

(1895) 01 MAD CK 0004
In the Madras High Court

Annamalay Mudaly and Another

APPELLANT

Vs

A. Moonesamy Mudaly and Others

RESPONDENT

Date of Decision : 18-01-1895

Acts Referred:

Transfer of Property Act, 1882 — Section 41

Citation : (1895) 5 MLJ 86

Judgement

1. The learned Judge has not found--and we do not see any evidence, that 2nd defendant was the ostensible owner with the consent of the

plaintiffs, and this being the case the plaintiffs are not debarred from putting forward their title as against the purchasers from the ostensible owner.

All that is alleged against the plaintiffs is that they did not come forward to claim the property or warn the intending purchasers, but it is not alleged

that this quiescence, whatever was the cause of it--was accompanied by any misrepresentation in act or word. See Bas-wantapa Shidapa v. Ranu

and Malkhana ILR (1884) B. 86. Section 41 of the Transfer of Property Act merely gives expression to principles formerly well recognised. We

must also hold that defendants 6th and 7th did not make reasonable enquiries as to the title they were purchasing. They do not state that they made

inquiries as to who performed Chockalinga's funeral ceremonies, nor did they enquire of Moonesamy (1st defendant) who was living close by and

though they allege a gift from Chockilingam to his sister, they did not receive with their conveyance any deed of gift, nor have they brought

evidence to show they had ground for believing there had been an oral gift. The Collector's certificate in Unnamalai's name is not a title-deed, and

could at most show Unnamalai's profession but not the basis of her title.

2. We do not understand why the evidence of Madura Mudaly (3rd defendant) should be discredited. His interest in defending the suit appears

identical with those of defendants 6th and 7th, and there is nothing to show his mortgage claim was settled out of court by plaintiffs or by 2nd

defendant. Had he been in a position to contest the suit on the same lines as those adopted by defendants (5th and 7th, it would apparently have

been his interest so to do.

3. We must allow the appeal and decree in plaintiff's favor for possession of item No. 2 in the plaint schedule. Respondents (defendants 6th and

7th) must also pay appellants' costs on the original side and in this appeal.