

(1895) 02 MAD CK 0004
In the Madras High Court

Krishna Pillay and Others

APPELLANT

Vs

Rangasami Pillai and Others

RESPONDENT

Date of Decision : 15-02-1895

Acts Referred:

Citation : (1895) ILR (Mad) 462

Hon'ble Judges : Subramania Ayyar, J; Best, J

Bench : Division Bench

Judgement

1. The Subordinate Judge has agreed with the District Munsif in finding that the kanom sued on is not proved to be genuine. But he has,

nevertheless, given plaintiff a decree on the ground that Exhibits A, B, C and D contain admissions of first defendant and his brother being

kanomdar under those through whom plaintiff claims, and that these are admissions made within the statutory period so as to prevent the plaintiff's

claim to redeem being time-barred. We agree with West, J., in Govindrav Deshmukh v. Ragho Deshmukh ILR 8 Bom. 543 in holding that a

plaintiff failing to establish the mortgage on which the suit was based should not be allowed to fall back upon some other as to which admissions

may have been made by the defendants in other proceedings. In Unnian v. Rama ILR 8 Mad. 415 the decree was passed on a mortgage expressly

pleaded and relied on by the defendant; so also in Kunhi Kutti Nair v. Kutti Maraccar 4 M.H.C.R. 359

2. We therefore set aside the decree of the lower Appellate Court and restore that of the District Munsif.

3. Respondents must pay appellants' costs in this Court and in the lower Appellate Court.