

ARUMUGAM
v.
SIVAGNANA.

default is charged, and clause (c) cannot apply, because plaintiff was not entitled to possession.

We are of opinion that the sale of the land under the Land Acquisition Act has not operated to effect any destruction of the property within the meaning of that paragraph. The only effect of the sale is to change the nature of the security. The land was converted into money to which the plaintiff might have made good his claim under the Act. Whether or not he has made good this claim, he can have no personal remedy against the mortgagor.

The appeal must be allowed and the suit dismissed with costs throughout.

APPELLATE CIVIL.

Before Mr. Justice Handley and Mr. Justice Weir.

ASHTAMURTHI (PLAINTIFF), APPELLANT,

v.

SECRETARY OF STATE FOR INDIA (DEFENDANT), RESPONDENT.*

Forest Act—Act V of 1882 (Madras), s. 33—“Jointly interested.”

The Government having possession of a forest under a mortgage is jointly interested therein with the mortgagor within the meaning of Madras Forest Act, s. 33.

SECOND APPEAL against the decree of L. Moore, District Judge of South Malabar, in appeal suit No. 905 of 1888, affirming the decree of A. Annasami Ayyar, District Munsif of Ernad, in original suit No. 243 of 1888.

Plaintiff, the uralan and representative of the Trikalayar devasom, sued the defendant, to obtain a declaration that the two notifications issued by the Government of Madras under section 33 (a) of the Madras Forest Act V of 1882, published in the *Fort St. George Gazette* on the 17th and 24th January 1888, relating to the management of 49 items of forest lands situated in Ernad and Calicut Taluks and mentioned in the schedule attached to the plaintiff are invalid and not binding upon his devasom.

* Second Appeal No. 888 of 1880.

The forest land to which the above notifications related were admittedly the property of the plaintiff's devasom; but it appeared that under exhibit A, executed on the 10th December 1840, the plaintiff's predecessor mortgaged the land to Government under the following among other conditions:—It was agreed that the mortgagee was to be put in possession, that the mortgagor was not to demand surrender on payment of the mortgage money as long as the mortgagee wished to continue in possession, and that the demise was to be renewed every 30 years when a renewal fee at the rate of 20 per cent. of the mortgage money was to be paid.

The plaintiff's case was that the Government and the appellant were not jointly interested in the forest land in question, and that consequently the provisions of section 33 of the Madras Forest Act (V of 1882) were not applicable to them.

That section provides as follows:—

“If the Government and any person or persons are jointly interested in any forest or waste land, or in the whole or any part of the produce thereof, the Government may either

- (a) undertake the management of such forest, waste land or produce, accounting to such person for his interest in the same; or
- (b) issue such regulations for the management of the forest, waste land or produce by the persons so jointly interested, as it deems necessary for the management thereof and the interests of all parties therein.

“When the Government undertakes, under clause (a) of this section, the management of any forest, waste land or produce, it may by notification in the *Fort St. George Gazette* and in the official gazette of the district declare that any of the provisions contained in chapters II and III of this Act shall apply to such forest, waste land or produce, and thereupon such provisions shall apply accordingly.”

The District Munsif dismissed the suit and his decree was affirmed on appeal by the District Judge.

The plaintiff preferred this appeal.

Bhashyam Ayyangar and Govinda Menon for appellant.

The *Government Pleader (Mr. Powell)* for respondent.

JUDGMENT.—We see no reason to differ from the construction put by both the Lower Courts on the term “jointly interested” occurring in section 33 of Madras Act V of 1882. The words

ASHTAMURTHI v. SECRETARY OF STATE FOR INDIA. used may not be (as a term of art) altogether appropriate, but the section appears to us clearly to refer to cases in which Government have a partial or limited interest in a forest along with a private individual, and this is precisely the state of affairs which on the terms of the lease put before us exists in this case.

We think then that the Government were jointly interested along with plaintiff in the forest within the meaning of section 33 of the Act.

The appeal is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Handley.

1889.
Oct. 26.
1890.
Feb. 14.

KANNAN AND ANOTHER (DEFENDANTS NOS. 8 AND 9), APPELLANTS,

v.

KRISHNAN AND OTHERS (PLAINTIFF AND DEFENDANTS NOS. 1 TO 7),
RESPONDENTS.*

Registration Act—Act III of 1877, s. 48—Transfer of Property Act—Act IV of 1882, s. 54—Oral agreement for sale of land—Subsequent conveyance with notice—Delivery of possession—Priority—Specific Relief Act—Act I of 1877, ss. 27, 42—Specific performance—Declaratory suit—Consequential relief.

Plaintiff being in possession of certain land as an incumbrancer under a registered instrument agreed orally with the mortgagor in 1835 to purchase it. The mortgagor subsequently sold the land to others who took the conveyance which was registered with notice of the plaintiff's mortgage and of the oral agreement with him. Plaintiff now sued for a declaration that the conveyance was not binding on him and for specific performance of the oral agreement :

Held, (1) that the suit was not bad for want of a prayer for delivery up, and cancellation of the conveyance ;

(2) that the plaintiff's possession under his incumbrance together with the agreement to sell was equivalent to delivery of possession within the meaning of Registration Act, s. 48 ;

(3) that the plaintiff was entitled to have the oral contract specifically enforced notwithstanding the subsequent registered sale.

SECOND APPEAL against the decree of A. F. Cox, Acting District Judge of North Malabar, in appeal suit No. 351 of 1887, confirming the decree of K. Kunjan Menon, Subordinate Judge of North Malabar, in original suit No. 44 of 1886.