

VELAYUTHAM  
v.  
SUBBAROYA.  
—  
SESHAGIRI  
Ayyar AND  
KUMARA-  
SWAMI  
SASTRIYAR, J.J.

to dispute that possession (or, in other words, that it was such as to give a cause of action or right to sue for possession) *throughout the twelve years next preceding the suit.*" The language of article 144 which speaks of possession "becoming adverse" supports this view. Reference may also be made to *Asanab Ravulhan v. Vamana Rzu*(1) and *Moidin v. Oothumanganni*(2). The decision in *Ponnuswamy Iyer v. Permaye*(3) is in favour of this position. There is no doubt that possession held by one of the co-owners will not be adverse to the others until they have notice of the hostile claim. The difficulty in this case arises from the fact that possession was hostile when it commenced. We have not been referred to any authority which shows that such a possession continues to be hostile notwithstanding the accrual of a peaceful title before the completion of the adverse possession. Possession should be *prima facie* attributed to a lawful title; we think the third defendant on the death of the widow must be deemed to have held the property on behalf of the plaintiff as well.

K.R.

---

## APPELLATE CIVIL.

*Before Mr. Justice Srinivasa Ayyangar.*

MURUGESA MUDALY AND TWO OTHERS (RESPONDENTS  
Nos. 2, 3 AND 5), PETITIONERS,

v.

RAMASAMI CHETTY (PETITIONER), RESPONDENT.\*

*Civil Procedure Code (Act V of 1908), O. XXXIV, rr. 3 and 8—Extension of time for paying mortgage amount only upon good cause—Non-passing of a foreclosure decree, not a good cause for extension—Civil Procedure Code (Act V of 1908), sec. 115—No interference, even with an order passed without jurisdiction, if justice does not require.*

Extension of time for payment of the mortgage amount due under a decree in suits instituted either by the mortgagor or the mortgagee can be given only where good cause is shown therefor and a party is not entitled to it as a matter of right, under Order XXXIV, rules 3 and 8, of the Code of Civil Procedure.

(1) (1878) I.L.R., 2 Mad., 223.

(2) (1888) I.L.R., 11 Mad., 416.

(3) (1914) 16 M.L.T., 630.

\* Civil Revision Petition No. 1076 of 1914.

An extension of time cannot be granted on the sole ground that no order for foreclosure absolute has been passed.

The High Court is not bound to interfere in revision with an order for extension of time wrongly passed.

English practice referred to.

PETITION under section 115 of the Code of Civil Procedure praying the High Court to revise the order of G. R. SUBBARAYA AYYAR, the District Munsif of Dharmapuri, in Original Petition No. 563 of 1914 in Original Suit No. 28 of 1911.

The facts of the case appear from the judgment.

*T. R. Ramachandra Ayyar* for the petitioners.

*Dr. S. Swaminathan* for the respondent.

JUDGMENT.—This is an application to revise the order of the District Munsif of Dharmapuri extending the time fixed for payment of the mortgage money by a decree *nisi* in a suit for redemption by a puisne mortgagee. The Munsif thinks that the reasons given by the plaintiff in the suit for non-payment of the mortgage money within the time fixed were insufficient and unsatisfactory, but all the same he gave the extension prayed for on the ground that the plaintiff was entitled as a matter of right to redeem until there is a decree for foreclosure absolute even though the time fixed by the decree *nisi* had passed.

The power to extend the time for payment of the mortgage money is now regulated by Order XXXIV, rules 3 and 8, and under the rules, the Court can only extend the time upon good cause shown. This is in accordance with the settled practice in England. Even in cases where the mortgagee sues for foreclosure, extension of time for payment is not given as a matter of course, and the mortgagor is not entitled to redeem as of right after the time fixed for payment although no order for foreclosure absolute has been passed: see *Faulkner v. Bolton*(1), *Nanny v. Edwards*(2), *In re Parbola, Limited: Blackburn v. Parbola, Limited*(3), *Seton on Judgments*, page 1913 and *Fisher on Mortgages*, section 1958; and in suits by a mortgagor to redeem, the time for payment is not extended except in cases of accident or mistake. See *Novosielski v. Wakefield*(4) and *Collinson v. Jeffery*(5). Inasmuch as the

MURUGESA  
MUDALIY  
v.  
RAMASAMI  
CHETTY.

SRINIVASA  
AYYANGAR, J.

(1) (1835) 7 Sim., 319. (2) (1827) 4 Russ., 124. (3) (1909) 2 Ch., 437.  
(4) (1811) 17 Ves. J., 417. (5) (1896) 1 Ch., 64.

MURUGESA  
MURUGALY  
v.  
RAMASAMI  
CHETTY.

SRINIVASA  
AYYANGAR, J.

lower Court extended the time for payment when it had no power to do so, this Court has power to interfere with the order in revision as one passed without jurisdiction; but I do not think that the justice of the case requires that I should interfere with the order.

The suit was instituted by the puisne mortgagee against the first mortgagee who had also purchased the equity of redemption. The puisne mortgagee, it is now settled, would be entitled to institute a suit for the sale of the property subject to the first mortgage: see *Mulla Vitthi Seethi v. Achuthan Nair*(1). But at the time when the suit was instituted there was some doubt on the point and the puisne mortgagee seems to have instituted the suit for the redemption of the first mortgage and for sale of the whole of the mortgaged properties for the sums due on both the mortgages. At any rate that was the decree passed. The sum which the plaintiff had to deposit on account of the first mortgage was nearly Rs. 2,000, and he made the deposit within a month after the date fixed and he paid also interest on that sum at 12 per cent. The amount due to him was nearly Rs. 1,161; and it is reasonable to suppose that the mortgage property was worth considerably more than the amount due on the first mortgage. The first mortgagee suffers no hardship; while on the other hand, if I interfere with the order, the puisne mortgagee would lose the whole of the amount due to him. I therefore dismiss this petition, but under the circumstances without costs.

N.B.

---

(1) (1911) 21 M.L.J., 213.

---