(1914) 04 MAD CK 0027

In the Madras High Court

Venkatarama Aiyar APPELLANT

Vs

Suppa Nadan and Others RESPONDENT

Date of Decision : 21-04-1914

Acts Referred:
Limitation Act, 1908 — Section 31(1)

Citation : AIR 1914 Mad 333 : 24 Ind. Cas. 24 : (1914) 27 MLJ 58

Judgement

1. We think it is open to us to hold that the question whether an instrument is or is not a mortgage within the meaning of Section 31(1) of the

Limitation Act of 1908 does not depend on the date of its execution. In Aliba v. Nanu ILR (1886) M. 218 the view taken by Muthusami Aiyar J.,

was that the enactment of the Transfer of Property Act created new rights and liabilities in the parties to a mortgage so that what might be a

mortgage as defined in Section 58 of that Act, might not be a mortgage if executed before that Act. But this was not decided by the Full Bench in

Rangasami v. Muthukumarappa ILR (1885) M. 509 and is doubted by Shephard, J. in Ramachandra Rayagaru v. Modhu Padhi ILR (1898) M.

326 . Though the learned Judge adhered to this opinion in Rangasami v. Muthukuma appa ILR (1885) M. 509 there he was also of opinion that

the document then in question was not a mortgage within the definition of the Transfer of Property Act in the absence of a transfer of property or

agreement giving a power of sale. But later cases have decided that to effect a mortgage it is not necessary to have an express transfer of interest

or an express agreement whereby the creditor acquires a power to sell the property in default of payment and that an instrument in which these

stipulations are not expressed may yet be a mortgage within the definition of Section 58 of the Transfer of Property Act and its holder a mortgagee within Section 31(1) Limitation Act. (The matter is discussed in Rama Brahmam and Others Vs. Venkatanarasu Puntulul and Others, in which the

cases are referred to. The authority of Bangasami v. Muthukumara ILR (1885) M. 509 is thus undermined to the extent that we cannot take the

definition of a mortgage from it and the Full Bench does not decide that the document before it, though it would have been a simple mortgage if

executed after the Transfer of Property Act was not so because it was executed before its enactment.

2. The document before us was executed before the Transfer of Property Act but it is in our opinion a simple mortgage within the definition of

Section 58 of that Act and so it is a mortgage and within the benefit of Section 31(1) of the Limitation Act.

3. We reverse the decree of the Court below and remand the suit to the Court of First Instance to be disposed of according to law.

4. Costs will abide the result.