

PETITIONER:
GANPAT SINGH (DEAD) BY LRS.

Vs.

RESPONDENT:
KAILASH SHANKAR & ORS.

DATE OF JUDGMENT 08/05/1987

BENCH:
DUTT, M.M. (J)
BENCH:
DUTT, M.M. (J)
VENKATARAMIAH, E.S. (J)

CITATION:
1987 AIR 1443 1987 SCR (3) 355
1987 SCC (3) 146 JT 1987 (2) 619
1987 SCALE (1)1273

ACT:

Limitation Act, 1963: Articles 134 & 136--Scope and applicability of--Application by auction purchaser under Order XXI Rule 95 CPC for delivery of possession of property sold in execution of decree--Period of limitation prescribed in Article 134 and not Article 136 applicable--Position not changed by insertion of Explanation II to Section 47 CPC by CPC (Amendment) Act 1976.

Civil Procedure Code 1908: Application for delivery of possession cannot be equated to an application for execution of decree.

HEADNOTE:

The mortgagee decree-holder in execution of the final decree for mortgage, himself purchased the disputed property in the auction sale held on July 14, 1978. On September 20, 1978 the judgment-debtor, the predecessor-in-interest of the appellants, filed an application under Order XXI Rule 90 of the Code of Civil Procedure for setting aside the aforesaid sale. Two other petitions of objections were filed, one of these being by another judgment-debtor. All these objections including the application under Order XXI Rule 90 of the Code of Civil Procedure were dismissed for default. Consequently, the sale was confirmed by the District Judge, the executing Court on January 2, 1979.

On July 17, 1980 more than one year after the sale was confirmed the decree-holder auction-purchaser filed an application under Order XXI Rule 95 of the Code of Civil Procedure for delivery of possession of the property auctioned-purchased by him. This application was opposed by the judgment-debtor on the ground that as the application was filed more than one year after the confirmation of sale it was barred by limitation under Article 134 of the Limitation Act.

The District Judge held that in view of Explanation II of Section 47 which was inserted in the Code of Civil Procedure, by Section 20 of

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the Code of Civil Procedure (Amendment) Act, 1974, Article 136 prescribing a period of limitation of 12 years for the execution of the decree and not Article 134 of the Limita-

tion Act would be applicable, and held that the application was not barred by limitation and directed issuance of the warrant of possession in respect of the disputed property.

The judgment-debtor filed a revision application under section 115 of the Code of Civil Procedure and a Single Judge of the High Court dismissed the revision application. The High Court held that after the insertion of Explanation II to Section 47 of the Code of Civil Procedure, the purchaser of property at a sale in execution of a decree would be deemed to be a party to the suit in which the decree was passed, and all questions relating to the delivery of possession of the property to such purchaser of immovable property would be questions relating to the execution of the decree and, as such, Article 136 and not Article 134 of the Limitation Act would apply. It was also held after the amendment of the Code of Civil Procedure, Article 134 and Article 136 of the Limitation Act became so inconsistent that both could not exist and that Article 134 stood impliedly repealed by Section 47 of the Code of Civil Procedure read with Article 136 of the Limitation Act.

A certificate for appeal to this Court under Article 134A of the Constitution, was granted by the Single Judge.

As the certificate on the basis of which the appeal was filed was not competent in view of clause III of Article 133, the appeal was treated as one under Article 136.

After conclusion of the hearing, the parties settled the dispute, the respondent decree-holder agreeing to relinquish all his rights as the auction-purchaser upon the appellants paying an agreed amount.

In spite of such settlement the Court felt the necessity of laying down the correct legal position.

