

(1906) 02 MAD CK 0013
In the Madras High Court

Chinnasamy Reddiar and Another

APPELLANT

Vs

Krishna Reddy and Others

RESPONDENT

Date of Decision : 16-02-1906

Acts Referred:

Citation : (1906) 16 MLJ 146

Judgement

1. We cannot uphold the finding of the lower courts that the sale deed Exhibit A was what they call, "a sham transaction" by which it is supposed, is meant a deed under which it was not really intended to transfer the property. No such case was set up expressly by the second defendant and the contention urged before the District Munsiff was that the object of first defendant in executing the document was to deprive his daughter, the present fourth defendant of the property. If that were to be the motive which actuated the first defendant, it would follow that he had an intention of transferring the property to the plaintiff. In this view of the case, the question as to whether all the items of consideration set out in Exhibit A were actually paid or not is immaterial. We consequently must hold that. Exhibit A was not anything that can be termed a sham transaction, that the effect of that document was to transfer the property to the plaintiff and that they are consequently entitled to bring this suit for the redemption of the property mortgaged under Exhibit I.

2. It is, however, urged that the present suit was premature on the ground that it was brought less than three years after the execution of Exhibit I. Turning to the document we find it there provided that the mortgagor has the right to redeem the mortgage within 3 years and we agree with the Subordinate Judge who held following the decision in *Rose Ammal v. Rajarathnam Ammal* I.L.R.(1898) 23 M. 33 that the suit be held to mean that at any time on or before the 25th August 1902 the mortgagor can redeem. All that the further clause in the document to the effect that if the mortgagor does not redeem up to that date, he can pay the mortgage amount to the mortgagee in any month of Ani subsequently and recover the property can be held to mean is that he cannot recover in any year at a date earlier than June and July, as, if he did so he would deprive the

mortgagee of the crops grown on the land.

3. We allow this appeal, set aside the decree of the Subordinate Judge and give the plaintiffs a decree for redemption on payment by them to the 2nd defendant of the mortgage amount. The usual decree under the Transfer of Property Act will be drawn up and it will be directed that the plaintiffs are not entitled to recover possession of the land before the end of June 1906. All the parties will pay their own costs throughout.