

(1897) 11 MAD CK 0012
In the Madras High Court

Sivathi Odnyan and Another

APPELLANT

Vs

Ramasubbayyar

RESPONDENT

Date of Decision : 30-11-1897

Acts Referred:

Citation : (1898) ILR (Mad) 64 : (1898) 8 MLJ 21

Judgement

1. We cannot accede to the contention that the District Judge is wrong in holding upon the issue remitted to him that the sum payable by the

appellants to the respondent is not Rs. 270, the price paid by latter for the property when he purchased it at the court-sale held in execution of the

decree obtained by the mortgagee, but Rs. 1,050, which the Judge found to be the proportion of the mortgage debt chargeable in, respect of the

property,

2. The decision is in accordance with the principle stated in Fisher on Mortgages in the following words: ""The assignee stands in the place of the

assignor; and, as the latter might have assigned to him gratis, it is but just that the measure of the allowance should be what was due and not what

was paid. The assignee taking the hazard should also have the benefit of the bargain, of which neither the mortgagor nor any subsequent

incumbrancer can have any equity to deprive him."" (5th Edition, Section 1784). Davis v. Barret is one of the modern cases in which the above

principle was acted upon. There A devised an estate to his heir who in his own right had a charge on it. The heir bought up an incumbrance on the

estate amounting to ₹11,555 for 2,000½, Sir John Romilly, M. R., held that the heir was entitled to the full amount as against other

incumbrancers on the estate. In dealing with the contention that the owner of

the second charge was entitled to have an account of what was actually paid for the purpose of getting in the former mortgage and of making it stand simply as security for that amount, the Master of the Rolls said: "I am of opinion that the second mortgagee has no such equity against any stranger who might purchase the first charge, and that the owner of the reversion not having created the first or second charge, is, in this respect, entitled to stand in the place of a mere stranger. It would be, as I believe, a new equity and productive of the most injurious consequences, if a second mortgagee were entitled, as against the bona-fide assignee of a first mortgage, to insist on an account being taken of what was actually paid for the first mortgage." (14 Bea v. at p. 554) . In Macrae v. Goodman, the Judicial Committee held similarly 5 M. P. C. C. 315 .

3. There are, no doubt, exceptions to the rule stated above as when the purchaser occupies a fiduciary position or when there is fraud or collusion.

In the present case, however, the respondent was a bona-fide purchaser at a court-sale which vested in him the right of the mortgagee in so far as the property in dispute was concerned. The finding of the District Judge must, therefore, be accepted.

4. The decrees of the lower appellate Court are reversed and those of the District Munsif restored with the modification that the amount payable by the appellants to the respondent is (instead of Rs. 270) Rs. 1,050 with interest thereon at 10 annas per cent, per mensem from the date of the decree to the date of payment. Each party will bear his own costs in this and in the lower appellate Court.