

MAHADEVA mentioned in clauses (b) and (c) only or of clauses (b), (c) and (d)
 v. together?
 KUPPUSAMI.

Pattabhiramayyar for plaintiff.

B. Subramanya Ayyar for defendant.

JUDGMENT.—We are of opinion that the receiver is entitled to remuneration at the rate fixed by the late Subordinate Judge, but for the amount of that fee, he is only entitled to a lien to the extent of 5 per cent. upon the sum remaining as net assets after the charges specified in clauses (b), (c) and (d) of section 356 have been paid. The question whether the opposing creditor's claim is a debt secured by mortgage is not before us. See *ex parte Browne in re Malthy*(1).

APPELLATE CIVIL.

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

1891. SUBBARAZU AND OTHERS (DEFENDANTS NOS. 2 TO 6), APPELLANTS,
 November 27. v.
 December 15.

VENKATARATNAM AND ANOTHER (PLAINTIFF AND DEFENDANT NO. 1),
 RESPONDENTS. *

*Hindu Law—Partition—Mortgagor and mortgagee—Redemption—Successive mortgages
 on family property—Assignment of equity of redemption.*

Two brothers constituted an undivided Hindu family. The eldest mortgaged half of certain family lands to P and the other half to the father (since deceased) of the contending defendants, and placed the mortgagees respectively in possession. Neither mortgage was binding on the younger brother who mortgaged his share of the same land to the plaintiff. The plaintiff obtained a decree on his mortgage and attached and brought to sale in execution and himself purchased the half share of his mortgagor, and having afterwards purchased the share of the elder brother and come to a settlement with P, now brought a suit for a moiety of the land in the possession of the contending defendants as forming part of the half share of his mortgagor:

Held, (1) that the contest being between strangers to the family, and the plaintiff having purchased the entire rights of the family in the land in question, the plaint was not defective for want of a prayer for the partition of the whole property of the family.

(2) that the plaintiff being the assignee of the elder brother could not

(1) L.R., 16 Ch. D., 497.

* Second Appeal No. 272 of 1891.

deprive his mortgagees of a portion of their security without asking for an account and offering to pay whatever might be due on the footing of the mortgage.

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SECOND APPEAL. against the decree of F. H. Hamnett, Acting District Judge of Godavari, in appeal suit No. 351 of 1889, affirming the decree of Lakshminarayana Rau, District Munsif of Rajahmundry, in original suit No. 152 of 1889.

Suit for possession of a moiety of certain land which had been the property of an undivided Hindu family consisting of two brothers. The plaintiff had acquired the rights of both brothers in the land in question. Defendants Nos. 2 to 5 held a mortgage from one of the brothers earlier in date than the transfer of his rights to the plaintiff. Defendant No. 1 was the widow and representative of the mortgagee.

The further facts appear sufficiently for the purposes of this report from the judgment of the High Court.

Both of the Lower Courts decreed in favour of the plaintiff. Defendants Nos. 2 to 6 preferred this second appeal.

Svirangachariar for appellants.

Ramasami Mudaliar for respondent No. 1.

JUDGMENT.—Venkatarazu and Sreeramulu were undivided brothers. They owned 13 odd acres of inam land in Penkarametta as well as other property. Venkatarazu, who was the elder brother, mortgaged a moiety of the land in Penkarametta to one Peddiah, and the other moiety to the father of defendants Nos. 2 to 6 and put each of his mortgagees in possession of 6 acres 59 cents, that is of the whole land. Both the Lower Courts have found that these mortgages were not binding on Sreeramulu and the finding is not impeached on second appeal. Sreeramulu mortgaged his share of the land in Penkarametta to the plaintiff, who, having obtained a decree on his mortgage in original suit No. 132 of 1887, purchased in execution Sreeramulu's half share, and having settled with Peddiah and purchased the share of Venkatarazu, now sues for a moiety of the land in the possession of the defendants Nos. 2 to 6, on the ground that Sreeramulu was entitled to that moiety. Both the Lower Courts have decided in his favour, and defendants Nos. 2 to 6 appeal. In the first place it is contended that the suit was not sustainable, as the plaintiff was bound to sue for a partition of the whole family property and could not maintain a suit for a specific portion only. In support of this contention reliance is placed on *Venkatarama v. Meera*

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Labai(1), but that case is distinguishable from the present. There the conflict was between a stranger who had purchased from one member of the joint family his share in a specific land and the members of the joint family. Here the contest is between strangers. The plaintiff having purchased the rights of the only members of the joint family in the Penkarametta land stands in the shoes of the joint family, and therefore the general principle on which the case above referred to was decided has no application to the present case. For the same reason, the case relied on by the respondents' pleader—*Chinna Sanyasi v. Suriya*(2)—is not in point. The plaintiff cannot set up the right of Sreeramulu to affirm the mortgage by Venkatarazu to defendants Nos. 2 to 6, appellants, and claim by partition to recover that share to which the alienation could not extend, because he stands in the shoes of Venkatarazu. If he represented Sreeramalu alone, he might perhaps avail himself of the right recognized in the latter case, but, having five years prior to the present suit purchased all the rights of defendant's mortgagor, he cannot now maintain a suit for Sreeramulu's half share. What he purchased from Venkatarazu was the right of redemption, and he cannot seek to deprive Venkatarazu's mortgagees of a portion of their security without asking for an account and offering to pay whatever may be due on the footing of the mortgage. The suit in its present form was clearly not maintainable. The defendants are entitled to say "you stand in the shoes of our mortgagor and you cannot reprobate your mortgage to us and plead that you had no right to give us possession of a moiety of the land. You had, at the time you granted the land, an undoubted right to a moiety, and you cannot oust us without discharging your liability." We fail to see what answer there is to this. Plaintiff is the owner by purchase of the whole land, and if he wants possession of the whole land, he must discharge his vendors' debts on the land and not seek by setting off the rights of one of his vendors against the other to deprive defendants of their security. The decrees of the Courts below must be reversed, and the suit dismissed with costs throughout.

(1) I.L.R., 13 Mad., 275.

(2) I.L.R., 5 Mad., 196.