

## APPELLATE CIVIL.

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

SUBBAMMAL AND OTHERS (DEFENDANTS NOS. 1—3), APPELLANTS,  
and

1887.  
March 23.

VENKATARÁMÁ AND ANOTHER (PLAINTIFF AND DEFENDANT NO. 4),  
RESPONDENTS.\*

*Transfer of Property Act—Act IV of 1882, ss. 131, 135—Notice—Assignment  
of actionable claim—Rights of transferee for value.*

A sued for principal and interest due on a mortgage assigned to him for value by the mortgagee. No notice of the assignment was given to the mortgagors before the plaintiff's demand. The sum sued for exceeded the amount paid by the plaintiff for the assignment and reasonable interest on it; but such amount was not paid or tendered to the plaintiff:

*Held*, that the plaintiff was entitled to a decree for the whole amount due on the assigned mortgage.

APPEAL from the decree of A. J. Mangalam Pillai, Subordinate Judge of Madura (West), reversing the decree of P.A. Lakshmanan Chettyár, Acting District Múnsif of Madura, in Original Suit No. 546 of 1884.

This was a suit to recover Rs. 149-4-0, being principal and interest due on a registered mortgage-deed, dated 1st July 1881, and executed by defendants Nos. 1, 2 and 3 to Venkatáchalam Ayyar. The plaintiff alleged that on 16th April 1884 he obtained an assignment of the mortgage from the mortgagee for the sum of Rs. 100. No notice of the assignment was given to the mortgagors before the plaintiff's demand. Defendant No. 4 asserted a mortgage lien over part of the property included in the mortgage sued on.

The District Múnsif dismissed the suit on the ground that the mortgage sued on was obtained by fraud.

The Subordinate Judge reversed the decree of the District Múnsif and decreed "that subject to the mortgage right of defendant No. 4 in plot No. 3, the plaintiff is entitled to recover the sum sued for."

\* Second Appeal No. 477 of 1886.

SUBBAMMAL  
v.  
VENKATA-  
RÁMÁ.

Defendants Nos. 1, 2 and 3 preferred this second appeal; the plaintiff and defendant No. 4 being joined as respondents.

*Venkatrámayyar* and *Seshagiri Ayyar* for appellants argued that the assignment was invalid for want of notice to the mortgagors under s. 131 of the Transfer of Property Act, and that in any case the plaintiff was only entitled to a decree for the purchase money and interest under s. 135 of that Act.

*Subramanya Ayyar* for respondents pointed out, as to the contention that the plaintiff could not recover the whole claim, that no payment or tender of the purchase-money and interest had been proved.

The further arguments adduced on this second appeal appear sufficiently for the purpose of this report from the judgment of the Court (Collins, C.J., and Parker, J.)

JUDGMENT.—The principal point argued before us is that no notice of transfer was given under s. 131 of the Transfer of Property Act. This point was not raised at settlement of issues.

We follow the rulings in *Lala Jugdeo Sahai v. Brij Behari Lal* (1) that the transfer came into operation when the debtors became aware of it (and he became aware of it when the action was brought), and in *Grish Chandra v. Kashisauri Debi* (2) that plaintiff is not debarred from recovering the full amount.

The second appeal is dismissed with costs.

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## APPELLATE CIVIL.

*Before Mr. Justice Kernan and Mr. Justice Parker.*

ÁLWAR AND ANOTHER (PLAINTIFFS), APPELLANTS,  
and

SÉSHAMMÁL AND ANOTHER (DEFENDANTS), RESPONDENTS.\*

*Civil Procedure Code, ss. 98, 99—Decree passed in a restored suit pending appeal against order of restoration.*

A suit was filed in a Múnsif's Court, but neither party appeared for the hearing, and the suit was dismissed. The Múnsif subsequently on review made an order restoring the suit and eventually decreed for the plaintiff. The defendant in the meanwhile appealed to the District Court against the order of restoration, and after

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(1) I.L.R., 12 Cal., 505.

(2) I.L.R., 13 Cal., 145.

\* Second Appeal No. 1112 of 1886.