

Uthandi Mudali Vs. Raghavachari and ors.

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Court : Chennai

Decided On : Dec-12-1905

Reported in : (1906)16MLJ106

Appellant : Uthandi Mudali

Respondent : Raghavachari and ors.

Judgement :

1. We think this decree cannot be supported. The defendants Nos. 2 to 4 sold certain property to the 1st defendant under Exhibit IX in November 1895.
2. In January 1896, the first defendant executed to the second defendant alone Exhibit B which is called a yethiridai deed, whereby after reciting that the second defendant and his younger brothers had on the 27th November 1895 conveyed to him the lands in question for Rs. 350, he agreed to resell them to the second defendant if on the 29th January 1901 - 'without obtaining from others and by your own earnings' - he paid the sum of Rs. 350.
3. The second defendant on the 29th June 1898 conveyed under Exhibit A his rights to the plaintiff, and the plaintiff now sues to recover the land by paying off the amount payable and Exhibit B to the first defendant.
4. The District Munsif dismissed the suit; but on appeal the District Judge held that Exhibit IX and B together constituted a mortgage and that the plaintiff was entitled to redeem.

5. We are clearly of opinion that this is wrong. The case is governed by *Situl Pershad v. Luchmi Pershad Singh* I.L.R. 10 I.A. 129 with which it is practically on all fours.

6. The two Exhibits IX and A do not in our opinion constitute one transaction. They are not between the same parties, and they cannot be construed as constituting a mortgage.

7. Moreover Exhibit B creates a contract personally with the second defendant alone which was not assignable. The plaintiff, therefore, under Exhibit A acquires no rights as against the first defendant. The suit should, therefore, have been dismissed and we, therefore, reverse the decree of the District Judge and restore that of the District Munsif with costs in this and in the lower appellate Court.

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