

case of *Virarayhava v. Subbakka*(1) is cited by the appellants' pleader. This case shows that an action for the breach of the contract to certify adjustment of the decree may be brought; but, it is not authority for the position that a suit to declare that a decree has been satisfied will lie. The appeal is dismissed with costs.

BAIRAGUTY
v.
BAPANNA.

APPELLATE CIVIL.

Before Mr. Justice Parker and Mr. Justice Subramanya Ayyar.

JAGANATHA (PLAINTIFF), APPELLANT,

v.

GANGI REDDI AND OTHERS (DEFENDANTS), RESPONDENTS.*

1892.
January 18.

Evidence Act—Act I of 1872, s. 115—Estoppel—Execution-purchaser without notice of mortgage.

The plaintiff sued to realise his security under a mortgage executed to him by defendant No. 1, by sale of the mortgage premises which were in the possession of defendants Nos. 2 and 3. It appeared that the plaintiff had previously attached and brought to sale the mortgage premises in execution of a decree against defendant No. 1, and that the other defendants had purchased at the Court sale, without notice of the plaintiff's mortgage, which was not referred to in the attachment lists or sale certificates:

Held, that the plaintiff was estopped from setting up his present claim.

SECOND APPEAL against the decree of O. Wolfe Murray, Acting District Judge of North Arcot, in appeal suit No. 139 of 1890, affirming the decree of S. Subba Rau, District Munsif of Chittur, in original suit No. 372 of 1889.

The facts of the case are stated above sufficiently for the purposes of this report.

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

The plaintiff preferred this second appeal.

Rama Rau for appellant.

Parthasaradhi Ayyangar for respondents.

JUDGMENT.—We think the plaintiff is estopped from recovering on the mortgage when he has allowed the auction purchaser to

(1) I.L.R., 5 Mad., 397.

* Second Appeal No. 477 of 1891.

JAGANATHA
GANGI REDDI. buy without notice in a suit in which he himself brought the pro-
erty to sale—see *Agarchand Gumanchand v. Rakhma Hannant*(1).
The second appeal is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Wilkinson and Mr. Justice Subramania Ayyar.

GOPALASAMI (DEFENDANT No. 1), APPELLANT,

v.

ARUNACHELLA (PLAINTIFF), RESPONDENT.*

Transfer of Property Act—Act IV of 1882, s. 68—Personal decree against mortgagor.

Suit for a personal decree on a usufructuary mortgage which contained no express covenant to pay, but, provided that if the mortgagor repaid the secured debt before a certain date (now passed), he should be replaced in possession. The mortgage premises had been attached in execution of a decree obtained by a third party against the mortgagor, and a claim preferred by the plaintiff having been erroneously rejected and the premises sold, he was dispossessed. The mortgagee accordingly brought his suit as above :

Held, that the plaintiff was not entitled to maintain the suit either under the terms of the mortgage or under Transfer of Property Act, s. 68.

SECOND APPEAL against the decree of T. Ramasami Ayyangar, Subordinate Judge of Negapatam, in appeal suit No. 938 of 1889, affirming the decree of C. Srirangachariar, District Munsif of Shiyali, in original suit No. 126 of 1889.

The facts of the case are stated sufficiently for the purposes of this report in the judgment of the High Court. The decrees of the Lower Courts were for the plaintiff. The defendant preferred this second appeal.

Subramanya Ayyar and *Sadagopa Chariar* for appellant.

Mr. Gantz for respondent.

JUDGMENT.—The plaintiff obtained a usufructuary mortgage of certain lands and held possession of the same until he was ousted by a person who purchased the property in execution of a money decree held by the latter against the first defendant, the mortgagor.

The plaintiff now sues for the recovery of the mortgage money.

(1) I.L.R., 12 Bom., 678.

* Second Appeal No. 239 of 1891.