

Palaniappa Tevan and ors. Vs. Shadagopa Mudaliar and ors.

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Court : Chennai

Decided On : Jan-03-1911

Reported in : 9Ind.Cas.729

Judge : Ralph Benson and ;Krishnaswami Aiyar, JJ.

Appellant : Palaniappa Tevan and ors.

Respondent : Shadagopa Mudaliar and ors.

Judgement :

1. The contentions in appeal are confined to 3rd, 5th and 9th issues and to a new point of law under the old Section 135 of the Transfer of Property Act. As to the 3rd issue we have no hesitation in accepting the finding of the Court below that the hypothecation bond sued on is not void for want of consideration. The admission and conduct of the defendants which have been set out by the Subordinate Judge can leave no doubt on the point. As to the 5th issue the point taken is that in one of the sales at which the plaintiffs purchased a part interest in the bond, the date of the bond was by a clerical error given as 1880 instead of 1879. All other particulars were correctly given and no one was under any mistake as what was being sold. Section 236, Civil Procedure Code, 1882, only requires a reasonably accurate description and this, we think was in this case sufficiently complied with. The facts in Benode Behary Mookerjee v. Raj Narain Mitter 30 C. 699 which has been pressed upon us were entirely different.

2. As to the 9th issue it is said there is a mistake in the decree. Such a mistake is not admitted and there is nothing before us to show that there is any mistake.
3. As to the point taken under Section 135 of the Transfer of Property Act that section has by virtue of Section 2, Clause (d) of the Act no application to sales in execution. The appeal fails and is dismissed with costs.

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