

**Periandi Vs. Angappa and anr.**

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**SooperKanoon Citation :** [sooperkanoon.com/776416](http://sooperkanoon.com/776416)

**Court :** Chennai

**Decided On :** Mar-24-1884

**Reported in :** (1883)ILR7Mad423

**Judge :** Charles A. Turner, Kt., C.J. and ;Muttusami Ayyar, J.

**Appellant :** Periandi

**Respondent :** Angappa and anr.

**Judgement :**

1. Appellant, Periandi Tevan, purchased the property in dispute on the 30th July 1880 in execution of a decree subject to a prior mortgage in favor of Subbaya Tevan and others, defendants 1 to 4. The mortgagees had previously been sued by the judgment-debtors in suit No. 618 of 1876, and a decree had been passed in the terms of a compromise then made. They were to the effect that the mortgage was redeemable upon the owners paying Rupees 10 on the 16th July 1877. But that decree was not put into execution within three years, and it was barred by limitation at the date of the sale. By the Court sale, the right, title, and interest of the judgment-debtors, as it was modified by the razinama decree, could alone have passed to the appellant. The question for decision then is whether the appellant might sue again for redemption, notwithstanding the razinama decree in suit 618 of 1876. There was no direction in the decree that in default of payment within an appointed day the mortgage be foreclosed.

2. It did not alter the legal relation which had subsisted between the parties prior to the suit, and the incidents of the relation exist so long as the relation exists. The decree-holder, by omitting to avail himself of the right declared to put an end to the relation, lost his right to recover the property in execution of that decree. As there was no foreclosure he can still assert his right to redeem, which may be conditional on the payment of a larger or a less sum than was requisite when the former decree was pronounced. It must sometimes happen that the result of taking an account, a usual feature in a suit for redemption, would be to show that there remained a debt due in excess of the amount supposed by the mortgagor and which he would be unable at once to discharge.

3. Under the Transfer of Property Act a Court may now pass a decree for foreclosure which will extinguish the mortgagor's rights; but power is also given to order a sale which will secure to the mortgagee the value of the interest remaining to him in the property.

4. The decree of the Lower Appellate Court must be set aside and that of the Court of First Instance restored with all costs.