

(1928) 10 MAD CK 0011
In the Madras High Court

Mariyumma and Others

APPELLANT

Vs

Andu Alias Abdulla Beari and Others

RESPONDENT

Date of Decision : 26-10-1928

Acts Referred:

Citation : 115 Ind. Cas. 149

Hon'ble Judges : Walsh, J;Venkatasubba Rao, J

Bench : Division Bench

Judgement

1. The question to be decided is whether the suit is barred under Article 134 of the Limitation Act. The plaintiff seeks to redeem a mortgage made in 1865. It was created by the father of plaintiffs Nos. 1 and 2 in favour of one Kunhammu, the 1st defendant's father. The properties mortgaged changed hands until finally they passed to the 2nd defendant under a sale-deed of 1894 (Ex. 4). The mortgagee in his very first dealing with these properties treated them as belonging to himself. In each of the documents that followed, the recitals that were made were consistent with this position. The learned Subordinate Judge has found, upon a scrutiny of these documents, that the 2nd defendant had reason to believe, and in fact believed, that his vendor was absolutely entitled to the properties. If that be so, the inference is reasonable that what he intended to purchase was an absolute property and not merely the interest of the mortgagee [See the judgment of Bakewell, J., in Muthaya Shetti Vs. Kanthappa Shetti, .]

We may refer to two Exhibits, Ex. 3 of 1892, the sale-deed in favour of the defendant's vendor and next Ex. 4 the sale-deed in his own favour

Exhibit 3 says:

I have absolutely sold you the properties for a sum of Rs. 10,500... your family

may enjoy them generation after generation making improvements etc.

2. In Ex. 4 again, similar words occur:

3. You may make your own improvements in the said property and enjoy the same generation after generation.

4. It is impossible to accede to the contention, that what was intended to be transferred or taken under those deeds, is merely the interest of a

mortgagee. Under Article 134 the question is what did the purchaser from the mortgagee intend to acquire? If he honestly and after due care

believed that his transferor was the full owner, it may be presumed that what he intended to acquire was full ownership.

5. The second appeal fails and is dismissed with costs.