

(1891) 12 MAD CK 0019
In the Madras High Court

Subbarazu and Others

APPELLANT

Vs

Venkataratnam and Another

RESPONDENT

Date of Decision : 15-12-1891

Acts Referred:

Citation : (1892) ILR (Mad) 234

Hon'ble Judges : Wilkinson, J; Arthur J.H. Collins, J

Bench : Division Bench

Judgement

1. Venkatarazu and Sreeramulu were undivided brothers. They owned 13 odd acres of inam land in Penkarametta as well as other property. Venkatarazu, who was the elder brother, mortgaged a moiety of the land in Penkarametta to one Peddiah, and the other moiety to the father of Defendants Nos. 2 to 6 and put each of his mortgagees in possession of 6 acres 59 cents, that is of the whole land. Both the lower Courts have found that these mortgages were not binding on Sreeramulu and the finding is not impeached on second appeal. Sreeramulu mortgaged his share of the land in Penkarametta to the plaintiff, who, having obtained a decree on his mortgage in Original Suit No. 132 of 1887, purchased in execution Sreoramulu's half share, and having settled with Peddiah and purchased the share of Venkatarazu, now sues for a moiety of the land in the possession of the defendants Nos. 2 to 6, on the ground that Sreeramulu was entitled to that moiety. Both the lower Courts have decided in his favour, and Defendants Nos. 2 to 6 appeal. In the first place it is contended that the suit was not sustainable, as the plaintiff was bound to sue for a partition of the whole family property and could not maintain a suit for a specific portion only. In support of this contention reliance is placed on Venhatarama v. Meera Labai ILR 13 Mad. 275 but that case is distinguishable from the present. There the conflict was between a stranger who had purchased from one member of the joint family his share in a specific land and the members of the joint family. Here the contest is between strangers. The plaintiff having purchased the rights of the only members of the joint family in the Penkarametta land stands in the shoes of the joint family, and therefore the general principle on which the case above referred

to was decided has no application to the present case. For the same reason, the case relied on by the respondents" pleader--Chinna Sanyasi v. Suriya ILR 5 Mad. 196--is not in point. The plaintiff cannot set up the right of Sreeramulu to affirm the mortgage by Venkatarazu to defendants Nos. 2 to 6, appellants, and claim by partition to recover that share to which the alienation could not extend, because he stands in the shoes of Venkatarazu. If he represented Sreeramulu alone, he might perhaps avail himself of the right recognized in the latter case, but, having five years prior to the present suit purchased all the rights of defendant's mortgagor, he cannot now maintain a suit for Sreeramulu's half share. What he purchased from Venkatarazu was the right of redemption, and he cannot seek to deprive Venkatarazu's mortgagees of a portion of their security without asking for an account and offering to pay whatever may be due on the footing of the mortgage. The suit in its present form was clearly not maintainable. The defendants are entitled to say "you stand in the shoes of our mortgagor and you cannot reprobate your mortgage to us and plead that you had no right to give us possession of a moiety of the land. You had, at the time you granted the land, an undoubted right to a moiety, and you cannot oust us without discharging your liability." We fail to see what answer there is to this. Plaintiff is the owner by purchase of the whole land, and if he wants possession of the whole land, he must discharge his vendors' debts on the land and not seek by setting off the rights of one of his vendors against the other to deprive defendants of their security. The decrees of the Courts below must be reversed, and the suit dismissed with costs throughout.