

(1910) 04 MAD CK 0058
In the Madras High Court

Sudailamuthu Pillay

APPELLANT

Vs

Muthusawmi Pillay and Others

RESPONDENT

Date of Decision : 29-04-1910

Acts Referred:

Citation : 7 Ind. Cas. 49

Hon'ble Judges : Ralph Benson, J;Krishnaswami Aiyar, J

Bench : Division Bench

Judgement

1. The mortgagee sues for sale Defendants Nos. 2 and 3 are in possession respectively of the 2nd and 1st item of property comprised in the mortgage. The Munsif made a decree for a portion of the mortgage-money making item No. 2 liable. On appeal by the 2nd defendant, the Subordinate Judge has dismissed the suit. It is impossible to appreciate his reasons. Because a puisne mortgage discharged by the 2nd defendant is not mentioned in the plaints and the purchases of 2nd and 3rd defendant are ignored, he says the suit ought to be dismissed. We think the conclusion stated does not follow. The plaintiff is not bound to know or set out the interests of parties in possession, in the mortgaged property. The decision is clearly wrong. We set aside the decree of the Subordinate Judge and remand the case for disposal according to law. The appellant is entitled to the costs of this appeal. The costs in the Court below will be provided for in the revised decree.