

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Davies.

1896. ALANGARAN CHETTI AND ANOTHER (DEFENDANTS NOS. 1 AND 2),
December 7. APPELLANTS,

v.

LAKSHMANAN CHETTI AND OTHERS (PLAINIFF AND
DEFENDANTS NOS. 3 AND 4), RESPONDENTS.*

*Mortgage—Transfer of Property Act, s. 101—Renewal of mortgage—Priority over
subsequent incumbrance.*

Where a mortgagee, subsequently to the execution of the mortgage deed, takes another mortgage in renewal of the former deed, he has priority over incumbrances subsequent to the first deed.

APPEAL against the decree of P. Narayanasami Ayyar, Subordinate Judge of Madura (West), in Original Suit No. 10 of 1893.

The plaintiff sued on a simple mortgage deed (exhibit A), executed in favour of one Narayana Chetti and the first defendant by the third defendant. The deed was dated 16th October 1879, and after reciting that certain monies were due on a prior mortgage deed (Exhibit B, dated 28th March 1871), executed by the third defendant in favour of the deceased undivided brother of Narayanan Chetti and in favour of the first defendant, provided for the payment of the monies due under the former deed with interest, and to secure the payment mortgaged certain immovable properties of the third defendant.

After the execution of the deed of the 28th March 1871, but before the execution of the deed now sued on, the first defendant on different dates made further advances to the third defendant and obtained from the latter two simple mortgage deeds, whereby the third defendant mortgaged the same properties that he mortgaged under the deeds of 28th March 1871 and of 16th October 1879. Upon these deeds the first defendant brought a suit against the third and obtained a decree for the sale of the mortgaged properties. At the sale, the properties were bought in by the first defendant.

* Appeal No. 172 of 1895.

The plaintiff now sued to recover the amount due by the deed of the 16th October 1879 by the sale of the properties thereby mortgaged.

ALANGIRAN
CHETTI
v.
LAKSHMANAN
CHETTI.

The only defence necessary to be mentioned for the purposes of this report was the defence of the first defendant to the effect that the mortgage sued on was subsequent to the mortgage deeds on which he had sued and obtained a decree.

The Subordinate Judge decreed in favour of plaintiff.

Defendant No. 1 appealed.

Sundara Ayyar for appellants.

Subramania Ayyar for respondent No. 1, plaintiff.

JUDGMENT.—The only point urged is the question of priority raised in the third issue. It is contended that the principle laid down by the Privy Council in *Gokaldas Gopaldas v. Purnamal Preamsukhdas*(1) is applicable only to the case of a purchaser of the equity of redemption. There is no ground for limiting the principle to that case only. It is true that that is the only case provided for by section 101 of the Transfer of Property Act, but that is a—if not the—very extreme case where otherwise an extinguishment of the charge would ordinarily be presumed. This Court has, in several instances, applied the principle to cases like the present. *Rupabai v. Audimulam*(2), *Seetharama v. Venkatakrishna*(3), and see also judgment in appeal No. 113 of 1895.

The Subordinate Judge was, therefore, right in holding that, by the mere execution of A, the security under E in respect of the plaint debt was not given up.

The appeal accordingly fails and is dismissed with costs.

APPELLATE CIVIL.

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

MANA VIKRAMA (PLAINTIFF), APPELLANT,

v.

RAMA PATTAR (DEFENDANT), RESPONDENT.*

1897.
March 26,
April 14.

Contract—Usage imported as term of a contract—Practice on a particular estate.

In order that the practice on a particular estate may be imported as a term of the contract into a contract in respect of land in that estate, it must be

(1) I.L.R., 10 Cal., 1035. (2) I.L.R., 11 Mad., 346. (3) I.L.R., 16 Mad., 94.

* Second Appeal No. 1878 of 1895.