

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Parker.*

SUBRAMANYAN (DEFENDANT), APPELLANT,

and

MANDAYAN (PLAINTIFF), RESPONDENT.*

1886.
March 4.
July 12.

Mortgage of seven parcels of land—Sale of equity of redemption of two parcels—Second mortgage of six parcels and redemption of one by mortgagor—Transfer of Property Act, s. 60—Redemption by purchaser of two parcels on payment of proportionate amount of debt, decreed.

In 1873 R mortgaged to S seven parcels of land (items 1—7) for Rs. 300. In 1880, M purchased R's rights in items 1 and 2. In 1881 R redeemed item 5 on payment of Rs. 30 and executed a second mortgage of the rest to S for Rs. 200 :

Held that M was entitled to redeem items 1 and 2 on payment of a proportionate amount of the first mortgage-debt.

APPEAL from the decree of S. Gopaláchari, Acting Subordinate Judge of Madura (East), confirming the decree of T. A. Krishna-sámi Ayyar, District Múnsif of Sivaganga, in suit 67 of 1883. The facts were as follows :—

On the 25th October 1873, Muthu Ráman mortgaged to defendant, Subramanyan Chetti, seven parcels of land (items 1—7) for Rs. 300.

On the 14th April 1880, Mandayan, the plaintiff, purchased at a sale, under the Rent Recovery Act (Madras Act VIII of 1865), Muthu Ráman's interest in two of the said parcels of land (items 1 and 2).

On the 12th July 1881, Muthu Ráman executed a second mortgage to defendant for Rs. 200 of all the said parcels of land, except item 5, which he redeemed paying Rs. 30.

Plaintiff sued to redeem items 1 and 2, offering to pay Rs. 100 as the proportionate amount of the sum secured by the mortgage of 25th October 1873.

The Múnsif held that, as the defendant had himself "split" the security by allowing item 5 to be redeemed, he could not

* Second Appeal 774 of 1885.

SUBRAMANYAN compel plaintiff to redeem items 3, 4, 6, 7, and that plaintiff was
 MANDAYAN. entitled to redeem items 1 and 2 on payment of Rs. 161, being
 the proportionate amount of Rs. 300 payable for their redemption
 according to the relative produce of the seven parcels of land.

The Subordinate Judge, referring to s. 60 of the Transfer of Property Act, held that it did not apply.

On the authority of *Marana Ammanna v. Pendyala Perubotulu* (1) and *Chandika Singh v. Pohkar Singh* (2) confirmed the decree of the Munsif.

Defendant appealed.

Subramanya Ayyar for appellant.

Rangacharyar for respondent.

The Court (Collins, C.J. and Parker, J.) delivered the following
 JUDGMENT :—The defendant, the mortgagee, on 12th July
 1881, accepted Rs. 30 as the proportionate amount of the mort-
 gage due on one item of land and lent a further sum upon
 the remaining six items.

By so doing he seems to us to have destroyed the indivisibility
 of the original contract. The plaintiff, on 14th April 1880, had
 become the purchaser of the equity of redemption of two items, and
 hence, we think, he is entitled to redeem those two upon payment
 of the proportionate amount due thereon—*Maranda Ammanna v.*
Pendyala Perubotulu. (1)

We dismiss this second appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Brandt.

KOLLU SHETTATI (JUDGMENT-DEBTOR), APPELLANT,

and

MANJAYA (DECREE-HOLDER), RESPONDENT.*

*Civil Procedure Code, s. 230—Limitation—12 years' rule—'Law in force' prior to that
 Code—Includes Act X of 1877.*

In s. 230 of the Code of Civil Procedure, 1882, the words 'law in force' include
 the Civil Procedure Code, 1877, as well as the Limitation Act then in force:

(1) I.L.R., 3 Mad., 230.

(2) I.L.R., 2 All., 906.

* Appeal against Appellate Order 5 of 1886.