

## APPELLATE CIVIL.

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

PURNAMAL CHUND (DEFENDANT NO. 3), APPELLANT,

*v.*

VENKATA SUBBARAYALU (PLAINTIFF), RESPONDENT.\*

*Mortgage—Priority—Merger of former mortgage in decree—Right of subsequent mortgagee to keep the prior incumbrance alive.*

Where there is a subsisting prior incumbrance and a subsequent mortgagee advances money for the purpose of discharging it, but it is for his benefit still to keep it alive, his right to keep it alive is not affected by the fact that the prior incumbrance had at the time taken the form of a decree. *Adams v. Angell*(1) followed.

SECOND APPEAL against the decree of S. Russell, District Judge of Chingleput, in Appeal Suit No. 62 of 1894, affirming the decree of N. Sarvothama Rau, District Munsif of Poonamallee, in Original Suit No. 230 of 1892.

The facts of this case appear sufficiently for the purpose of this report in the judgment of the High Court.

*Sankaran Nayar* for appellant.

*Ramachandra Rau Sahib* for respondent.

JUDGMENT.—The respondent (plaintiff) seeks to enforce a mortgage executed in his favour on the 15th December 1891. The sum of Rs. 1,150, part of the sum advanced by him was, it is found, advanced and actually for the amount due under a decree, dated the 20th March 1890, obtained by one Subba Reddi on a mortgage in his favour executed in the year 1887. The appellant was the holder of an intermediate incumbrance, dated the 4th February 1890, upon which also a decree was obtained on the 4th November 1890. Prior to the date of the respondent's mortgage, there were therefore two mortgage decrees in existence, the earlier one in favour of Subba Reddi, the later in favour of the appellant. It is found, as a fact, that the respondent when advancing Rs. 1,150 for the discharge of the earlier decree intended to keep alive the prior incumbrance, and it has been

\* Second Appeal No, 1427 of 1895.

(1) L.R., 5 Ch. D., 645.

held that he is to that extent entitled to priority as against the appellant whose incumbrance is intermediate in point of time.

On the hearing of the appeal, it was argued before us that inasmuch as Subba Reddi's mortgage had become merged in the decree passed upon it and that decree had been satisfied, the intention of keeping it alive for his own benefit could not properly be imputed to the respondent. Notwithstanding the opinion to the contrary expressed in the unreported case, we are of opinion that the principle on which the respondent bases his claim to priority is not affected by the circumstance that the money advanced by him was advanced in order to pay off a mortgage debt due under a decree. It is sufficient for the respondent to show that there was a subsisting prior incumbrance; that his money was lent for the purpose of discharging it, and that it was for his benefit that that prior incumbrance should still be kept alive. It cannot be said that he had any the less a right to keep the incumbrance alive, because it had taken the form of a decree. The same thing had happened in the case of *Adams v. Angell*(1), nor can it be said in the present case that the respondent did anything which could serve to negative an intention on his part to adopt the course which it was obviously for his benefit to adopt. The appeal is dismissed with costs.

PURNAMA  
CHUND  
v.  
VENKATA  
SUBBA-  
RAYALU.

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## APPELLATE CIVIL.

*Before Mr. Justice Subramania Ayyar and Mr. Justice Benson.*

MAMMOD (JUDGMENT-DEBTOR), APPELLANT,

v.

LOCKE AND ANOTHER (DECREE-HOLDER AND AUCTION-PURCHASER),  
RESPONDENTS.\*

*Civil Procedure Code—Act XIV of 1882, s. 244 (c)—Parties to the suit—  
Auction-purchaser.*

Land was sold in execution of a decree of a Subordinate Court, and a sale certificate was issued. A question having subsequently arisen as to what had actually been the subject of the sale, the auction-purchaser applied to the Court, and an order was made by which the sale certificate was amended. The judgment-debtor appealed to the District Court joining the decree-holder and the auction-purchaser as respondents.

1897.  
August 6.  
September 2.

(1) L.R., 5 Ch. D., 645.

\* Appeal against Appellate Order No. 22 of 1897.