
(1921) 11 MAD CK 0012
In the Madras High Court

Omayurupagam Mutt (through its Atheena Karthar
Umamaheswarar Sivachariar

APPELLANT

Vs

Sivasooria Thevan and Others

RESPONDENT

Date of Decision : 02-11-1921

Acts Referred:

Registration Act, 1908 — Section 49

Citation : AIR 1922 Mad 407 : (1922) 16 LW 475 : (1922) 42 MLJ 144

Hon'ble Judges : William Ayling, O.C.J.;Odgers, J

Bench : Full Bench

Judgement

William Ayling, Officiating C.J.

1. The facts of this case are fully and clearly set forth in paragraph 2 of the judgment of the Lower Appellate Court and it is unnecessary to

recapitulate them.

2. It presents some difficulty owing to the peculiar circumstances and the vague nature of the plaint; but after the best consideration I can give I

think the conclusion of the learned Subordinate Judge is correct.

3. As he says :--""The suit as framed is for recovery of possession on the strength of mere title ignoring the transaction under which defendants got

possession."" It has been suggested in argument before us that it should be treated as a suit for redemption either of the genuine mortgage of 1886

or of the spurious mortgage of 1858 set up by defendant's predecessor in the previous suit and found to be false. Reliance was placed on the

Privy Council decision in Varada Pillai v. Jeevarathnammal 38 M.L.J. 313 (P.C.) for the position that in spite of the provisions of S- 49 of the

Registration Act, the Court would be entitled to look into the terms of the

mortgage deed, and give plaintiff relief on the basis thereof. I am clearly of opinion that the judgment of their Lordships does not go to this length. We were referred to a recent case disposed of by ourselves (Sontyanagopala Dasu (dead) and Others Vs. Inapatalupula Rami and Others,) for the same proposition; but that case is easily distinguishable. The mortgage deeds there were not inadmissible in evidence, although the mortgages themselves were void as relating to property which at the time of their execution was inalienable. We gave relief on the grounds of equity in circumstances which have no parallel here- It is unnecessary however to pursue the matter further; because, viewed as a suit to redeem the mortgage of 1866 the decision in O.S. No. 485 of 1894 on the file of the Court of the District Munsif of Srivaikuntam must operate as res judicata.

4. The decision in the same suit that the mortgage of 1858 is false may not operate as res judicata; but even if it does not it is not pretended now that there ever was such a mortgage and the Courts cannot be asked to decree redemption of a mortgage which is admittedly fictitious.

5. We must therefore fall back on the original frame of the suit No doubt the original title to the property of the mutt which the plaintiff represents is

not denied and the admission in the suit of 1894 by defendant's predecessor that he came into possession of the land by virtue of some mortgage

under the Mutt may be held binding on defendants- But it does not follow that his other possession subsequent to the decision of that suit is not

adverse, and I think the Subordinate Judge has rightly held that it was. Assuming that Muthiah Thevan's possession up to 1894 is to be referred to

the genuine but invalid mortgage of 1866, yet in the course of that suit Muthiah Thevan repudiated that mortgage as false and set up a different

interest in himself. The mortgage of 1866 thus repudiated by Muthiah Thevan was by the decision of the Court declared to be ineffective; and it

seems to me impossible to refer to his subsequent possession or that of his successors. It has been held by Piggott, J. in *Mussamat Zaibeennissa v.*

Parikkat (1914) 25 I.C. 611 following *Aikman, J* in *Sita v. Ram Madho Lal* (1901) 24 All. 44 that a decree of Court pronouncing a mortgage

debt to be satisfied is equivalent to a declaration that the relations of mortgagee and mortgagor have come to an end; and render the subsequent

possession of the mortgagee adverse to the mortgagor. It seems to me that a

similar result must be held to accrue from a decision which in effect says that the relations never existed,

6. There is really no equity in the case. The suit of 1894 was brought by the predecessor of the present plaintiff and plaintiff himself succeeded to the headship of the Mutt in 1896. He took no steps whatever to recover the suit lands for nearly 20 years (vide plaint) by which time the lands as the Subordinate Judge says had been improved by defendants and became very valuable.

7. I would dismiss the second appeal with costs.

Odgers, J.

8. I agree and have nothing to add.