

(1967) 02 MAD CK 0026
In the Madras High Court
Case No : C.R.P. No. 1932 of 1967

Pencil alias Bodi Reddi

APPELLANT

Vs

Vajjiram Chetti and others

RESPONDENT

Date of Decision : 08-02-1967

Acts Referred:

Transfer of Property Act, 1882 — Section 56

Citation : (1967) 02 MAD CK 0026

Hon'ble Judges : Ramaprasada Rao, J

Bench : Single Bench

Advocate : N.R. Ragavachariar, for the Appellant;

Final Decision : Allowed

Judgement

Ramaprasada Rao, J.—The order of the learned District Munsif is obviously wrong. It runs contra to the principle in S. 56 of the Transfer of

Property Act. Under S. 56 of the Transfer of Property Act, which provides for marshalling by subsequent purchaser it is seen that if there is a

subsisting mortgage over two or three properties and if one or more of such properties are sold by the mortgagor, then the buyer of such

properties in the absence of a contract to the contrary is entitled to have the mortgage debt satisfied out of the properties not sold to him but

without causing prejudice to the mortgagee. Obviously this privilege is granted to an intermediate purchaser during the subsistence of the mortgage

so that he need not be unreasonably disturbed from the property if otherwise the mortgage debt could be satisfied. In the instant case, the

mortgagor mortgaged three items of property to the first respondent under Ex. B. 1. Under Ex. B. 2, two items therein were sold to the eleventh

defendant--petitioner in this civil revision petition. After sale, one of mortgagors

(Chinnammal) settled the last item which was the subject matter of the mortgage under Ex. B. 1 in favour of her daughter, under Ex. B. 3. The mortgage debt not having been satisfied the mortgagee instituted a suit, obtained a decree and was about to bring the properties to sale. At that point of time, the petitioner invoking apparently S. 56 of transfer of Property Act, filed an application to the court to the effect that the properties covered by Ex. B. 2 could be sold last and the property covered under Ex. B. 3 should be sold in the first instance, to satisfy the decree. It also appears that he averred that no prejudice by such a process would be caused to the decree holder,--mortgagee, as the petitioner was willing for the properties which are the subject matter of Ex. B. 2 being proceeded against in can the property covered under Ex. B. 3 was not sufficient to satisfy the mortgage debt. This appears to be the clear principle underlying S. 56 and this was ignored by the court below. The prayer of the petitioner for the postponement of the sale of his properties under Ex. B. 2 appears to be not only reasonable but also one which ought to be done within the meaning of S. 56 of the transfer of property Act. This apart, the settlement under Ex. B, 3 was in favour of the daughter. This also appear to me to be an additional reason why the petitioner's prayer ought to have been accepted by the court below. The order of the lower court is therefore set aside and the petitioner's prayer in that court is allowed and the execution will proceed in the manner indicated above. No costs.