

APPELLATE CIVIL.

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

KUMBALINGA PILLAI (DEFENDANT No. 1), APPELLANT,

v.

ARIAPUTRA PADIACHI (PLAINTIFF), RESPONDENT.*

Civil Procedure Code—Act XIV of 1882, s. 317—Sale under mortgage decree—Benami purchaser—Purchase on account of a subsequent usufructuary mortgage—Suit for conveyance and possession.

Certain land was hypothecated to A and subsequently put in the possession of B under a usufructuary mortgage. A obtained a decree upon his hypothecation for the sale of the property against B and the mortgagor. In execution the land was purchased by the agent of B with his money and he agreed to execute a conveyance to B. This agreement was not carried out and the nominal purchaser ejected B's tenant:

Held, that B was entitled to a decree for delivery of possession and execution of a conveyance.

SECOND APPEAL against the decree of W. F. Grahame, District Judge of South Arcot, in appeal suit No. 280 of 1893, affirming the decree of T. B. Vasudeva Sastri, District Munsif of Chidambaram, in original suit No. 109 of 1893.

The plaintiff sued to compel defendant No. 1 to execute in his favour a conveyance of certain land and deliver possession thereof or in the alternative to pay him a sum of Rs. 1,010. The land had originally been the property of Paramasiva Pillai by whom it had been mortgaged to the plaintiff in 1883, having already been hypothecated to Arumuga Pillai. In suit No. 518 of 1885 the assignee of Arumuga Pillai obtained against the plaintiff and the mortgagor a decree for sale, in execution of which the plaintiff became the purchaser in the name of defendant No. 1 who acted as his agent and agreed to convey the land to him on the confirmation of the court-sale. The plaintiff paid the money and remained in possession by his tenant until November 1892 when defendant No. 1 ejected him. It was objected that the suit was not maintainable by reason of the provisions of Civil Procedure Code, section 317, but the District Munsif overruled this objection

* Second Appeal No. 1570 of 1894.

and passed a decree requiring that the defendant No. 1 should execute a conveyance as prayed, and his decree was affirmed on appeal by the District Judge.

KUMRALINGA
PILLAI
v.
ARIAPUTRA
PADIACHI.

Defendant No. 1 preferred this second appeal.

Krishnasami Ayyar for appellant.

Tirumalaisami Chetti for respondent.

JUDGMENT.—At the time of the auction-sale the plaintiff was the usufructuary mortgagee in possession, and the land was brought to sale in satisfaction of a decree upon a prior hypothecation. The equity of redemption was purchased by the first defendant, who at the time was the plaintiff's paid agent, and it is found that in the purchase the first defendant acted as plaintiff's agent and that the plaintiff supplied the money for the purchase. The plaintiff remained in possession through his tenants. The mortgage being usufructuary, the first defendant could not have disturbed him without redeeming the mortgage even if he (first defendant) had purchased the equity of redemption on his account. But it is found that he agreed to execute a conveyance to the plaintiff, allowed plaintiff to take possession of the sale certificate and delivery order and that he was at the time plaintiff's agent.

We think the case falls within the principles laid down in *Monappa v. Surappa*(1) and *Sankuni Nayar v. Narayanan Nambudri*(2) and that section 317, Code of Civil Procedure, is not a bar to the suit.

The second appeal is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Muthusami Ayyar and Mr. Justice Best.

MUNIAPPA NAIK AND OTHERS (DEFENDANTS), APPELLANTS,

v.

SUBRAMANIA AYYAN (PLAINTIFF), RESPONDENT.*

1894.
December 20.

*Civil Procedure Code—Act XIV of 1882, ss. 268, 274—Attachment of mortgage-debt
—Suit by purchaser on mortgage.*

The plaintiff sued to recover principal and interest due on a mortgage. He claimed title as purchaser at a court-sale held in execution of a decree against the

(1) I.L.R., 11 Mad., 234. • • (2) I.L.R., 17 Mad., 282.

* Second Appeal No. 1427 of 1894.