
(1924) 01 MAD CK 0042
In the Madras High Court

Aiyisa Bivi Ammal

APPELLANT

Vs

Kalandarsa Rowther and Another

RESPONDENT

Date of Decision : 17-01-1924

Acts Referred:

Citation : (1924) 46 MLJ 501

Hon'ble Judges : Wallace, J

Bench : Division Bench

Judgement

Wallace, J.—The ruling in Imambandi v. Mutsaddi ILR (1918) Cal. 878, 1918 35 M.L.J. 422 which was relied on by this Court in its

judgment of 10-2-1920 for holding that the sale Exhibit III is not binding on the plaintiff is equally in point to hold that the mortgage Exhibit 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 Dasu v. Rami ILR (1921) .M. 946 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 Exhibit 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 clearly 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.