Setting aside the judgment of the Single Judge of the High Court and that of the District Court,

HELD: 1. Article 134 of the Limitation Act, 1963 would apply to an application under Order XXI Rule 95 of the Code of Civil Procedure by the auction-purchaser for delivery of possession of the property sold in execution of a decree. [363G]

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2. The Single Judge of the High Court has misunderstood the scope of the provision of section 47 of the Code of Civil Procedure and that of the provisions of Articles 134 and 136 of the Limitation Act, 1963. It may be that before the amendment of section 47, an auction purchaser could file a suit for recovery of the possession of the property within 12 years from the date of the sale, but in view of the amendment of Section 47 of the Code such a suit cannot be filed. But that is no ground for holding that Article 136 of the Limitation Act would apply to an application for delivery of possession. [363C-D]

3. It is for the Legislature to prescribe the period of Limitation, and the Court is only to see whether any particular application has been filed within that period. [363F]

4. When a property is sold in execution of a decree an application for setting aside the sale may be made under Rule 89, 90 or 91 of Order XXI of the Code of Civil Procedure by the persons and on the ground mentioned therein. Such an application has also to be made within the prescribed period of limitation of 60 days from the date of the sale under Article 127 of the Limitation Act, 1963. Article 134 prescribes a limitation of one year for an application for delivery of possession by a purchaser of immovable property at a sale in execution of a decree. The limitation of one year will be computed from the date the sale becomes absolute. Such an application for delivery of possession can

be filed only after the decree is put into execution within the period of limitation as prescribed by Article 136 of the Limitation Act. [362B-D]

5. The period of limitation prescribed by Articles 136 and 134 are for two different purposes, the former being for the execution of a decree for possession in respect of which the decree is passed, and the latter for an application for delivery of possession of immovable property which is purchased in the course of execution of a decree. The two articles have nothing in common for their operation. They do not stand in conflict with each other. [362D-E]

6. The scope of Articles 134 and 136 and the subject-matter being completely different, the question of implied repeal of Article 134, does not at all arise. [363F]

7. Merely because Explanation II to Section 47 CPC was inserted by the C.P.C. (Amendment) Act 1976, an application for delivery of possession under Order XXI Rule 95 C.P.C. cannot be equated with an application for the execution of a decree for possession so as to apply 12

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years period of limitation as prescribed by Article 136 of the Limitation Act. [362F-G]

8. An application for delivery of possession of immovable property purchased in execution cannot, by any stretch of imagination, be construed as an application for execution of a decree for possession of property so as to invoke the provision of Article 136 of the Limitation Act. [362E]

9. After a sale becomes absolute on the dismissal of the application of the judgment-debtor's claim for setting aside the sale, another application for setting aside the sale by the judgment-debtor is not maintainable and the period of limitation as prescribed by Article 134 of the Limitation Act cannot be computed from the date of the dismissal of the second application for setting aside the sale. [366H; 367A]

10. In the instant case, on January 2, 1979 while dismissing the application of the judgment-debtor under Order XXI Rule 90 the District Judge confirmed the sale. The said order confirming the sale is binding not only on the judgment-debtor, who made the application under Order XXI Rule 90, but also on all other parties to the execution proceedings including the 4th judgment-debtor. Accordingly, there can be no doubt that the application filed by the 4th judgment-debtor praying for setting aside of the sale on grounds other than those mentioned in Rules 89 to 91 was not maintainable after the confirmation of the sale. By the order dated July 21, 1979 the District Judge while dismissing the application of the judgment-debtor observed that after the confirmation of the sale the Court was not authorised to entertain the application. The application of the judgment-debtor not being maintainable in law, the respondent decree-holder was not entitled to compute the period of one year under Article 134 of the Limitation Act from the date of dismissal of the second application by the 4th judgment debtor. [365C-E; 368B]

Chandra Mani Sahai & Ors. v. Anarjan Bibi & Ors., AIR 1934 PC 134 Kamakshi Ammal & Anr. v. Arukkani Ammal & Ors., AIR 1957 Madras 440 explained and distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2841 of 1986.

From the Judgment and Order dated 9.4. 1986 of the Rajasthan High Court in S.B. Civil Revision No. 11 of 1981.

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VM. Tarkunde, S. Atreya, Virendra Bandhu and Indra Makwana for the Appellants.

T.S. Krishnamurthy Iyer and S.K. Jain for the Respondents.

