

Krishnayya Vs. Unnissa Begam

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Court : Chennai

Decided On : Dec-04-1891

Reported in : (1892)ILR15Mad399

Judge : Parker and ;Wilkinson, JJ.

Appellant : Krishnayya

Respondent : Unnissa Begam

Judgement :

1. We agree with the learned Judge that the decision in Ramasami v. Bagirathi I.L.R. 6 Mad. 180 was right, and see no reason why we should refer this case to the Full Bench because of the decision in Stowell v. Ajudhia Nath I.L.R. 6 All. 255. In that case the contest was between two mortgagees, the second mortgagee having been the first purchaser. After the sale to him the first mortgagee attached and brought the property to sale, and the mortgagee died prior to the sale. The second mortgagee had, however, purchased his interest subject to the first mortgagee's claim, and the death of the original owner could not affect the proceedings in any way. The remark of OLDFIELD, J., was not concurred in by STRAIGHT, J., and both Judges were agreed that the question whether the sale might be voidable at the instance of the legal representative did not arise for decision.

2. The property might be liable in the hands of the legal representatives, but the right, title and interest of a deceased person could not be sold. The sale without notice to him of property belonging to a person not a Party to the suit was a material irregularity and must necessarily cause him substantial injury.

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