

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar.

RAMALINGA (DEFENDANT), PETITIONER,

v.

SAMIAPPA (PLAINTIFF), RESPONDENT.*

1889.
May 1.
August 7.*Court sale—Emblements—Crop standing on land sold in execution of a decree obtained by a mortgagee in possession.*

A mortgagee in possession sued on his mortgage and having obtained a decree brought the land to sale in execution; and the execution purchaser was placed in possession:

Held, the mortgagee was not entitled to recover from the execution purchaser the value of the then standing crop.

PETITION under section 25 of the Provincial Small Cause Courts Act, 1887, praying the High Court to revise the decree of T. Ramasami Ayyangar, Subordinate Judge of Negapatam.

Suit to recover the value of a crop raised by the plaintiff as mortgagee in possession on land which was purchased by the defendant at a Court sale held in execution of a decree obtained by the plaintiff on his mortgage. The Subordinate Judge passed a decree in favor of the plaintiff.

The defendant preferred this petition.

Subramanya Ayyar for petitioner.

Bashyam Ayyangar for respondent.

The further facts of this case and the arguments adduced on this petition appear sufficiently for the purpose of this report from the judgment.

MUTTUSAMI AYYAR, J.—The petitioner was defendant in small cause suit No. 74 of 1888, on the file of the Subordinate Judge at Negapatam, and the counter-petitioner was plaintiff in that suit. The question is whether the decision passed therein is contrary to law. The plaintiff was originally a mortgagee in possession of 1 veli, 4 mahs of land. He obtained a decree for sale of the land in liquidation of the mortgage, and the land was accordingly put up to sale in execution. The defendant purchased it, paid the purchase money and obtained a warrant for delivery of posses-

* Civil Revision Petition No. 296 of 1888.

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sion. At that time a crop was standing on the land and, in execution of the warrant, the standing crop as well as the land was placed in his possession. The mortgagee claimed the value of the crop on the ground that he had raised it, and the purchaser contended that it had passed to him with the land. The Subordinate Judge was of opinion that the defendant bought only the land and acquired no right to the standing crop. In this view he decreed that defendant do pay plaintiff the value of the crop, together with interest, and it is argued before me that the decision is bad in law and that the standing crop passed with the land by virtue of its sale.

I am of opinion that the decree cannot be supported. It does not appear that the right to the standing crop was expressly reserved at the sale or by the sale notice. The interest that passed by the Court sale was not simply that of the judgment-debtor or mortgagor as it stood at the date of the decree, but also included the interest of the mortgagee, the sale being ordered in execution of the mortgage and not subject to it. The ordinary rule is that the right to the growing crop will pass by a sale of the land without express mention, and this the Subordinate Judge has overlooked. Nor has the doctrine of emblements any application in this case. A mortgagee is not one of the persons entitled to emblements, and cannot as such rely either on section 51 or section 108, clause *b*, of the Transfer of Property Act, which only declared the pre-existing law on the subject. (See also Woodfall's Landlord and Tenant, 11th edition, 705.) Nor is this case within the equity of the rule of law concerning emblements which are not allowed even to tenants who either know when their term is to cease or by their own negligence or misconduct allow their interest to determine between the time of sowing and of harvest. It was open to the mortgagee in this case to have asked the Court to postpone the sale, so as to enable him to take the standing crop. This view is in accordance with the decision in *Land Mortgage Bank of India v. Vishnu Govind Patankar*(1). I set aside the decree of the Subordinate Judge and direct that the counter-petitioner's suit be dismissed with costs throughout.

(1) I.L.R., 2 Bom., 670.