2001

BENCH:
V.N. Khare & S.N. Variava

JUDGMENT:

L...I...T.....T.....T.....T.....T.....T.....T...J
V.N. KHARE, J.:

One Subramania Pillai took loan. It appears that he committed default in repaying the loan. With the result, the State of Tamil Nadu took proceedings for recovery of dues under Section 5 of the Tamil Nadu Revenue Recovery Act (hereinafter referred to as the Act). In the said proceedings, the land measuring 2 acres 47 cents was put to sale by public auction treating the land as if it was owned by Subramania Pillai. The appellant herein purchased the said property at the said auction held on 21.11.1974. On 2.12.1974, the plaintiff-respondent filed an application under Section 38 of the Act praying therein for cancellation of auction sale in favour of the appellant. His case was that Subramania Pillai was not the owner of the said property and in fact it belonged to him. The respondent, on 1.4.1975, filed further objections. It appears that on the basis of the two objections filed by the respondent, the Collector ordered for an enquiry. After the matter was enquired into, the Collector on 11.1.1977, rejected the application of the respondent and confirmed the sale in favour of the appellant herein. On 4.2.1977, the sale certificate was issued in favour of the appellant and the possession of the land was delivered to him on 11.2.1977. On 12.2.1977, the respondent filed a suit for declaration of his title to the land, delivery of possession of said land to him and for setting aside the auction sale in favour of the appellant. Initially, the respondent, in the said suit, did not implead the State of Tamil Nadu as one of the defendants. Subsequently, the defendant in the suit, by a separate application i.e. I.A. No. 164/1979 prayed for impleadment of State of Tamil Nadu as defendant No. 2. The said application was allowed by the trial court on 11.10.1979 directing for impleadment of the State of Tamil Nadu. The trial court framed several issues. One of the issues was whether the suit brought by the plaintiff was within the period of limitation. The trial court after considering other issues held that the suit was barred by limitation as the same was not brought within six months of the date when the cause of action to the plaintiff arose. The Suit was thus dismissed. The plaintiff thereafter preferred an

appeal before the first appellate court. The first appellate court was of the view that since the plaintiff was stranger to the proceedings, the period of limitation provided under Section 59 of the Act is not applicable. In view of the matter, the appeal was allowed and the suit filed by the respondent was decreed, as prayed for. The appellant thereafter filed second appeal before the High Court but the same was dismissed. It is against the said judgment of the High Court, the appellant is in appeal before us.

Learned counsel appearing for the appellant urged that the suit brought by the plaintiffs-respondents was barred by limitation and, therefore, it ought to have been dismissed on that ground alone. We find substance in the arguments. Section 38 of the Act provides thus:

Section 38 (1) : At any time within thirty days from the date of the sale of immovable property, application may be made to the Collector to set aside the sale on the ground of some material irregularity, or mistake or fraud, in publishing or conducting it; but, except as otherwise is hereinafter provided, no sale shall be set aside on the ground of any such irregularity or mistake unless the applicant proves to the satisfaction of the Collector that he has sustained substantial injury by reason thereof.

(2) xxx xxx xxx xxx

(3) On the expiration of thirty days from the date of the sale, if no such application is made or if such application has been made and rejected, the Collector shall make an order confirming the sale; provided that, if he shall have reason to think that the sale ought to be set aside notwithstanding that no such application has been made or on grounds other than those alleged in any application which has been made and rejected, he may, after recording his reasons in writing, set aside the sale.

(4) xxx xxx xxx xxx

(5) xxx xxx xxx xxx xxxxxx.

A perusal of the aforesaid provisions shows that any person aggrieved against an auction sale of property is entitled to file an application before the Collector within expiry of thirty days from the date of sale of immovable property on the ground of some material irregularity or mistake or fraud in publishing and conducting the sale. It is not disputed that the plaintiffs did file the said application for setting aside the auction sale within thirty days and was rejected by the Collector. The question therefore arises is, what is the period of limitation for bringing a suit in the civil court for cancellation of an auction sale.

Section 59 of the Act provides thus:

Nothing contained in this Act shall be held to prevent parties deeming themselves aggrieved by any proceedings under this Act, except as hereinbefore provided, from applying to the Civil Courts for redress; provided that Civil Courts shall not take cognizance of any suit instituted by such parties for any such cause of action, unless such suit shall be instituted within six months from

the time at which the cause of action arose."

The said provision shows that parties aggrieved by any proceedings under the Act can bring a suit in the civil court within six months from the time at which the cause of action arose. It cannot be disputed that the plaintiff was aggrieved by the proceedings under the Act and was thus entitled to institute a suit in the civil court. It is also not disputed that in the present case, the cause of action arose when the application of the respondent was rejected and the sale was confirmed that is on 11.1.1977. It is also true that the suit was laid in the civil court within six months from the time at which the cause of action arose. But in the said suit, State of Tamil Nadu was not impleaded as defendant and in the absence of State of Tamil Nadu, the suit instituted by the plaintiff was incompetent. It was only when I.A. No. 164/1979, filed by the defendant for impleadment of the State of Tamil Nadu was allowed by the trial court, the suit laid by the plaintiff became competent. It is also not disputed that I.A. No. 164/1979 for impleadment of the State was allowed on 11.10.1979. Section 21 of the Limitation Act provides that where after the institution of a suit, if a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party. In view of Section 21 of the Limitation Act, so far as the State of Tamil Nadu was concerned, suit filed by respondent has to be treated as instituted when the application for impleadment of State of Tamil Nadu was allowed, i.e. on 11.10.1979 and by that time the suit stood barred by time.

Learned counsel for the respondent referred the proviso to Section 21 of the Limitation Act and on the strength thereof argued that even if the application for impleadment of State of Tamil Nadu was allowed on 11.6.1979 the said order has to be understood as if impleadment of defendant no.2 was with effect from the date of filing the suit. There is no substance in the argument. Section 21 of the Limitation Act contemplates two situations one under the substantive provision which provides that where after filing of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been brought on the day when he was added or substituted as a party in the suit. The second situation contemplated under the proviso to the substantive provision is where the court is satisfied that a new plaintiff or defendant was omitted to be added or substituted due to a mistake in good faith, the court may direct that the suit, as regards the newly added or substituted party, shall be deemed to have been instituted on any earlier date. Thus, under the proviso, if the court is satisfied, it can direct that the suit as regards newly added or substituted plaintiff or defendant shall be deemed to have been instituted on an earlier date. In such a case, the court after substituting or adding a party in the suit is required to pass a separate/further order that the suit as regards the newly added defendant or plaintiff shall be deemed to have been instituted with effect from the date the suit was laid. Merely adding or substituting a plaintiff or defendant by the court is not enough. In the absence of any order that the impleadment of newly added or substituted party shall take effect from the date of institution of a suit, the period of limitation so far as the newly added or substituted shall run from the date of their impleadment in the suit. We have looked into the records but do not find

any order having passed under the proviso to Section 21 of the Limitation Act that the impleadment of the State of Tamil Nadu would take effect from the date of institution of the suit. In the absence of such an order by the trial court, the suit filed by the respondent was barred by limitation as contemplated under Section 59 of the Act.

For the aforesaid reasons, we set aside the judgment under challenge and restore the decree of the trial court. The appeal is allowed. There shall be no order as to costs.@@

JJJ

V.N. Khare
S.N. Variava
21 February, 2001