

(1897) 09 MAD CK 0004
In the Madras High Court

Syamalarayudu

APPELLANT

Vs

Subbarayudu and Another

RESPONDENT

Date of Decision : 07-09-1897

Acts Referred:

Citation : (1898) ILR (Mad) 143

Hon'ble Judges : Subramania Ayyar, J; Davies, J

Bench : Division Bench

Judgement

1. There is no dispute that the plaintiff did pay off the mortgagees with a sum of Rs. 1,084. He would ordinarily be entitled to step into their shoes

and to claim payment of his mortgage money out of the property originally mortgaged now in the hands of the second defendant whose liability to

pay the mortgage amount was established in the very suit in which the sale to him was upheld. The ground given in the Courts below for refusing to

allow plaintiff's payment to be a charge upon the property was that the payment was not bond fide, and that it was not bond fide because it was

made during the tendency of the suit between plaintiff and second defendant about the sale. We fail to see in this circumstance anything to affect the

validity of the payment which was no doubt made by the plaintiff for the purpose of strengthening his own claim. The plaintiff's illegal act in

antedating his sale-deed, also for the purpose of supporting his title does not vitiate the payment subsequently made, and which in itself was legal.

There was therefore, no want of bond fides, and certainly no fraud. We must accordingly allow the second appeal and direct that a decree for sale

of the property be drawn up in the ordinary form for the sum of Rs. 1,084 with interest thereon at the rate of 12 percent, per annum on Rs. 660

from the 11th March 1891 and on Rs. 424 from the 3rd March 1891 up to the date of the plaint, with 6 percent, per annum thereafter until date of realization. The date for payment is fixed for the 7th March 1898. The second defendant must pay the plaintiff's costs on the above amount throughout. In other respects the decree of the Munsif is confirmed.