

Present : De Sampayo A.C.J. and Porter J.

1923.

SUPPIAH *v.* SINNIAH.

387—*D. C. Jaffna, 15,536.*

Mortgage—Mortgagee's address not registered—Land sold in execution of money decree—Fiscal's transfer to purchaser subject to mortgage—Action by mortgagee without making purchaser a party—Purchase by mortgagee under mortgage decree—Civil Procedure Code, ss. 643 and 644.

K mortgaged his land to defendant by a bond which was registered in 1910. The address of the mortgagee was never registered. In April, 1917, the land was called in execution of a money decree against K, and was purchased by the plaintiff. A Fiscal's transfer was issued to the plaintiff on September 10, 1917, and registered in May, 1918. The defendant sued K on his mortgage bond on September 13, 1917, and obtained a decree in October, 1917.

The defendant himself purchased the mortgaged land at a sale under the mortgage decree in 1920. The plaintiff was not a party to the mortgage action, nor was he given notice of it. The plaintiff's Fiscal's transfer expressly stated the sale to have been subject to the mortgage.

Held, that plaintiff's title should prevail over that of defendant.

THE facts appear from the judgment.

Hayley, for appellant.

Samarawickreme (with him *J. Joseph*), for respondent.

1923.

June 6, 1923. DE SAMPAYO A.C.J.—

*Suppiah v.
Sinniah*

This is one more case which presents a difficult point—almost a puzzle—in the law of mortgage. One Kanapathipillai was the owner of the land in dispute, and he, on May 1, 1909, mortgaged it to the defendant. The mortgage bond was registered on July 10, 1910, but the address of the mortgagee was not registered at any time. Pending this mortgage, the land was on April 25, 1917, sold in execution of a money decree against Kanapathipillai and was purchased by the plaintiff. A Fiscal's transfer was issued to the plaintiff on September 10, 1917, and the same was registered on May 29, 1918. The defendant sued Kanapathipillai on his mortgage bond on September 13, 1917, but without making the plaintiff a party to the action or giving him any notice of it, and obtained a decree on October 24, 1917. The plaintiff's Fiscal's transfer expressly stated the sale to have been subject to the mortgage, but there is no special significance in this recital, because the grant in any event was in fact subject to the mortgage. The defendant, however, still ignoring the plaintiff, issued writ in the mortgage action and had the land sold and purchased it himself on March 3, 1920. The present action is a contest for title to the land between the plaintiff and the defendant.

The principal question is whether the defendant took effective steps to make the mortgage decree binding on the plaintiff. There are two ways in which he might have done this. One was to follow the provisions of sections 643 and 644 of the Civil Procedure Code as to registration of an address and notice to the puisne incumbrancer, which in fact was in a series of decisions of this Court held to be the only way. The other way was what was pointed out as allowable by the Full Bench in *Moraes v. Nallan Chetty*,¹ namely, to make the puisne incumbrancer a party to the mortgage action or to bring a supplementary hypothecary action against him. But the defendant followed neither of these courses, and the matter has now reached a stage in which, not only is neither course possible, but a mere question of competing purchases arises. The plaintiff's Fiscal's transfer is prior in date as well as registration, and I think his title should prevail over that of the defendant. The unsatisfactory state of the mortgage law in Ceylon was pointed out in *Moraes v. Nallan Chetty* (*supra*) and remedial legislation was suggested, but as matters stand, and exercising my best judgment on the question in this case, I have come to the above conclusion.

In my opinion the judgment of the District Judge in favour of the plaintiff should be affirmed, with costs.

PORTER J.—I agree.

Judgment affirmed.

¹ (1923) 24 N. L. R. 297 ; 4 C. L. R. 198.