

APPELLATE CIVIL.

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

SYAMALARAYUDU (PLAINTIFF), APPELLANT,

v.

SUBBARAYUDU AND ANOTHER (DEFENDANTS), RESPONDENTS.*

1897.
September 7.

Mortgage—Discharge of encumbrance by intending purchaser—' Bonâ fides.'

A having mortgaged land to B agreed to sell it to C and then to D, in whose favour he executed a conveyance bearing a date prior to the contract with C. C sued A and D to have the conveyance set aside and his contract specifically performed and a decree was passed in his favour. While the suit was pending, D paid off B and now sued A and C to recover the money paid by him :

Held, that the plaintiff occupied the position of the mortgagee whom he had paid off, and that the sum constituted a charge on the land.

SECOND APPEAL against the decree of G. T. Mackenzie, District Judge of Godavari, in Appeal Suit No. 41 of 1896, confirming the decree of E. Subbarayudu, District Munsif of Narsapur, in Original Suit No. 9 of 1895.

Defendant No. 1 was the owner of certain land which was mortgaged for 1,084 rupees. In 1890, he agreed to sell the land to defendant No. 2, but, instead of completing the contract, he conveyed the land to plaintiff antedating the conveyance so as to make it appear that the plaintiff's rights were prior to those of defendant No. 2. Defendant No. 2 then sued to obtain the cancellation of the plaintiff's conveyance and specific performance of his contract with defendant No. 1. After the summons had been served, the plaintiff paid off the mortgagees, and the suit brought by defendant No. 2 having terminated in a decree as prayed therein, he now sued to recover the money so paid by him. The District Munsif passed a decree for the sum in question against defendant No. 1, but held that the plaintiff had no charge on the land in the hands of defendant No. 2. This decree was affirmed on appeal by the District Judge.

The plaintiff preferred this second appeal.

Ramachandra Rau Sahib for appellant.

Pattabhirama Ayyar for respondent No. 2.

JUDGMENT.—There is no dispute that the plaintiff did pay off the mortgagees with a sum of Rs. 1,084. He would ordinarily be

* Second Appeal No. 1222 of 1896.

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entitled to step into their shoes and to claim payment of his mortgage money out of the property originally mortgaged now in the hands of the second defendant, whose liability to pay the mortgage amount was established in the very suit in which the sale to him was upheld. The ground given in the Courts below for refusing to allow plaintiff's payment to be a charge upon the property was that the payment was not *bonâ fide*, and that it was not *bonâ fide* because it was made during the pendency of the suit between plaintiff and second defendant about the sale. We fail to see in this circumstance anything to affect the validity of the payment which was no doubt made by the plaintiff for the purpose of strengthening his own claim. The plaintiff's illegal act in antedating his sale deed also for the purpose of supporting his title does not vitiate the payment subsequently made, and which in itself was legal. There was, therefore, no want of *bonâ fides*, and certainly no fraud. We must accordingly allow the second appeal and direct that a decree for sale of the property be drawn up in the ordinary form for the sum of Rs. 1,084 with interest thereon at the rate of 12 per cent. per annum on Rs. 660 from the 11th March 1891 and on Rs. 424 from the 3rd March 1891 up to the date of the plaint, with 6 per cent. per annum thereafter until date of realization. The date for payment is fixed for the 7th March 1893. The second defendant must pay the plaintiff's costs on the above amount throughout. In other respects the decree of the Munsif is confirmed.

APPELLATE CIVIL.

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

ITTIRARICHAN UNNI AND ANOTHER (DEFENDANTS NOS. 1
AND 2), APPELLANTS,

v.

KUNJUNNI (PLAINTIFF), RESPONDENTS.*

Malabar Law—Powers of stani—Lease by stani of forest land attached to the stanom.

A stani in Malabar is not a tenant for life impeachable for waste. He is a person who represents the estate for the time being, and it is open to him to

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27.
October 15.