(1923) 08 MAD CK 0018

In the Madras High Court

Nadepena Appamma and Others APPELLANT

Vs

Saripalli Chinnaveadu (dead) and Others RESPONDENT

Date of Decision : 17-08-1923

Acts Referred:

Citation : AIR 1924 Mad 292 : 79 Ind. Cas. 510 : (1923) 45 MLJ 667

Hon'ble Judges : Ramesam, J

Bench : Division Bench

Judgement

Ramesam, J.—The facts are stated by my learned brothers. It is sufficient to add that defendants 1 to 4 represent the original mortgagee

who is dead and defendants 5 to 8 are their relations and friends who got into possession of the suit property within 12 years prior to suit.

2. It is true that the unregistered deed of mortgage mentioned in the plaint is inadmissible in evidence to prove the mortgage. It is also true that a

mortgage of Immovable property to secure a sum of Rs. 100 or upwards cannot be created otherwise than by a registered deed. There is

therefore no mortgage of 1902 to redeem.

3. But it does not follow that there was not, at the date of plaint, the relation of mortgagor and mortgagee between the plaintiff and defendants 1 to

4. It is too narrow reading of the plaint which is a bare narration of the facts, to construe it as seeking to redeem only a mortgage of 1902 and no

other. The decision in Krishna Pillai v. Rangaswami Pillai ILR (1895) M. 462 : 5 M.L.J. 187 does not apply. If the defendants who remained in

possession for 15 years prescribed for and acquired the interest of a mortgagee by adverse possession, the relation between the plaintiff and the

defendants is that of a mortgagor and mortgagee. The limited interest of a mortgagee may be acquired by adverse-possession Madhava v.

Narayana I.L.R.(1885) M. 244 To prove the extent of interest acquired by the defendants by adverse possession, the terms of the mortgage

asserted by them have to be and may be proved. Such proof cannot be regarded as an attempt to prove the mortgage of 1902 or to adduce

secondary evidence of the terms of the unregistered deed of mortgage; for the asserted mortgage need not, necessarily be though very often it will

be identical with the mortgage attempted to be created by means of the unregistered deed of mortgage.

4. The case has not been tried. One cannot now know what the evidence the plaintiffs are going to adduce to prove the mortgage acquired by the

defendants by adverse possession. The unregistered deed of mortgage (which ought to be in the defendant''s possession), if forthcoming, can be

admitted in evidence to show the character of the defendant''s possession. Varada Pillai v. Jeevaratnammal : 5 M.L.J. 187. It cannot be assumed

at this stage that no other evidence will be forthcoming.

5. Even if the defendants acquired no mortgage or other limited interest by adverse possession, the plaintiffs can succeed if they are able to prove

their title. It cannot be said that the character of the suit is changed. In the first place, even as the suit is framed, it is a suit for possession based on

title, as against defendants 5 to 8 and the suit is not a suit for mere redemption. But, apart from this, I agree with the decision in Ananda Hait v.

Khudiram Hait 19 C.L.J. 532, where it was held that a suit to redeem a usufructuary mortgage is substantially a suit for possession. See also Sesha

Naidu v. Periyasami Odayar ILR (1921) M. 952, 957-8.

6. I agree with Venkatasubba Rao. J. that the appeal must be dismissed. Costs of the High Court to abide the result.

