

SUBRAMANIA
 AYYAR
 v.
 ARUNUGA
 CHETTY.

being no pre-existing liability on the part of the ward at the time the guardian entered into the contract.

In the present case the effect of the guardian's contract was to keep alive a liability to which, at the date of the contract, the minor's share of the ancestral estate was already subject.

The second appeal is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Bhashyam Ayyangar.

K. MALLIKARJUNADU SETTI (COUNTER-PETITIONER),
 APPELLANT,

v.

A. LINGA MURTI PANTULU (PETITIONER), RESPONDENTS.*

Civil Procedure Code—Act XIV of 1882, s. 310-A—Application by second mortgagee to set aside sale of mortgaged property under decree obtained by first mortgagee in suit to which second mortgagee had not been made a party—“Person whose immoveable property has been sold”—Transfer of Property Act—Act IV of 1882, s. 75.

Land, which was subject to two mortgages, was sold under a decree obtained by the first mortgagee, in a suit in which the second mortgagee was not made a party. The second mortgagee then applied to have the sale set aside, and paid into Court the amount due to the first mortgagee :

Held, that the second mortgagee was not entitled to have the sale set aside. Inasmuch as he had not been made a party to the suit in which the decree was obtained his interest had not passed under the sale, and his right to redeem the prior mortgage continued. He was, therefore, not a person whose immoveable property had been sold within the meaning of section 310-A of the Civil Procedure, and had no *locus standi* to apply under that section.

PETITION under section 310-A of the Code of Civil Procedure and section 75 of the Transfer of Property Act. The plaintiff in Original Suit No. 567 of 1898 had obtained a decree upon a mortgage

* Appeal against the Appellate Order No. 35 of 1901 of V. Venugopaul Chetty, District Judge of Ganjam at Berhampur, dated the 6th August 1900, passed in Civil Miscellaneous Appeal No 9 of 1900, presented against the order of D. Ragavendra Rao Pantulu Garu, District Munsif of Sompeta, dated the 28th December 1899, passed in Miscellaneous Petition No. 1713 of 1899 (Executive Petition No. 458 of 1899 ; Original Suit No. 567 of 1898).

over land executed in his favour by the two defendants in that suit. Petitioner held a second mortgage on the same land. A portion of the land was sold in execution of the plaintiff's decree. Petitioner had not been joined as a party in Original Suit No. 567 of 1898, and only heard of the sale after it was over. He now claimed the right to have the sale set aside and to redeem the plaintiff's mortgage, and, with that object, paid the necessary amount into Court. The application was opposed by the auction-purchaser, who raised the objection, among others, that the petitioner's right of redemption had not been affected by the sale, and claimed that petitioner was not entitled to have the sale set aside. He further, at the hearing of the petition, offered to pay petitioner the amount due to him under his mortgage. The District Munsif held that petitioner was entitled to apply under section 310-A, but, as the auction-purchaser was willing to redeem petitioner's mortgage, he rejected the application. The Acting District Judge upheld the Munsif's finding that petitioner was entitled to apply under section 310-A, and considered that his right to so apply was not affected by the fact that he was a subsequent mortgagee. He next considered whether petitioner's position was altered by the subsequent offer of the auction-purchaser to pay petitioner the amount due on his mortgage. He held that that subsequent offer should not have been taken notice of and that, under section 310-A, as soon as petitioner paid the money into Court, the Court was bound to give petitioner the benefit of that section and cancel the sale. He ordered the sale to be set aside.

The auction-purchaser preferred this appeal.

P. S. Sivaswami Ayyar for appellant.

P. B. Sundara Ayyar for respondent.

JUDGMENT.—Following the opinion of the Full Bench we hold that the provisions of section 310-A of the Civil Procedure Code are applicable to a sale of mortgaged property sold under a mortgage decree; but in the present case, the applicant under section 310-A is a second mortgagee who was not made a party to the suit. His interest therefore could not have passed under the sale which he seeks to set aside under section 310-A for his right to redeem the prior mortgage will continue notwithstanding the decree and the sale thereunder. We hold therefore that he is not a person whose immoveable property has been sold within the meaning of

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section 310-A. He has therefore no *locus standi* to apply under that section.

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We set aside the order of the lower Appellate Court and restore that of the District Munsif, but on the ground stated above.

Each party will bear his own costs throughout.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Bhashyam Ayyangar.

VADALI MAMIDIGADU (PLAINTIFF), APPELLANT,

v.

KOTIPALLI RAMAYYA AND THREE OTHERS (DEFENDANTS),
RESPONDENTS.*

Hindu Law—Alienation by one of two co-widows—Effect on the inheritance and on the interest of the alienor.

Though one of two co-widows, who is not the managing member on behalf of both, cannot charge the inheritance, even where the transaction is for the benefit of the estate, an alienation by her will bind her own interest in the property during her life-time.

SURE for a declaration. Plaintiff alleged that one Mandra Venki, whom he described as the sole widow of Veeraswamigadu, deceased, had conveyed certain land to him under a sale-deed, but that, when he endeavoured to obtain possession of the land, he was prevented from doing so by the four defendants. First defendant remained *ex parte*. Second defendant pleaded that she also was a widow of the deceased Veeraswamigadu, and, as such, entitled, jointly with first defendant, to possession and enjoyment of the land. Third defendant also remained *ex parte*. Fourth defendant had attached the property in execution of a decree which he had obtained against defendants Nos. 1 and 2 on a bond executed by Veeraswamigadu. His suit was filed after the alienation by first defendant to plaintiff. He supported second defendant.

* Second Appeal No. 485 of 1901, presented against the decree of J. H. Munro, District Judge of Godavari, in Appeal Suit No. 29 of 1900, presented against the decree of K. S. Sambasiva Ayyar, District Munsif of Tanuku, in Original Suit No. 3 of 1898.