The Judgment of the Court was delivered by

DUTT, J. This appeal on a certificate granted under Article 134A of the Constitution of India is at the instance of the heirs and legal representatives of a deceased judgment-debtor and is directed against the judgment of a learned Single Judge of the Rajasthan High Court whereby the learned Judge upheld the order dated December 12, 1980 of the learned District Judge, Jaipur City, Jaipur, holding that in view of Article 136 of the Limitation Act, 1963 the application of the decree-holder auction-purchaser for delivery of possession of the property auctioned-purchased by him was maintainable and not barred by limitation. The certificate on the basis of which the appeal is filed is not competent in view of clause (3) of Article 133 of the Constitution, we have however treated the appeal as one under Article 136 of the Constitution. The special leave to file the appeal is granted by us.

The mortgagee decree-holder in execution of the final decree for mortgage himself purchase the disputed property in the auction-sale held on July 14, 1978 at a sum of Rs.30,000. On September 20, 1978, the judgment-debtor Ganpat Singh, since deceased, the predecessor-in-interest of the appellants, filed an application under Order XXI Rule 90 of the Code of Civil Procedure for setting aside the sale. Two other petitions of objections were filed by one Chiranji Lal and by another judgment-debtor, Mst. Abhey Kanwar. All these objections including the application of Ganpat Singh under Order XXI Rule 90 of the Code of Civil Procedure, were dismissed for default and, consequently, the sale was confirmed by the learned district Judge, the executing court, on January 2, 1979.

On July 17, 1980, that is, more than one year after the sale was confirmed, the decree-holder auction-purchaser filed an application under Order XXI Rule 95 of the Code of Civil Procedure for delivery of possession of the property auctioned-purchased by him. The said application was opposed by the judgment-debtor Ganpat Singh on the ground that as the application was filed more than one year after the confirmation of sale, it was barred by limitation under Article 134 of the Limitation Act.

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It was held by the learned District Judge that in view of the provision of Explanation I1 of section 47 which was inserted in the Code by Section 20 of the Code of Civil Procedure (Amendment) Act, 1974, Article 136 prescribing a period of limitation of 12 years for the execution of the decree and not Article 134 of the Limitation Act would apply. In that view of the matter, the learned District Judge held that the application was not barred by limitation as contended on behalf of the judgment-debtor and directed issuance of the warrant of possession in respect of the disputed property.

Being aggrieved by the said order of the learned District Judge, the judgment-debtor filed a revisional application under section 115 of the Code of Civil Procedure before a learned Single Judge of the High Court. The view expressed by the learned District Judge commended to the learned Judge of the High Court. The learned Judge took a similar view that after the insertion of Explanation II to Section 47 of the Code of Civil Procedure, a purchaser of property at a sale in execution of a decree would be deemed to be a party

to the suit in which the decree was passed and all questions relating to the delivery of possession of the property to such purchaser of immovable property would be questions relating to the execution of the decree and, as such, Article 136 and not Article 134 of the Limitation Act would apply. Further, the learned Judge held, inter alia, that after the amendment of the Code of Civil Procedure, Article 134 and Article 136 of the Limitation Act became so inconsistent that both could not exist and, relying upon the principle that in cases where two articles are equally applicable, the rule that the article which keeps alive the right of the party must be preferred, the learned Judge held that Article 134 stood impliedly repealed of section 47 of the Code of Civil Procedure read with Article 136 of the Limitation Act. In that view of the matter, the learned Judge dismissed the revisional application of the judgment-debtor under section 115 of the Code of Civil Procedure. The learned Judge, however, granted a certificate to the appellants for appeal to this Court under Article 134A of the Constitution of India. Hence this appeal.

At this stage, it may be stated that the parties have settled their disputes after the hearing was concluded, the respondent decree holder having agreed to relinquish all his rights as the auction purchaser upon the appellants paying him a sum of Rs. 1,28,000. The terms of such settlement will be stated hereafter. In spite of such settlement, we think we should consider the view expressed by the learned district Judge and the learned Single Judge of the High Court 361

that after the amendment of section 47 of the Code of Civil Procedure, an application under Order XXI Rule 95 of the Code will be governed by Article 136 of the Limitation Act and that, as held by the learned Judge of the High Court, Article 134 stands impliedly repealed by section 47 read with Article 136 of the Limitation Act.

