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**(1912) 08 MAD CK 0068**  
**In the Madras High Court**

Subraya Kini

APPELLANT

Vs

Ramappa Adige and Another

RESPONDENT

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**Date of Decision :** 06-08-1912

**Acts Referred:**

**Citation :** 17 Ind. Cas. 265

**Hon'ble Judges :** Sundara Aiyar, J;Sadasiva Aiyar, J

**Bench :** Division Bench

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**Judgement**

Sundara Aiyar, J.—There is no ground for interference in this second appeal. The members of the Kini family gave a mortgage to the plaintiff in 1860 and took a lease from him of the mortgaged lands. Their possession, therefore, was that of tenants under the plaintiff. It was not shown that that possession came to a legal termination. Neither the execution of the mulgeni lease to Rahman nor the assertion of mulgeni right in Narayana Kini subsequently would have the result of changing the nature of the possession originally had in 1860 as lessees. Whether, therefore, the execution of the mulgeni has been properly proved or not, whether the mulgeni was valid or not, and whether it is a mulgeni lease that now subsists after the partition in the family of the Kinis and the allotment of the lands at that partition to persons, who subsequently sold the lands to others from whom the plaintiff derived his title, it is clear that until the mortgage is redeemed, the plaintiff is entitled to recover on the tenancy which came into existence at the time of the mortgage. The plaintiff is, therefore, entitled to recover possession. The District Judge has not recorded a finding on the question of notice. Whether that question was argued before him does not appear, but the Munsif's judgment on the point is obviously right. It is quite immaterial that the plaintiff, at the time of the first notice, Exhibit I, had not purchased the equity of redemption in a portion of the land. His right to give notice was as the lessor under the lease which was executed at the time of the mortgage. The second appeal must, therefore, be dismissed with costs.

Sadasiva Aiyar, J.

2. I am of opinion that the District Judge finds as a fact that the alleged mulgeni lease to Rahman is a myth. Even if his finding is wrong, and even taking it that there was a mulgeni lease to Rahman created by the Kinis, that mulgeni lease right, as it was transferred to Narayana Kini in 1878, when Narayana Kini and his brothers (the then heads of the Kini family) were undivided in interest, ceased to exist by merging in their own mulgeni right and this explains why Narayana Kini hypothecated the land itself under Exhibit III and not merely a mulgeni right in the land. When, therefore, at the partition of 1881, the property fell to the share of the plaintiff's vendor's husband, plaintiff's vendor's husband got title to the property itself subject only to the original usufructuary mortgage right in plaintiff's favour and not subject to the mulgeni right in any body else. No mulgeni right in any other person, therefore, existed at that time. No such right came into existence afterwards. In this view, the second appeal must be and is dismissed with costs.