APPELLATE CIVIL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Ayling.

1910.
August 31.

RAMU AIYAR (TWENTY-FIFTH DEFENDANT), APPELLANT,

v.

A. L PALANIAPPA CHETTY AND OTHERS (PLAINTIFFS AND DEFENDANTS NOS. 1 TO 11, 13 TO 26 AND LEGAL REPRESENTATIVE OF THE DECEASED TWELFTH DEFENDANT), RESPONDENTS.*

Civil Procedure Code, Act XIV of 1882, ss. 278, 280, 281, 282, 283—*Bar under s.* 283 *applies to parties to proceedings though subsequent to the order they become representatives of judgment-debtor—Orders under* ss. 280, 281, 282 *may deal with questions of title.*

Parties to proceedings under section 278 of the Civil Procedure Code of 1882 and persons claiming through them who would be estopped by orders passed under sections 280—282 do not cease to be parties to such proceedings and to be so estopped because subsequent to such order they acquire rights which enable them to stand in the shoes of the judgment-debtor.

Orders under sections 280, 281, and 282 may determine questions of title. The power of the Courts in passing such orders is not confined to determining which of the parties is in possession.

APPEAL against the decree of A. C. Tate, District Judge of Chingleput, in Original Suit No. 2 of 1903.

The facts are fully stated in the judgment.

C. V. Anantakrishna Ayyar for appellant.

T. R. Ramachandra Ayyar and *M. Narayanaswami Ayyar* for first respondent.

THE CHIEF JUSTICE.—The question which we have to decide in this appeal is whether it is open to the appellant to impeach the validity of the mortgage on which the suit is brought. The question arises in this way. The suit is by the mortgagee. The first defendant is the mortgagor. Defendants Nos. 23 and 24 held a money decree against the mortgagor and they attached the mortgaged property. The mortgagee put in a claim under section 278 of the Civil Procedure Code. The mortgagor was not a party to these proceedings. On the hearing of that claim the mortgage was attached by defendants Nos. 23 and 24 on two grounds. It was attacked on the ground that it was invalid because the provisions of section 257-A of

* Appeal No. 62 of 1906.

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the Code had not been complied with and on the ground that it was a sham. Notwithstanding that the mortgage was impeached on the grounds I have stated, the claim of the mortgagee was upheld. Defendants Nos. 23 and 24 became the purchasers at the Court sale held under the order made in the proceedings under section 278; they afterwards assigned their rights to the twenty-fifth defendant who is the appellant before us. Now the present suit is a suit by the mortgagee and he seeks to recover the money due to him from the mortgagor by sale of the mortgaged property. The twenty-fifth defendant seeks to impeach the validity of the mortgage. One of the issues raised in the suit was whether the mortgage was bad because the provisions of section 257-A of the Code had not been complied with. The Court of First Instance held it was. The matter came before this Court on appeal and with regard to the question this Court took a different view from that of the Court of First Instance and held that section 283 barred the right of defendants Nos. 23, 24 and 25 to raise the question of the validity of the mortgage with reference to the provisions of 257-A, because they failed to bring a suit within one year from the order made in the claim proceedings. They held against the twenty-third and twenty-fourth defendants on the contention which they raised that they were entitled on the ground of minority to escape the operation of this provision of the law of limitation.

Now it is conceded by Mr. Anantakrishna Ayyar who argued this appeal on behalf of the appellant that the grounds of the decision of this Court, to which I have just referred, are equally applicable to the question which we have to consider here, that is to say, the question whether the appellant is entitled to impeach the mortgage with reference to the provisions of section 257-A, and on the ground that it is a sham. The parties against whom the order referred to in section 283 of the Code of Civil Procedure was made were the judgment-creditors of the mortgagor (defendants Nos. 23 and 24) and the twenty-fifth defendant derived his title by assignment from them. The contention on behalf of the appellant was that although the order was made against the parties from whom the twenty-fifth defendant derived his title inasmuch as these parties were the purchasers at Court auction, the appellant had become relieved of the disability

imposed by the provisions of section 283 of the Civil Procedure Code and clothes himself with all the rights of the judgment-debtor. One of these rights was the right to say " As I was not a party to the claim proceedings I am not bound thereby."

Now that is the argument which is advanced by the appellant and it seems to me it cannot be supported on principle or by authority. The policy of the section is clear. It is stated in the case to which Mr. Ramchandra Ayyar referred, *i.e.*, *Sardhari Lal* v. *Ambika Pershad* (1), that the object to be secured was speedy settlement of questions of title raised in execution. As regards the policy of the section I fail to see that the circumstances of this case give the appellant any special claim for consideration. It may be that the auction purchaser is the representative of the judgment-debtor and not the decree-holder, but that is a proposition which can only be ccepted subject to certain limitations. I need only refer to the decisions in *Sandhu Targanar* v. *Hussain Sahib* (2) and *Krishna Satapasti* v. *Sarasvatula Sambasiva Row* (3). The proposition, as it seems to me even if we accept it, can have no application to a case where the parties against whom the order was made under the claim proceedings are the identical parties who claim to have the benefit of standing in the shoes of the judgment-debtor. They are none the less the parties against whom the order was made because they have the right to say (assuming they have the right) we stand in the shoes of the judgment-debtor.

