
(1924) 01 MAD CK 0047
In the Madras High Court

Aiyisa Bevi Ammal

APPELLANT

Vs

Kalandarsa Rowther and Another

RESPONDENT

Date of Decision : 17-01-1924

Acts Referred:

Citation : 80 Ind. Cas. 561

Hon'ble Judges : Wallace, J

Bench : Single Bench

Judgement

Wallace, J.—The ruling in Jamam-bandi v. Mutsaddi 45 Cal. 878 which was relied on by this Court in its judgment of 10th February, 1920 for the holding that the sale Ex. III is not binding on the plaintiff is equally in point to hold that the mortgage Ex. I is not binding on the defendants. Both transfers, being by a person not guardian of the minors, are equally void.

2. So that the position is this: 1st defendant was admitted into possession in 1893 under a void mortgage. The nature of his possession after that was nevertheless that of mortgagee and not absolute trespasser (See Gopala Dasee v. Rami 64 Ind. Cas. 328: (1921) M.W.N. 385 : 41 M.L.J. 194 and he began then to prescribe by adverse possession for the legal status of mortgagee, which, if his possession was not altered or disturbed he would acquire, after twelve years of such possession; i.e., the plaintiff would after such a period of 12 years be barred by limitation from contending on the ground that the mortgage was a void one, that 1st defendant was not even mortgagee. But while the 1st defendant was thus prescribing for a legal mortgage title, the same mortgagor on behalf of the plaintiffs chose to sell the property to him in 1900 under Ex. III. This sale no doubt was equally void as the mortgage was. But it had the legal effect of altering the nature of the possession which 1st defendant had in the property. He began in 1900 to prescribe by adverse possession for a vendee's title just as in 1893 he had begun to prescribe for a mortgagee's title, and that the manner of his possession was prescribing for full ownership was known to the party who had deliberately converted the mortgage into a sale.

3. It seems to me, therefore quite clear that after 12 years from 1900 1st defendant had prescribed by adverse possession for a full vendee's title, i.e., absolute ownership, and that it is not open to plaintiff now to contend that the mortgage title emerges again when the sale is held void, and the defendants must therefore prescribe for 60 years. The plaintiff's guardian converted the possession of 1st defendant as mortgagee into that of vendee.

4. If it should be argued that the adverse possession as vendee vanishes when the sale is held void, it must in the circumstances of this case equally follow that the adverse possession as mortgagee vanishes when the mortgage is held void. The plaintiff would then be in a worse case, since then 1st defendant would have been an absolute trespasser since 1893. and the suit would be long barred by limitation.

5. The Lower Appellate Court's decision is correct, and I dismiss this appeal with costs.