

## APPELLATE CIVIL.

Before Mr. Justice Shephard and Mr. Justice Best.

ARUMUGAM (DEFENDANT No. 1), APPELLANT,

*v.*

SIVAGNANA AND OTHERS (PLAINTIFF AND DEFENDANTS  
NOS. 2 AND 3), RESPONDENTS.\*

1890.  
Feb. 27.

*Transfer of Property Act (Act IV of 1882), s. 68—Sale of mortgaged premises  
under Land Acquisition Act—Personal suit by mortgagee.*

The sale of mortgaged premises under the Land Acquisition Act is not a destruction of the security within the meaning of s. 68 of the Transfer of Property Act and does not enable the mortgagee to sue the mortgagor personally.

SECOND APPEAL against the decree of E. K. Krishnan, Subordinate Judge of South Malabar, in appeal suit No. 646 of 1888, reversing the decree of T. V. Anantan Nayar, Principal District Munsif of Calicut, in original suit No. 837 of 1887.

Suit by a mortgagee to recover from the mortgagor personally Rs. 1,332-2-6, principal and interest of the mortgage debt. The debt had not become payable by the mortgagor under the terms of the mortgage instrument at the date of the suit, but it appeared that part of the mortgage premises had been purchased by Government under the Land Acquisition Act.

The District Munsif dismissed the suit, but his decree was reversed in appeal by the Subordinate Judge.

The defendant preferred this second appeal.

*Sankaran Nayar* for appellant.

*Mahadeva Ayyar* for respondent No. 1.

JUDGMENT.—As to land No. 1, of which the plaintiff was entitled to possession under the mortgage, it is not shown that the plaintiff has been deprived of possession of it, and, therefore, whether the suit is regarded as a suit for damages or a suit under section 68 of the Transfer of Property Act; it is premature with regard to the other item, the only question which can possibly arise is whether the plaintiff is entitled to relief under the last paragraph of section 68:—clause (b) cannot apply, because no

\* Second Appeal No. 693 of 1889.

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.

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## 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.

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\* Second Appeal No. 888 of 1880.