Coming to the decision of the Full Bench in *Krishnasami Naidu* v. *Somasundaram Chettiar* (4), what was held there (so far as is material to the question we have to consider) was that a judgment-debtor who is not in fact a party to the claim proceedings does not in the eye of law become such by reason solely of his being the judgment-debtor. That does not help the appellant.

We were also referred to the decision in *Vadapalli Narasimham* v. *Dronam Raju Setharama Murthy* (5). There, following the principle of the decision of the Full Bench, it was held that a claim under section 281 was not conclusive against, or in favour of, the judgment-debtor under section 283 of the

(1) (1888) I.L.R., 15 Calc., 521.
(2) (1905) I.L.R., 28 Mad., 87.
(3) (1908) I.L.R., 31 Mad., 177.
(4) (1907) I.L.R., 30 Mad., 335.
(5) (1908) I.L.R., 31 Mad., 163

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Code unless he was a party to the proceedings in which the order was passed. The other case *Guruva* v. *Subbarayudu* (1) certainly does not help the appellant because, as it seems to me, it does not carry him so far as the decision of the Full Bench. Then with regard to the other two cases *Mahomed Mira Ravuther* v. *Savvasi Vijaya Raghunadha Gopalar* (2) and *Mahabir Pershad Singh* v. *Macnaghten* (3), I think neither of these authorities supports the proposition which Mr. Anantakrishna Ayyar has asked us to accept. So much for the first point.

The second point is this: it is said that, assuming that the appellant is estopped because the defendants Nos. 23 and 24 are estoppped, the order on the claim petition is not an adjudication as regards the question of the validity of the mortgage. It is argued, that the order in the claim proceedings merely determines the question of physical possession and does not determine, and was never intended by the legislature to determine, any question of title. Now if we turn to section 283 of the Civil Procedure Code we find the words "The party against whom an order under section 280, 281 or 282 of the Civil Procedure Code is passed may institute a suit to establish the right which he claims to the property in dispute, but, subject to the result of such suit, if any, the order shall be conclusive." Surely that means the order with reference to the right to claim the property in dispute and not the order with reference to the fact as to whether A or B was in physical possession at the time the order was made. If we turn to the order made by the learned Judge in the claim proceedings it becomes clear that on one side the title under the mortgage was asserted and on the other side the title under the mortgage was denied on the ground that the mortgage was fraudulent. And the learned Judge holds, I quote his language, "I must hold, therefore, that exhibit C has been executed for consideration notwithstanding that the date of exhibit C compared with the dates referred to by counter-petitioners' vakil in connection with their suit against Chockalinga Pillai seems to show that exhibit C was executed in that connection. In holding that exhibit C is a genuine document I also consider the evidence relating to possession which I am

(1) (1890) I.L.R., 13 Mad., 366.

(2) (1900) I.L.R., 23 Mad., 227.

(3) (1889) I.L.R., 16 Calc., 682.

going to refer to." The learned Judge adjudicates upon this very question in his order, although it is true that the actual words of his final order are "That however does not interfere with the finding to which I now come, that Palaniappa Chetti is in possession of the property mortgaged to him by exhibit C." I think that must be taken as an adjudication upon the question as to whether he was in possession, as the party entitled to possession, that is to say, in possession by reason of the mortgage which he set up as the basis of his claim. I think, therefore, the points which have been taken by the appellant fail

As regards the merits Mr. Anantakrishna Ayyar did not think it necessary to contest the findings of the lower Court.

The result would be that the appeal is dismissed with costs.

AYLING, J.—I agree.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Abdur Rahim.

1910. October 21.

KOVVURI BASIVI REDDI AND ANOTHER (PLAINTIFFS), APPELLANTS,

v.

TALLAPRAGADA NAGAMMA *alias* BHUSHAMMA AND OTHERS (DEFENDANTS), RESPONDENTS.*

Civil Procedure Code, Act XIV of 1882, *s.* 28—*Test for misjoinder—No misjoinder where claims against several defendants in respect of same matter—Limitation Act, sch. II, art.* 62—*Suit to recover purchase money where sale* ab initio *void governed by art.* 62.

A suit to recover the consideration paid for a sale, which is *ab initio* void is governed by article 62 of schedule II of the Limitation Act and must be brought within three years from the date when the purchase-money was paid.

Hanuman Kamat v. *Hanuman Mandur*, [(1892) I.L.R. 19 Calc., 123], followed.

Krishnan Nambiar v. *Kannan*, [(1898) I.L.R., 21 Mad., 8], not followed.

A purchased some land from B and paid the purchase-money. On proceeding to take possession, he was obstructed by C and he got a sale-deed from C paying consideration for the sale. When the second sale was concluded, D undertook to get back the purchase-money from B, which was not done.

A who had paid the purchase money twice brought a suit against B, C, and D to recover from B the amount paid to him, if he should be found not to be the owner or in the alternative, if B should be the true owner, to recover from C and D the amount paid for the second sale:

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* Second Appeal No. 1503 of 1909.