Both the learned District Judge and the learned Judge of the High Court have been greatly influenced by the fact of the insertion of Explanation II under section 47 by the Code of Civil Procedure (Amendment) Act, 1976. Explanation II provides as follows:-

"Explanation II. (a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section."

Under clause (a) of Explanation II the auction-purchaser shall be deemed to be a party to the suit in which the decree is passed. Under clause (c), all questions relating to the delivery of possession shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of section 47. Section 47 bars determination of any question relating to the execution, discharge or satisfaction of the decree in a suit. Such question shall be determined by the executing court. As has been already noticed, in view of clause (a) of Explanation II, the auction-purchaser shall be deemed to be a party to the suit in which the decree is passed and under clause (b) of Explanation II all questions relating to delivery of possession shall be deemed to be questions relating to the

execution, discharge or satisfaction of the decree. Such questions, therefore, are to be determined by the court executing the decree and not by a separate suit.

Section 47 itself has nothing to do with the question of limitation. Article 136 prescribes a period of limitation of 12 years for the execution of a decree from the date on which the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods when default in making any

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payment or delivery in respect of which execution is sought, takes place. After a decree is out into execution within the period of limitation under Article 136, questions relating to execution, discharge or satisfaction of the decree may arise and such questions including the question as to the delivery of possession shall be determined by the executing court. When a property is sold in execution of a decree, an application for setting aside the sale may be made under Rules 89, 90 or 91 of Order XXI of the Code of Civil Procedure by the persons and on grounds as mentioned therein. Such an application has also to be made within the prescribed period of limitation of sixty days from the date of sale under Article 127 of the Limitation Act, 1963. Article 134 prescribes a limitation of one year for an application for delivery of possession by a purchaser of immovable property at a sale in execution of a decree. The limitation of one year will be computed from the date the sale becomes absolute. Such an application for delivery of possession can be filed only after the decree is put into execution within the period of limitation as prescribed by Article 136 of the Limitation Act. The periods of limitation prescribed by Articles 136 and 134 are for two different purposes, the former being for the execution of a decree for possession in respect of which decree is passed and the latter for an application for delivery of possession of immovable property which is purchased in the course of execution of a decree. The two articles have nothing in common for their operation and it is not readily understandable how the two articles stand in conflict with each other. An application for delivery of possession of immovable property purchased in execution cannot, by any stretch of imagination, be construed as an application for execution of a decree for possession of property so as to invoke the provision of Article 136 of the Limitation Act. Merely because the auction-purchaser will be deemed to be a party in the suit in which the decree has been passed, as provided in clause (a) of Explanation II to section 47 of the Code, and by virtue of clause (b) of Explanation II all questions relating to delivery of possession of the property shall be deemed to be questions relating to execution, discharge or satisfaction of the decree within the meaning of section 47, an application for delivery of possession under Order XXI Rule 95 of the Code of Civil Procedure cannot be equated with an application for the execution of a decree for possession so as to apply 12 years' period of limitation as prescribed by Article 136 of the Limitation Act.

If it is held that Article 136 would apply to an application for delivery of possession under Order XXI Rule 95 of the Code, it may lead to an absurdity. Suppose a decree is put into execution on the last day of limitation of 12 years. Obviously, the sale of any property in

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execution of the decree will take place after the expiry of 12 years and, therefore, no application for delivery of

possession of the property of the auction-purchaser will be maintainable as 12 years have already passed from the date of the decree. If Article 136 is held to apply to an application for delivery of possession, then for the very same reason it will also apply to an application for setting aside sale. In other words, an application for setting aside sale can also be made within a period of 12 years from the date of decree irrespective of the date of sale, which is absurd on the face of it.

