

**(1890) 12 MAD CK 0011**  
**In the Madras High Court**

Ayyavayyar and Another

APPELLANT

Vs

Rahimansa

RESPONDENT

---

**Date of Decision :** 10-12-1890

**Acts Referred:**

**Citation :** (1891) ILR (Mad) 170

**Hon'ble Judges :** Shephard, J; Arthur J.H. Collins, J

**Bench :** Division Bench

---

## **Judgement**

1. Having regard to the language used in the two instruments, dated 17th January 1873, we think there can be no doubt that a sale with a condition for repurchase on the date specified was intended. The absence of reference to a reconveyance does not appear to us to be important, and there are certainly no words positively indicating that a mortgage was intended. There is no mention of interest and no power is reserved to the purchaser to recover his purchase-money. On the other hand, there is the fact that property was already hypothecated to the purchaser and it is not explained why a different form of mortgage should have been required. The District Judge, however, refers to other circumstances, which, in his opinion, point to an intention that the land should stand as a security for the amount of the consideration stated in the sale-deed. He finds that the price was inadequate, and he refers to the fact that the signature of Nachimuttu Pillai, as an attesting witness, was taken to a muchalka given to the defendant's father by a tenant who appears to have been let into possession in the month of January 1873. This latter circumstance seems to us wholly unimportant for, in any view of the case, Nachimuttu Pillai had at that date a possible right to the property.

2. The District Judge does not allude to the conduct of the plaintiff in abstaining for some fifteen years from reclaiming the land.
3. We have to say whether there is any evidence to show that in 1873 the parties intended to enter into a transaction different from that which appears on the face of the instruments to which they are parties. In our opinion, there is no such evidence, and, therefore, we must reverse the decree of the District Judge and restore that of the District Munsif.
4. The respondent must pay the costs in this and in the Lower Appellate Court.