(1897) 09 MAD CK 0015

In the Madras High Court

Kanaran and Another APPELLANT

Vs

Kuttooly and Another RESPONDENT

Date of Decision : 14-09-1897

Acts Referred:
Transfer of Property Act, 1882 — Section 60

Citation : (1898) ILR (Mad) 110 : (1898) 8 MLJ 62

Judgement

1. The most important question in the case is whether the agreement in the mortgage, exhibit I, to sell the mortgaged property to the mortgagee in

default of payment of the mortgage money is binding upon the mortgagor. Neither of the Courts below has considered this question. They have

proceeded to deal with the agreement of sale as if it were valid. On the question as to its validity we have no hesitation in holding against it.

2. It is the policy of the law that the right of redemption in a mortgagor shall not be fettered or clogged in any manner or to any extent by an

agreement between mortgagor and mortgagee, saving such transactions between the parties as would operate as an extinguishment of the right

(See Proviso to Section 60 of the Transfer of Property Act). A transaction to have this effect must naturally be one entered into after the mortgage

(See Perayya v. Venkata ILR 11 M. 403.

3. The present case is no doubt not governed by the terms of the Transfer of Property Act, the mortgage being prior to it; but at the date of the

mortgage, the law was substantially the same. Since 1858, the principles applicable to mortgages in this Presidency are those administered by the

Courts of Equity in England; according to which, agreements derogating from the right of redemption are treated as unenforceable. This principle is most strongly illustrated in the case of mortgages by conditional sale where the condition is held by the Courts to be inoperative. For other

instances of the application of the principle, it is sufficient to refer to the cases of Mahomed Muse v. Jijibhai Bhagvan ILR 9 B. 524 and Sayad

Abdul Hak v. Gulam Jilami Ib. 20B. 677 and to two recent English cases--Field v. Hopkins 44 Ch. Div. 524 and Salt v. Marquess of

Northampton, 92 A. C. 1. In this case the effect of the agreement was practically to deprive the mortgagor of the right to redeem after three years.

The agreement must, therefore, be held to be invalid, and the defendants'' contention that the plaintiffs are precluded by the above agreement from

seeking to redeem fails. It becomes unnecessary to consider the other objections taken to the validity of that agreement.