

Manjappa Roi Vs. Krishnayya

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Court : Chennai

Decided On : Jul-24-1905

Reported in : (1906)ILR29Mad113

Judge : S. Subrahmania Ayyar, Officiating C.J. and; Boddam, J.

Appellant : Manjappa Roi

Respondent : Krishnayya

Judgement :

1. We are unable to agree with the lower Courts that the fifth defendant had no locus standi if, as contended by him, he has any rights as assignee of the mortgage interests purported to be created by exhibits IV and V. No doubt the mortgages relied on by the plaintiff and the fifth defendant were executed after a decree had been obtained against the mortgagor under a previous mortgage of 1877. No doubt also that a sale took place under that decree and the mortgaged property was purchase has eventually devolved upon the mortgagor. On the principle embodied in Section 43 of the Transfer of Property Act the mortgagor cannot use this subsequently-acquired interest to invalidate his own mortgages to the plaintiff or the mortgages under exhibits IV and V if they really created mortgage rights, and the fifth defendant as claiming through the mortgagor would be equally precluded from raising any question as to the validity of the plaintiff's mortgage. As the result of what has happened the sale of the mortgaged property should be on the footing that the mortgage of 1877 is now existent if the fifth

defendant establishes any rights under exhibits IV and V.

2. The decree therefore in directing that the sale should be subject to the mortgage which, as stated above, had already ceased to exist is wrong. The decree is therefore set aside and the suit remanded to the Court of First Instance for fresh disposal after due enquiry into the alleged rights of the several claimants, viz., the plaintiff and the fifth and sixth defendants.

3. Costs in this and in the lower Appellate Court will be provided for in the revised decree.

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