(1891) 08 MAD CK 0011

In the Madras High Court

Chinnan APPELLANT

Vs

Ramachandra and Others RESPONDENT

Date of Decision : 31-08-1891

Acts Referred:
Transfer of Property Act, 1882 — Section 91

Citation : (1892) ILR (Mad) 54

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

Bench : Division Bench

Judgement

1. The third issue has apparently been tried under a complete misapprehension of the law.

2. Assuming that the person, who executed the mortgage in the plaintiff''s favour, was the owner of the property, the only question is whether in

fact he did mortgage it to the plaintiff. That is the only real question. It is found by the Subordinate Judge that the sums stated in the mortgage

document to have been advanced on the security of it have not really been advanced, and on that finding apparently the Subordinate Judge arrives

at the conclusion that the plaintiff''s mortgage is ""not a bond fide one"" and that he has no right to claim redemption. The expression ""bond fide

mortgage"" is a very loose and indefinite one, and it is not clear what the Subordinate Judge means. Prima facie when the execution of a mortgage

or other conveyance is proved--and here apparently it was proved and not denied by the mortgagee--further evidence is not required to show that

the purchaser has taken the interest which the document purports to convey. It is not necessary for him to prove as against a third person that the

consideration passed, and proof that the consideration mentioned did not pass is of no avail to show that the interest which the instrument purported to convey was not conveyed to the purchaser. Such proof is only important, when taken with other circumstances, it tends to show that

the instrument was a mere sham not intended to convey any interest to the ostensible purchaser at all.

3. In the present case, if the plaintiff''s mortgagor is content that the plaintiff should redeem, the defendants can have no reason to object; but for

that reason the mortgagor ought, as Section 91 of the Transfer of Property Act requires, to be brought on the record.

4. We must ask the Subordinate Judge, after first adding the mortgagor or his representative as a defendant, to return a revised finding on the third

issue, and, if he finds in favour of the plaintiff on that issue, to return findings on the other question raised in the appeal.

5. Findings to be returned within a month after the re-opening of the Subordinate Court, and seven days, after the posting of the finding in this

Court, will be allowed for filing objections.

6. [The Subordinate Judge, in compliance with the above order, returned a revised finding which was to the effect that the mortgage deed sued on

was executed for the benefit of one Vellian Chetty and not for that of the plaintiff who had paid nothing for it. He observed that the plaintiff''s case

was not that he had obtained the mortgage benami for Vellian Chetty (who was his cousin), but that he had taken it for his own benefit.]

7. The second appeal having come on for final hearing, the Court delivered judgment as follows:

8. It is now found that, as far as the plaintiff is concerned, it was not intended that he should take any interest under Exhibit A. We must accept the

finding observing, however, that the observations of the Subordinate Judge are very confused.

9. The appeal is dismissed with costs.

