

(1892) 04 MAD CK 0017
In the Madras High Court

Muthia Chetti alias Ramanathan Chetti	APPELLANT
Vs	
Subbayyan and Others	RESPONDENT

Date of Decision : 25-04-1892

Acts Referred:

Citation : (1892) 2 MLJ 294

Judgement

1. The mortgage to Chidambara Chetti by Venkatasami Naidn and others was in April 1875. The sale of the land hyphothecated by the mortgagor to the defendants was in June or July 1876. The suit by plaintiff's assignor was in 1878. The District Munsif. found that there was ""no proof worth the name to show that plaintiff's assignors had any knowledge of the defendants being in occupation of the sites."" The District Judge was therefore in error in holding that plaintiff's assignors were bound to have made defendants parties to O.S. No. 36 of 1878. If they had no notice of their interest they could not make them parties not having been parties to that suit. Defendants are not bound by it but they are not entitled to ask that plaintiff's present suit shall be dismissed. At the time when they purchased the land was subject to the mortgage and the sales by Venkatasami Naidu in no way prejudiced the right of the prior mortgagee. The purchasers of Venkatasami Naidu's rights are entitled to have an opportunity of redeeming the mortgage, but if they fail to do so within a date to be fixed by the court the plaintiff is clearly entitled to a decree. We set aside the decrees" of the courts below and remand the suits to the Court of First Instance in order that it may pass a fresh decree in each case after determining the amount which, each defendant is liable to pay. Plaintiff is entitled to his costs in this and in the Lower Appellate Court and the costs

of the" Court of First Instance will abide and follow the result.