

Subban Vs. Arunachalam

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SooperKanoon Citation : sooperkanoon.com/786211

Court : Chennai

Decided On : Apr-13-1892

Reported in : (1892)ILR15Mad487

Judge : Arthur J.H. Collins, Kt., C.J. and ;Parker, J.

Appellant : Subban

Respondent : Arunachalam

Judgement :

1. We think that, under Section 85 of the Transfer of Property Act, it is necessary to make Lakshumanan Chetti a party, as he has an interest in the property comprised in the mortgage, even though the plaintiff may not ask for a personal decree against him. He is, at any rate, interested in item 4.

2. The subsequent encumbrancers must also be made parties unless the items of property sold or mortgaged to them have been excluded from the properties against which plaintiff seeks a decree. It may be that sales or mortgages made with plaintiff's concurrence have excluded such items from liability; but, if so, they must be excluded from the suit. It is not clear that such is the case. The decrees of the Courts below must be reversed and the suit remanded to the Court of First Instance for disposal.

3. We will give the appellant the costs of this appeal and the other costs will abide and follow the result.

