

(1902) 08 MAD CK 0004
In the Madras High Court

Sivaraman Chetty and Another

APPELLANT

Vs

Kuppumuthu Chetty

RESPONDENT

Date of Decision : 22-08-1902

Acts Referred:

Citation : (1903) 13 MLJ 72

Judgement

1. The judge should not have remanded the suit to the District Munsiff. The whole case and all the materials necessary for adjudication were before him and he should have disposed of the appeal. The 1st defendant having obtained a decree on his prior mortgage without forming the plaintiff as a party and having in execution purchased the mortgaged property, the right of the plaintiff as a puisne mortgagee to redeem the 1st mortgage is not affected by either the decree or sale. The only effect of the sale will be to transfer to the 1st defendant, the purchaser, the equity of redemption of the mortgagor who alone was a party to that suit. The plaintiff is therefore clearly entitled to redeem the prior mortgage in favour of the 1st defendant without prejudice to the right of the 2nd defendant as assignee from the 1st defendant of the mortgagor's equity of redemption to redeem the plaintiff on payment of the amount of the mortgage on the item of property mentioned the plaint and the proportionate amount of the 2nd mortgage chargeable on the said item of property, which alone is comprised in both the mortgages after he (the plaintiff) has redeemed the 1st mortgage. This cannot be done in the present suit for the reason at any rate that the plaintiff's 2nd mortgage comprises not only the plaint item but two other items the mortgagor's equity of redemption in which has passed to the plaintiff in virtue of the sale held in execution of the decree passed

in the suit brought by the plaintiff on the 2nd mortgage against the mortgagor alone without joining as a party the 1st defendant the prior mortgagee

of one of the 3 items comprised in the 2nd mortgage. We set aside the decree of the District Judge and remand this appeal for disposal by him

according to law, with reference to these remarks. Costs will be costs in the cause.