

Appellate Jurisdiction.(a)*Regular Appeal No. 83 of 1875.*

RAMASAMI CHETTI and 3 others.....(*Defendants*) *Appellants.*
 SALUCKAI TE'VAR *alias* OYYA TE'VAR. (*Plaintiff*) *Respondent.*

Proceedings against the widow of the deceased mortgagor alone in execution of a decree obtained against the mortgagor (the widow having merely a right to maintenance) cannot be effectual to pass to the purchaser at the sale in execution any right or interest in the property mortgaged.

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THIS was a Regular Appeal against the decree of the Subordinate Court of Madura in Original Suit No. 89 of 1873.

Mr. O'Sullivan and Bhashyam Iyengar, for the defendants, appellants.

The *Advocate-General, Mr. Tarrant, Mr. Shephard* and *Sashier*, for the plaintiff, respondent.

This Appeal and Regular Appeals No. 82 and 84, were heard together. For the arguments of Counsel, see Regular Appeal, No. 82 of 1875.(1)

The Court delivered the following

JUDGMENT :—Ramasawmy Chetty and three others are the appellants. The suit was brought against them for the recovery of Arasanoor and Pappangudy, two villages of the Polliaputt of Padamathoor and was in all other respects like the suit brought by the plaintiff against Ponnusawmy Tévar's representatives.(1) The appellants claimed to be mortgagees of these villages and purchasers of the equity of redemption.

These villages with three others were in 1827 mortgaged to or charged in favor of the father of Ramanadan Chetty and Lutchmanan Chetty, and, by a decree of the Sudder Court made in 1839, this charge was established, and the amount due in respect of it was ascertained to be 38,820 Rupees. In 1854 this amount having been in great part satisfied, Narrain Chetty, representing the persons above-named, obtained a fresh security for the sum of 5,487 Rupees,

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(1) *Ante* p. 155.

the balance then remaining due and for other monies alleged to be then due from Durai Pandien. The villages of Puvandy and Padamathoor were mortgaged to him for 10 years to secure the sum of 48,874 Rupees, being the amount then ascertained to be due to him.

The two villages now in question were about the same time mortgaged for 10 years to Aroonachella Chetty, the appellants' father, to secure a sum of Rupees 17,692 said to be due under a decree in a suit (Original Suit No. 1 of 1852) on the file of the Adalut Court of Madura and another decree of the Subordinate Court. Having obtained a transfer of the decrees an arrangement by way of compromise was made to the above effect and filed in Court. It was thereby stipulated that Aroonachella Chetty should receive the usufruct in lieu of interest for the term of mortgage, and that on non-payment of the principal sum the amount should be recovered "through process of the Court" from the two villages and the defendants' other property. According to the written statement these villages were, "under the two razinamabs filed in the Civil Court on the 3rd February 1860," mortgaged to 1st defendant's father by the said Oyya Tēvar *alias* Gouri Vallabha Tēvar for Rupees 1,28,133-13-8. Shortly before the date mentioned an arrangement similar to that already noticed was made and filed in Court which, after referring to the compromise of 1854 and to several razinamabs in suits brought in the three previous years and ascertaining an amount of 106,928 Rupees to be due for principal and interest, provided for an extension of the mortgage term for 3 years. In the event (it was stipulated) "of any obstruction at any time henceforward as to the enjoyment of the two villages under mortgage." Aroonachella Chetty was declared entitled to recover "by means of a precept of the Court the principal and interest on the responsibility of the villages and of the defendants' other property."

About the same time another like arrangement was made and filed relating to a sum of 21,205 Rupees.

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Under these arrangements Aroonachella Chetty was entitled, subject to an adjustment of accounts under Regulation XXXIV of 1802, Section 9, to hold the village during the mortgage, and under a practice then prevailing process of execution would have been issued on his application against the villages and against the debtors' other property.

The appellants also claim to be purchasers (in the name of Ramiengar, the 4th appellant) of the villages at a sale in execution of a decree obtained in 1866 by one Meenachi Ammal against Vellai Nachiar *alias* Karaka Nachiar the widow of Durai Pandien.

The plaintiff in that suit had obtained in 1859 a decree by consent or after compromise against Durai Pandien for a balance of 870 Rupees due on account of a bond given for 1,559 Rupees. The terms of the compromise provided for a payment of this sum in two months, and on failure for the levy of the amount by Court precept from all the resources of the defendants' Zemindary.

Five years after her husband's death a suit was brought against Vellai Nachiar for 2,358 Rupees said to be due under this compromise, and the defendant not appearing, the Court gave a decree for the amount. In the judgment though not in the decree the defendant is described as the legal representative of Durai Pandien. In execution of this decree, the right, title and interest of Vellai Nachiar, the widow of the deceased Zemindar Durai Pandien, in the village was sold to the appellants.

As upon Durai Pandien's death his widow, beyond her right to maintenance, derived no interest in the property and in regard to it was not her husband's representative, it cannot, we conceive, be held that by this sale any further right passed to the appellants. Whatever claim they may now have must rest upon the mortgage title advanced by them. In support of this we have at the most evidence of sums advanced to the late proprietor and secured in the manner we have stated. So far as the advances made by Aroonachella Chetty or his father can be traced they may be regarded as advances made to Durai Pandien. The profits

of the villages were adequate to the discharge of encumbrances of an earlier date. Durai Pandien was not authorized to sell the estate, or to raise money, or incur debts for his own extravagant purposes and without limit. Notwithstanding the long delay on the plaintiff's part he is entitled to require from the defendants further evidence than they have given in support of their charge, and, in the absence of such evidence, we hold that the Court below has rightly decided that the plaintiff was entitled to a decree.

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This appeal will be dismissed with costs.

Appeal dismissed with costs.

Appellate Jurisdiction.(a)

Regular Appeal No. 84 of 1875.

KOSALA RAMA PILLAI and another... (Defendants) Appellants.
SALUCKAI TE'VAR *alias* OYYA TE'VAR. (Plaintiff) Respondent.

Debts undertaken by the holder of an ancestral and impartible Polliaput in respect of decrees obtained against his mother cannot by such undertaking become a charge upon villages forming part of the estate.

Razinamah arrangements not made decrees of Court but irregularly acted upon as if they had been so made do not alone substantiate advances alleged to have been made.

THIS was a Regular Appeal against the decree of the Subordinate Court of Madura in Original Suit No. 107 of 1873.

1875.
November 10.
R. A. No. 84
of 1875.

Mr. O'Sullivan and Bhashyam Iyengar, for the defendants, appellants.

The *Advocate-General*, *Mr. Tarrant*, and *Mr. Shephard*, for the plaintiff, respondent.

This Appeal and Regular Appeals, Nos. 82 and 83 were heard together. For the arguments of Counsel see Regular Appeal No. 82 of 1875.(1)

The Court delivered the following

JUDGMENT:—Kosala Rama Pillai and Vasudéva Pillai, who are the appellants in Regular Appeal No. 84 of 1875

(a) Present:—Sir W. Morgan, C. J., and Innes, J.

(1) *Ante* p. 155.