

provisions of section 55 of the Transfer of Property Act. The article applicable is article 132 and not article 111 and the suit is not barred by limitation. It was argued by the respondents that if this be the right view, no case could arise to which article 111 would be applicable. This may or may not be so. For the purpose of the present case it is enough for us to hold that the period of limitation in this case is twelve years from the date of the sale. Having regard to the decision of the Privy Council it would seem that *Natesan Chetti v. Soundararaja Ayyangar*(1), *Avuthala v. Dayumma*(2), and *Subrahmania Ayyar v. Poovan*(3), can no longer be regarded as binding authorities in so far as this point is concerned. We must set aside the decrees of the lower Courts. There will be the usual decree for sale for Rs. 900 with interest at six per cent. per annum from the date of plaint to the date of payment with proportionate costs out of the sale-proceeds of the properties in schedule B. The respondents will bear their own costs throughout.

RAMA-  
KRISHNA  
AYYAR  
v  
SUBRAH-  
MANIA  
AYYAR.

The time for payment will be three months from this date.

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## APPELLATE CIVIL.

*Before Mr. Justice Boddam and Mr. Justice Moore.*

UTHANDI MUDALI (FIRST DEFENDANT), APPELLANT,

v.

RAGAVACHARI AND OTHERS (PLAINTIFF AND DEFENDANTS  
NOS. 2 TO 4), RESPONDENTS.\*

1965.  
December 13

*Mortgage—Whether sale followed by agreement to reconvey amounts to—Contract creating personal right not transferable.*

Three brothers sold certain properties by a duly executed sale-deed. The vendee, more than two months after the sale, executed an agreement in favour of one of them in the following terms:—

" You shall, on 29th January 1901, without obtaining from others and by your own earnings, pay me the sum of Rs. 350 and obtain the right of purchase from

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(1) I.L.R., 21 Mad., 141.

(2) I.L.R., 24 Mad., 233.

(3) I.L.R., 27 Mad., 28.

\* Second Appeal No. 1059 of 1903, presented against the decree of K. O. Manavedan Raja, Esq., District Judge of North Arcot, in Appeal Suit No. 2 of 1903, presented against the decree of M.R.Ry. V. Ranga Rau, District Munsif of Chittoor, in Original Suit No. 93 of 1901.

UTHANDI  
MUDALI  
v.  
RAGAVA.  
CHARI.

me in respect of the lands sold. If you do not pay the amount on that date you shall have no right whatever."

The plaintiff having obtained the assignment of the right under the agreement, sued to recover possession on payment of the amount, alleging that the sale-deed and agreement taken together amounted to a mortgage :

*Held*, that the sale-deed and agreement not being between the same parties and being independent transactions could not be construed as constituting a mortgage.

*Situl Pershad v. Luchmi Pershad Singh*, (L.R., 10 I.A., 129), followed.

*Held also*, that the right conferred by the agreement was personal and not transferable.

THE facts necessary for this report are set out in the judgment.

*K. Srinivasa Ayyangar* for appellant.

*T. R. Ramachandra Ayyar* for *V. Krishnaswami Ayyar* for first respondent.

JUDGMENT.—We think this decree cannot be supported. The defendants Nos. 2 to 4 sold certain property to the first defendant under exhibit IX in November 1895.

In January 1896 the first defendant executed to the second defendant alone exhibit B, which is called a yethiridai deed whereby after reciting that the second defendant and his younger brothers had, on the 27th November 1895, conveyed to him the lands in question for Rs. 350, he agreed to resell them to the second defendant if on the 29th January 1901—" without obtaining from others and by your own earnings"—he paid the sum of Rs. 350.

The second defendant on the 29th June 1898 conveyed under exhibit A his rights to the plaintiff and the plaintiff now sues to recover the land by paying off the amount payable under exhibit B to the first defendant.

The District Munsif dismissed the suit: but on appeal the District Judge held that exhibits IX and B together constituted a mortgage and that the plaintiff was entitled to redeem.

We are clearly of opinion that this is wrong. The case is governed by *Situl Pershad v. Luchmi Pershad Singh*(1) with which it is practically on all fours.

The two exhibits IX and B do not, in our opinion, constitute one transaction. They are not between the same parties and they cannot be construed as constituting a mortgage.

(1) L R., 10 I.A., 129.

Moreover, exhibit B creates a contract personally with the second defendant alone which was not assignable. The plaintiff, therefore, under exhibit A acquires no rights as against the first defendant. The suit should have been dismissed. We reverse the decree of the District Judge and restore that of the District Munsif with costs in this and in the lower Appellate Court.

UTHANDR  
MUDALI  
v.  
RAGAVA-  
CHARI.

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## APPELLATE CIVIL.

*Before Sir Arnold White, Chief Justice, and Mr. Justice Moore.*

ARUNACHELLAM CHETTY (PETITIONER FIRST DEFENDANT),  
APPELLANT,

1905  
December 5.

v.

RAMANADHAN CHETTY (MINOR) BY HIS NEXT FRIEND  
ALAMELU ACHI (COUNTER-PETITIONER, ATTACHING CREDITOR),  
RESPONDENT.\*

*Civil Procedure Code—Act XIV of 1882, ss. 258, 462—Adjustment of decree by guardian without leave under s. 462 cannot be certified under s. 258 of the Civil Procedure Code.*

The provisions of section 462 of the Code of Civil Procedure apply to compromises after decree; and no adjustment by compromise of a decree by the guardian of a minor can be certified under section 258 of the Code of Civil Procedure when the guardian had not applied for leave to enter into the compromise under section 462 of the Code.

THE minor respondent, in execution of a decree, attached certain decrees passed against the appellant and his brother, and took proceedings in execution of the decrees so attached. Thereupon a compromise was entered into by which the guardian of the respondent through her agent agreed to give up a portion of the amount due under the attached decrees and received the balance. The appellant applied to the Court under section 258 of the Code of Civil Procedure to certify the adjustment thus made.

The Subordinate Judge refused to certify on the ground that the guardian had not obtained leave under section 462 of the Code of Civil Procedure to enter into the compromise.

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\* Civil Miscellaneous Appeal No. 30 of 1905, presented against the order of M.R.Ry. W. Gopalachariar, Subordinate Judge of Madura (East), in Execution Application No. 328 of 1904 (Original Suit No. 46 of 1901).