

(1924) 09 MAD CK 0064
In the Madras High Court

Aiyisa Bibi Ammal

APPELLANT

Vs

Kalandaras Rowther

RESPONDENT

Date of Decision : 05-09-1924

Acts Referred:

Citation : AIR 1925 Mad 1020

Judgement

1. The facts necessary for the decision of this appeal have been set out in Wallace, J.'s judgment and we do not propose to state them again. "When the plaintiff who is a Mahomedan was a minor, two transactions were entered into by his de-facto guardian : first a mortgage of 1893 and the other a sale of 1900. They are void under Imambandi v. Mutsaddi AIR 1918 P.C. 11 as they were entered into by a person not authorised to do so under the Mahammadan law.

2. The mortgagee took possession and his possession was that of a trespasser. But as a right to a limited estate could be acquired by adverse possession he could have at the end of the statutory period claimed that he had acquired the mortgagee's interest. Before, however he had continuous possession as mortgagee for the statutory period, the sale-deed of 1900 in his favour was executed. From that moment his possession though also that of a trespasser, was the possession of one who claimed to be absolute owner of the property. The quality and extent of right acquired by adverse possession depends upon the claim accompanying it and upon the nature of the animus possidendi. The plaintiff seeks to redeem the mortgage of 1893 and ignore the sale of 1900. He wants to treat the defendant as having acquired by adverse possession the right of a mortgagee and on that footing seeks to redeem the mortgage. But as from 1900 the defendant has had adverse possession not merely of a limited interest in the property but of the property itself, he has acquired an absolute right to it. The plaintiff contends that the defendant having entered on the property originally as a mortgagee, cannot be heard to say that by adverse possession he has become the owner. Khia Rajmal v. Daim [1905] 32 Cal. 296 a decision of the Privy Council is relied on. The facts, however, are distinguishable. In that case the original possession was assumed to be lawful in its origin and it is clear that

where the origin of the defendant's possession is lawful, time does not run against the owner until the denial of his right has been brought to his knowledge. But in this case the possession of the defendant even at the outset cannot be treated as permissive as he must be deemed to have got into possession of the property as a trespasser. The decision of Wallace, J., is right and the appeal is dismissed with costs.