
(1910) 12 MAD CK 0034
In the Madras High Court

Seshan Pattar and Others

APPELLANT

Vs

Yakkanath Easwaran Unni Avergal Styled Ayini Pulli Raman
Kumaran and Others

RESPONDENT

Date of Decision : 14-12-1910

Acts Referred:

Transfer of Property Act, 1882 — Section 92

Citation : 9 Ind. Cas. 940(1)

Hon'ble Judges : Krishnaswami Aiyar, J; Ayling, J

Bench : Division Bench

Judgement

1. This is a suit for redemption. The first plaintiff was the jemni and the second plaintiff melcharatdar or second mortgagee. A decree was passed by the Subordinate Judge for redemption in favour of the second plaintiff. A further direction was made that if the second plaintiff failed to pay the amount specified within the period provided in the decree the mortgaged property was to be sold. This direction for sale is in accordance with the provisions of Section 92 of the Transfer of Property Act. Defendants Nos. 1 to 8 have preferred this appeal claiming a larger amount by way of compensation for improvements than was allowed by the decree of the original Court. Since the appeal was filed, the first plaintiff the jemni has died. It is said two years and a half have elapsed since the date of his death. His representatives have not been brought upon the record.

2. A preliminary objection is taken that the appeal is liable to be dismissed as the mortgagor is not a party to the appeal. We think the objection is well-founded. The appeal of the 1st mortgagee is to enhance the amount recoverable from the mortgage property and if they succeed in the appeal the property which belongs to the jemni, whose representatives have not been brought upon the record, is liable to be sold for the larger amount which the appellants claim. We must hold that the representatives of the mortgagor not having been brought on the record, the appeal is bad and cannot be prosecuted, see Vedapurathi v. Avara 25 M. 568. We dismiss the appeal with costs.

3. The memorandum of objections is also dismissed with costs.