It appears that the learned Judge of the High Court has misunderstood the scope of the provision of section 47 of the Code of Civil Procedure and that of the provisions of Articles 134 and 136 of the Limitation Act, 1963. It may be that before the amendment of section 47 of the Code, an auction-purchaser could file a suit for recovery of possession of the property within 12 years from the date of sale, but in view of the amendment of section 47 of the Code such a suit cannot be filed. But that is no ground for holding that Article 136 of the Limitation Act would apply to an application for delivery of possession. Under the old Limitation Act of 1908, an application for delivery of possession could be made within three years from the date on which sale became absolute as prescribed by Article 180 of that Act, but under Article 134 of the Limitation Act, 1953 such an application can be made within one year from the date on which sale became absolute. Thus the period of limitation for delivery of possession of property purchased at the court sale has been reduced to a considerable extent, but that also cannot be taken into consideration for the purpose of interpretation of the provisions of the Limitation Act. It is for the Legislature to prescribe the period and the Court is only to see whether any particular application has been filed within that period. In the instant case, as stated already, the scope of Articles 134 and 136 and their subject-matters being completely different, the question of implied repeal of Article 134, as held by the learned Judge of the High Court, does not at all arise. We would, accordingly, hold that Article 134 will apply to an application under Order XXI Rule 95 of the Code of Civil Procedure by the auction-purchaser for delivery of possession of the property sold in execution of a decree.

It may be mentioned here that Mr. Krishnamurthy Iyer, learned Counsel appearing on behalf of the decree-holder respondent, has not made any attempt to support the judgment of the High Court on the ground of amendment of section 47 of the Code of Civil Procedure or on the ground of implied repeal of Article 134 of the Limitation Act by

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the amended section 47 of the Code read with Article 136 of the Limitation Act. On the contrary, it is contended by him that there can be no doubt that limitation under Article 134 commences from the date when the sale becomes absolute. He has, however, sought to support the conclusion of the learned Judge of the High Court that the application for delivery of possession of the property is not barred by limitation on another groups which will be stated presently. Under Order XXI Rule 92 where no application is made under Rule 89, Rule 90 or Rule 91 where such application is made and disallowed, the court shall make an order confirming the sale, and thereupon the sale shall become absolute. It is submitted by the learned Counsel that it is not correct that the sale becomes absolute only under the circumstances as mentioned in Rule 92, and that apart from the provisions of Rules 89, 90 and 91 of Order XXI of the Code, an auction-sale can be challenged on grounds other than those mentioned

in the said Rules. Counsel submits that if an application for setting aside sale is made and disposed of, the sale will become absolute after the disposal of such application, even though the application is not one as contemplated by Rules 89, 90 or 91 of Order XXI of the Code.

In this connection, the learned Counsel has drawn our attention to an application for setting aside the sale made by the 4th judgment debtor on January 27, 1979 on grounds other than those mentioned in Rules 89, 90, or 91. But the said application was dismissed by the learned district Judge on July 21, 1979. It is submitted by the learned Counsel that on the disposal of that application on July 21, 1979, the sale became absolute and the decree-holder respondent having filed the application for delivery of possession on July 17, 1980, that is, within one year from July 21, 1979, it should be held that the application was quite within the period of limitation as prescribed by Article 134 of the Limitation Act. In support of the contention, the learned Counsel has placed reliance upon a decision of the Privy Council in Chandra Mani Saha and others v. Anarjan Bibi and others, AIR 1984 PC 134. In that case, in interpreting the words "when the sale becomes absolute" in Article 180 of the old Limitation Act, 1908, the Privy Council observed as follows:-

"Upon consideration of the sections and orders of the Code, their Lordships are of opinion that in construing the meaning of the words "when the sale becomes absolute" in Art. 180, Lim. Act, regard must be had not only to the provisions of O. 21. R. 92(1) of the schedule to the Civil Procedure Code, but also to the other material sections and

orders of the Code, including those which relate to appeals from orders made under O. 21, R. 92(1). The result is that where there is an appeal from an order of the Subordinate Judge, disallowing the application to set aside the sale, the sale will not become absolute within the meaning of Art. 180, Lim. Act, until the disposal of the appeal, even though the subordinate Judge may have confirmed the sale, as he was bound to do, when he decided to disallow the above mentioned application.

