

**(1896) 09 MAD CK 0003**  
**In the Madras High Court**

Mammunhi

APPELLANT

Vs

Gri Sham Bhatta and Others

RESPONDENT

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**Date of Decision :** 02-09-1896

**Acts Referred:**

**Citation :** (1897) 7 MLJ 11

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**Judgement**

1. The plaintiff was transported for life in 1872. In 1873 his wife executed an usufructuary mortgage in favour of her brother, the sum secured being Rs. 925. In 1878 a similar mortgago was executed by her in favour of Iswara Bhatta, the consideration being the promise on the latter's part to pay off the former mortgage and, an additional advance of Rs. 300. In 1882, within twelve years of the institution of the suit, Iswara Bhatta assigned his motgage to the appellant.

2. It is contended on the appellant's behalf that, inasmuch as Iswara Bhatta took possession in 1878, and his possession and that of the appellant were adverse to the plaintiff, the suit ought to have been dismissed on the ground of limitation. On the respondent's part, it is argued that there is no evidence to show when, if ever, the possession under the mortgage of 1878 began, and further that the possession of the appellant was not wholly adverse, because it might be referred in part to a right to retain the land until payment of the Rs. 300 actually due by the respondent. If there had been a separate mortgage for this Rs. 300, this argument must probably have prevailed. But the appellant's case is that the possession of his assignor began under the same instrument which gave him a charge as well for the admitted debt as for the other sum, which, according to the respondent, ought not to have been borrowed. It is impossible to assign the

appellant's possession to his right in respect of one debt more than the other.

3. If, therefore, before this suit was instituted, more than twelve year's possession had been enjoyed under the instrument of 1878, the

respondent's right to impeach it to any extent must be held to be lost. There appears; to be no distinct evidence as to when, if ever, Iswara Bhatta

took possession. Considering the confused was in which the plaint is framed and the questions presented in the issues, we think that the appellant is

entitled to an opportunity of showing when his assignor's possession began. Fresh evidence may be taken. There must be a finding as to the

question for what period, if any, he was in possession.

4. Findings are to be submitted within one month after the reopening of the Court after the recess, and seven days will be allowed for filing

objections after the findings have been posted up in this Court.

5. In compliance with the above orders, the Subordinate Judge submitted that his finding on the issue was that 4th defendant's assignor Iswara

Bhatta, was in possession from 1881 till the date of the assignment to the 4th defendant.

On receipt of this finding the Court delivered the following

1. We accept the finding. The suit is barred by limitation as against the appellant. The appeal is allowed and the suit dismissed as against the

appellant who is entitled to the costs in this Court and in the Court below.

2. We cannot give the 2nd respondent his costs. He need not have appeared.