

Seshayyar Vs. Pappuvaradayyangar

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Court : Chennai

Decided On : Aug-25-1882

Reported in : (1883)ILR6Mad182a

Judge : Innes, Officiating C.J. and ;Muttusami Ayyar, J.

Appellant : Seshayyar

Respondent : Pappuvaradayyangar

Judgement :

Innes, Officiating C.J. and Muttusami Ayyar, J.

1. The second defendant disclaimed all title to the property and. only said he was in possession on behalf and on account of his divided brother, the first defendant. It was not stated that he was first defendant's agent. First defendant did not appear, and the District Munsif found in favour of the mortgage set up by plaintiff and decreed in his favour.

2. The second defendant then appealed. It is observable that he was not authorized to conduct the defence to the suit on behalf of first defendant, nor did he assume to do so, nor did he appeal on behalf of first defendant. He appealed in his own name and on his own account.

3. The Subordinate Judge found the mortgage set up by plaintiff not established, and, on what he considered to be the principle laid down in Sevaji Vijaya

Raghunadha Valoji Kristnan Gopalar v. Chinna Nayana Chetti 10 M.I.A. 151 dismissed plaintiff's claim.

4. The plaintiff now appeals to the High Court on the ground that second defendant had no locus standi and that he had no right to appeal.

5. If the second defendant had set up possession on his own account and stood of his possession and put plaintiff to the proof of his title, we should agree with the Subordinate Judge as the case would then be on all fours with that on which he has relied. But after second defendant had disclaimed all interest in the land on his own account and admitted that he only held possession on behalf of the first defendant, it was not open to him to contest the decree which decided in favour of plaintiff's title and against first defendant.

6. It then rested with first defendant to appeal. He did not do so, and we think second defendant could not appeal to the Court to protect a possession which he had already disclaimed to hold except on behalf of first defendant.

7. We must reverse the decree of the Subordinate Judge and restore that of the District Munsif.

8. Second defendant will pay the costs of this appeal.