We may now consider the above contention of the learned Counsel for the respondent decree-holder. It has been already noticed that on January 2, 1979 while dismissing the application of the judgment-debtor under Order XXI Rule 90 of the Code of Civil Procedure, the learned District Judge also confirmed the sale. The said order of the learned District Judge confirming the sale is binding not only on the judgment-debtor, who made the application under Order 21 Rule 90, but also on all other parties to the execution proceedings including the 4th judgment-debtor. Accordingly, there can be no doubt that the application filed by the 4th judgment-debtor praying for the setting aside of the sale on grounds other than those mentioned in Rules 89, 90 and 91, was not maintainable after the confirmation of the sale. Indeed, by the order dated July 21, 1979 the learned District Judge while dismissing the application of the 4th judgment-debtor observed that after the confirmation of the sale, the court was not authorised to entertain the application. We do not think that the decision of the Privy Council in Chandra Mani's case (supra) lends any support to the

contention of the learned Counsel for the respondent decree-holder that an auction-sale can be set aside even on grounds other than those mentioned in Rules 89, 90 and 91. All that has been ruled in that decision is that in construing the meaning of the words "when the sale becomes absolute" in Article 180 of the old Limitation Act, regard must be had not only to the provision of Order XXI Rule 92(1) of the Code, but also to the other material sections and orders of the Code including those which relate to appeals from orders made under Order XXI Rule 92(1). No provision of the Code has been pointed out to us under which a sale can be set aside apart from the provisions of Rules 89, 90 and 91 of order XXI of the Code. There can be no doubt that when an application for setting aside the sale is made, the order passed by the executing court either allowing or dismissing the application will be final and effective subject to an appeal that may be made under the provisions of the Code. It is inconceivable that even though no appeal has been filed against an order dismissing an applica-

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tion for setting aside the sale, another application for setting aside the sale can be made without first having the order set aside. Such an application will be barred by the principle of *res ludicata*. In the circumstances, there is no merit in the contention made on behalf of the respondent decree-holder that the application for delivery of possession having been made within one year of the dismissal of the application of the 4th judgment-debtor for setting aside the sale, it was within the period of limitation as prescribed by Article 134 of the Limitation Act.

In *Kamakshi Ammal and another v. Arukkani Ammal and another*, AIR 1957 Mad. 440, which has been relied on by the learned Counsel for the decree-holder respondent, there was an application under Order XXI Rule 58 of the Code of Civil Procedure by one Nagammal who claimed under a possessory mortgage and that claim was allowed on June 14, 1913. The decree-holder filed a suit to set aside this claim as she was entitled to do under the Code before it was amended in 1976. The suit terminated in a compromise decree on August 15, 1944 and the application under Order XXI Rule 95 of the Code was made by the decree-holder on August 14, 1947, that is, within three years from the date when the claim-suit was disposed of. It was held by the Madras High Court that the sale could not be said to have become absolute till the claim-suit was finally disposed of on August 15, 1944. In holding that, the Madras High Court has placed reliance upon the decision of the Privy Council in *Chandra Mani's case* (*supra*) to the effect that though the third column of Article 190 of the old Limitation Act refers to the date when the sale becomes absolute, that clause must be read not only with the provision of Order XXI Rule 92(1) of the Code, but also with the other material provisions and orders of the Code.

In our opinion the above decision of the Madras High Court in *Kamakshi Ammal's case* does not support the contention of the respondent decree-holder. Order XXI Rule 58 of the Code is a material provision relating to any claim that may be preferred or any objection that may be made to the attachment of any property in execution of a decree. Any sale that is held would, undoubtedly, be subject to the order that may be passed under Order XXI Rule 58 of the Code and, thereafter, as provided in the Code before its amendment in 1976, the result of a suit that may be filed challenging such order passed by the executing court under Order XXI Rule 58. But after a sale becomes absolute on the dis-

missal of the application of the judgment debtor's claim for setting aside the sale, another application for setting

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aside the sale by the judgment-debtor is not maintainable and the period of limitation as prescribed by Article 134 of the Limitation Act cannot be computed from the date of the dismissal of the second application for setting aside the sale.

