

APPELLATE JURISDICTION (a)

*Special Appeal No. 336 of 1862.*VENKATACHARI.....*Appellant.*ANANTACHARI and others.....*Respondents.*

A mortgaged land to B, the mortgage-instrument providing that B should be entitled to purchase the land if it were not redeemed by 12th July 1843. In 1845, B accepted from A one pagoda in part-payment of the mortgage-money :—*Held* that this was a waiver by B of his right to purchase.

THIS was a special appeal from the decree of James Wilkins, the Principal Sadr Amin of Cuddalore, in Appeal Suit No. 9 of 1861, modifying the decree of the District Munsif of Vilupuram in Original Suit No. 1409 of 1859.

1862.
November 20.,
S. A. No. 336
of 1862.

Sadagopachartu for the appellant, the plaintiff.

The facts sufficiently appear from the following

JUDGMENT :—The plaintiff sues for land purchased by him from the first defendant in the year 1855, offering to redeem a prior mortgage thereon granted by the first to the second defendant and transferred by the second to the third defendant.

The District Munsif decreed for the plaintiff, but on appeal the Principal Sadr Amin observed that the terms of the mortgage-bond gave to the mortgagee the right to purchase the property for the additional sum of eight pagodas, if redemption were not effected before the 12th July 1843; and this right he considered to have been transferred to the third defendant, and to be still in him. He therefore disallowed the sale to the plaintiff and dismissed the suit with costs.

We find that after the expiration of the term limited for the redemption of the mortgage, namely in the year 1845, the second defendant accepted from the first defendant the sum of one pagoda in part-payment of the mortgage-money, which was thus reduced from 19 to 18 pagodas; and that in 1853 the second defendant transferred his rights to the third defendant in consideration of the reduced

(a) Present Strange and Frere, J J.

1862. sum of 18 pagodas. We consider that by accepting the
 November 20. sum of one pagoda, at the time in question, the second
 S. A. No 336 defendant abandoned his right to purchase the property, and
 of 1862. that all he could and did transfer to the third defendant was
 his other rights under the instrument of mortgage.

Under these circumstances we set aside the decree of the Principal Sadr Amin and affirm that of the District Munsif.

The costs in appeal and special appeal are to be paid to the third defendant.

Appeal allowed.

NOTE.—See *Price v. Perrie*, 2 Freem. 258 ; *Willett v. Winnell*, 1 Vern 488 : Coote, Mortg. 14.

APPELLATE JURISDICTION (a)

Special Appeal No. 803 of 1861.

LAKSHMI NÁRAYANA.....Appellant.

RÁMAPPA CHAKHIRA.....Respondent.

An usufructuary mortgage of lands was executed in 1846, but the mortgagee did not enter into possession. In 1852 his representative, the plaintiff, commenced a suit to obtain possession, but allowed it to drop. In 1854 he commenced the present suit for the same object :—*Held* that laches could not be imputed to the plaintiff from the date of presenting the plaint in 1852, and that the produce from that date should be accordingly awarded him.

1862. THIS was a special appeal from the decree of Lakshu-
 November 20. máya, the temporary Principal Sadr Amin of Manga-
 S. A. No. 803 lur, in Appeal Suit No. 242 of 1860, by which he refused
 of 1861. to allow the plaintiff the profits which the latter claimed
 under a deed of *bhogyadhi*(b), or usufructuary mortgage,
 dated the 29th March 1846.

Srinivasachariyar for the appellant, the plaintiff.

The defendant did not appear.

The facts sufficiently appear from the following.

(a) Present Strange and Frere, J J.

(b) *Bhogyadhi* is properly an usufructuary *pledge*, from Sanskr. *bhogyā*, 'enjoyment' 'possession' and *adhi* 'pledge.'