

GURULINGA-  
SWAMI  
V.  
RAMA-  
LAKSHMAMA.

It is pointed out to us that some doubt seems to have been entertained by the learned Judges who took part in the decision of 1884.\* The circumstance may perhaps be accounted for by the fact that the Chief Justice had previously, when a member of the Allahabad Court, expressed an opinion adverse to that entertained by this Court. (See *Humman Thicari v. Chirai* (1)). The fact remains that the current of authority is for this Presidency unbroken. The present question is by no means the only question of Hindu Law on which the High Courts have maintained different views. On questions of this class it appears to me pre-eminently desirable not to disturb well settled rules of law. I would, therefore, decline to treat the question as an open one and would dismiss the appeal with costs. The point taken with regard to the pleader's fee was dealt with at the hearing. I would decline to interfere with the Judge's discretion.

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## APPELLATE CIVIL.

*Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.*

SANGU AYYAR (PLAINTIFF), APPELLANT,

v.

CUMARASAMI MUDALIAR AND OTHERS (DEFENDANTS),  
RESPONDENTS. †

1894.  
April 4, 9.

*Transfer of Property Act—Act IV of 1882, s. 54—Execution of sale-deed without consideration—Subsequent transfer for value—Priorities.*

In a suit for land, it appeared that in 1887, A had executed in favor of B a registered conveyance of the land in question, which purported to be a sale-deed, but that no consideration was in fact paid; and that A who had retained possession sold and delivered it to C and D and that they then discharged a mortgage which was to have been paid off by B. In the interval between the two transactions above referred to, the plaintiff had purchased the land from B and he now alleged

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\* The allusion here is to the unreported case above cited, viz., *Vikrami Devi v. Neelamani Patia Mahadevi* decided in 1884 by TURNER, C.J., and MUTTUSAMI AYYAR, J. That portion of their judgment in which the present subject was dealt with is given at I.L.R., 11 Mad., 489, in the report of the appeal in the Privy Council against the decree of the High Court.—[*Reporter's Note.*]

(1) I.L.R., 2 All., 164, 169. † Second Appeal No. 1547 of 164, 1893.

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that the persons in possession had executed a rent agreement, in fact found to be a forgery, under the terms of which he claimed to eject them.

*Held*, that the plaintiff's claim founded on the transaction of 1887 did not prevail against C and D.

SECOND APPEAL against the decree of O. Chandu Menon, Subordinate Judge of Tinnevely, in appeal suit No. 198 of 1892, affirming the decree of C. Subramania Ayyar, District Munsif of Tinnevely, in original suit No. 313 of 1891.

Suit to recover land with mesne profits. The plaintiff claimed title under a registered sale-deed (exhibit D) for Rs. 300, dated 5th November 1888, and executed in his favour by defendant No. 1, who had purchased the land under a registered sale-deed in 1887 (exhibit A) from two persons named Sundara Nadan and Gurusami Nadan. It was further alleged the defendants Nos. 2, 4 and 6, who in 1888 were in possession as tenants of defendant No. 1 under a lease (exhibit B) had then been directed by him to attorn to the plaintiff and had in fact done so.

Defendants Nos. 3 and 5, who alone contested the suit, claimed title under a registered sale-deed executed in their favour by Gurusami Nadan in January 1890.

It appeared that a mortgage debt due by Sundara and Gurusami Nadan was to have been paid off by defendant No. 1 in 1887, but was in fact subsisting till 1890 when it was discharged by defendants Nos. 3 and 5.

The District Munsif dismissed the suit, finding that the alleged sale to defendant No. 1 was supported by no consideration, and that exhibit B, which was a document purporting to be signed by the alleged tenants, was a forgery. His decree was affirmed on appeal by the Subordinate Judge.

The plaintiff preferred this second appeal.

*Sundara Ayyar* for appellant.

*Krishnasami Ayyar* for respondents Nos. 3 and 5.

JUDGMENT.—It is contended that document A being registered the property passed to the first defendant, though it is found that no consideration was paid as specified in A, and that, consequently, the subsequent sale to defendants Nos. 3 and 5 is invalid on the ground that it was made by a person having no title to convey. In support of this contention reliance is placed on *Ram*

*Lakhan Rai v. Bandan Rai*(1), *Bishenmun Singh v. The Land Mortgage Bank of India*(2), *Umedmal Motiram v. Daru Bin Dhondiba*(3), and also on section 54 of the Transfer of Property Act.

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The present case is, however, distinguishable from the above. Here the first purchaser abstained from paying the purchase money from 1887 to 1890, and allowed his vendor to retain possession, and then to sell the property to defendants 3 and 5, who, in consequence, paid off the mortgage that was to be discharged by the original purchaser.

The plaintiff purchased the same property from the first defendant in 1888, and lay by till 1890, and then, forging the lease B, brought this suit for possession of the property without offering to pay the consideration or accounting for it.

We are unable to say that his conduct discloses an intention to insist upon the original sale as a valid transaction.

After thus lying by for several years, we do not think he should be permitted in equity to turn round on others who have paid valuable consideration and succeed with the aid of a forged document. To do so would be to permit the Registration Act to be turned into an instrument of fraud.

We dismiss the appeal with costs.

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## APPELLATE CIVIL.

*Before Mr. Justice Nutturami Ayyar and Mr. Justice Best.*

VOLKART BROTHERS (PLAINTIFFS),

v.

RUTNAVELU CHETTI (DEFENDANT).\*

1892.  
 October 21.  
 1894.  
 February 6.

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*Contract Act—Act IX of 1872, s. 39—Shipment at monthly intervals.*

The defendant agreed to purchase from the plaintiffs 120 cases of condensed milk which were to be shipped in London and delivered in Madras. The agreement stipulated for shipment in six lots of twenty cases each at monthly intervals, but it contained a proviso, whereby the plaintiffs were excused from monthly shipments if space in ships sailing for Madras were not available. The second shipment was

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(1) I.L.B., 2 All., 711. (2) I.L.R., 11 Calc., 244. (3) I.L.B., 2 Bom., 547.

\* Referred Case No. 12 of 1892.