The decision of the Madras High Court in Dadrabahu Nainar v. Devendra Nainar, ILR (1969) 1 Mad. 175, relied on by the respondent decree-holder, does not appear to be of any assistance to him. In that case, the Madras High Court has only followed the decision of the Privy Council in Chandra Mani's case (supra). In an earlier decision of the Full Bench of the Madras High Court in Muthu Korakkai Chetty v. Madar Ammal, ILR 43 Mad. 185 FD, also relied on by the respondent decree-holder, what happened was that after an auction-sale had been confirmed without opposition on April 26, 1918, an application was made on January 13, 1918 to set it aside on the ground of fraud, and it was set aside on June 25, 1918 in respect of a part of the properties sold. The auction-purchaser applied on February 17, 1917 for delivery of the remaining properties. It was held by the Full bench that the application was not barred under Article 180 of the old Limitation Act as time should be computed from the date of the order disallowing the petition to set aside the sale on the ground of fraud and not from the date of the first confirmation. This decision has been strongly relied upon by the learned Counsel for the respondent decree-holder and it is submitted that even though the application for setting aside the sale on the ground of fraud was made after the sale was confirmed, the Full Bench took the view that the period of limitation under Article 180 of the old Limitation Act should be computed from the date of the order disallowing the application to set aside the sale on the ground of fraud and not from the date of the first confirmation. On the basis of this decision, it is urged that in the instant case also the period of limitation under Article 134 should be computed from the date of dismissal of the second application for setting aside the sale.

We are enable to accept the contention. In the Full Bench decision of the Madras High Court the application for setting aside the sale was made by the sons of a deceased judgment-debtor and the remaining judgment-debtors, and the application in so far as it was made by the sons of a deceased judgment-debtor was admitted out of due time on the ground of fraud. In our opinion the High Court was justified in entertaining the application on the ground of fraud by the sons of a deceased judgment-debtor who were not brought on the record as the legal representatives of their deceased father. The application was, therefore, quite maintainable and, even though the sale was confirmed

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and became absolute under Order XXI Rule 92, it was subject to the disposal of the application for setting aside the sale on the ground of fraud. The facts of this decision are quite different from those of the instant case before us. The application by the judgment-debtor not being maintainable in law, the respondent decree-holder was not entitled to compute the period of one year under Article 134 of the Limitation Act from the date of dismissal of the second application by the 4th judgment-debtor. The contention made on behalf of the respondent decree-holder is without substance and is overruled.

In view of the discussion made above, we set aside the

judgment of the learned Single Judge of the High Court and that of the learned District Judge.

As stated already, the parties have settled their disputes, the respondent decree-holder having decree to relinquish all this rights as the auction-purchaser upon the appellants paying him a sum of Rs. 1,28,000. We are told that said sum has been deposited in this Court in the above appeal and, as prayed for by the parties, we by our order dated May 5, 1987 set aside the execution sale and directed that the amount of Rs. 1,28,000 lying in this Court would be paid to the respondent decree-holder or to his Counsel in full settlement of the mortgage decree. By the said order we have also recorded full satisfaction of the mortgage decree passed in S.C. No. 10/73 on the file of the District Judge, Jaipur City, obtained by the respondent decree holder against the appellants and others. It has also been recorded in the order that the decree-holder auction-purchaser has no sort of claim against the appellants under the mortgage deed in question or the decree passed thereon. The two suits which have been filed by the decree-holder auction-purchaser against the Posts & Telegraph Department for recovery of arrears of rent in respect of the suit premises have, on the prayer made on behalf of the decree-holder auction-purchaser, been directed to be dismissed by the Trial Court without costs, since the money payable thereunder has been deposited in this Court by the Posts & Telegraph Department. The Posts & Telegraph Department has been directed to pay the rent of the premises in suit in their occupation including arrears, if any, which may have accrued subsequent to the period for which rent has already been deposited in this Court, to the appellant treating them as landlords.

Even though the matter has been settled between the parties as above, we felt the necessity of laying down the correct legal position and, hence, this Judgment.

N.V.K.

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