

Rao Sahib Pydah Venkatachalapathi Garu and ors. Vs. Muthu Venkatachalapathi (Died) and anr.

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Court : Chennai

Decided On : Jan-07-1914

Reported in : (1914)26MLJ151

Appellant : Rao Sahib Pydah Venkatachalapathi Garu and ors.

Respondent : Muthu Venkatachalapathi (Died) and anr.

Judgement :

1. If the claim of the plaintiff in the present suit is to be treated as based on the footing of a mortgage-transaction we think it is clear that, as was held in Mutha Venkatachalapathi v. Pynda Venkatachalapathi I.L.R. (1903) M. 348 that the unregistered letter cannot be received as evidence of such a transaction.

2. Assuming the plaintiff is entitled to sue for possession on the ground that no title passed to the defendants under the sale deed (Exhibit A), in order to succeed he must show that by virtue of the unregistered letter the sale deed does not affect the 'immoveable property which is comprised both in the sale deed and in the unregistered letter, in the way in which the sale deed purports to affect the property, and would affect the property if the unregistered letter had never been written. This being so it seems to us the unregistered letter is relied on as evidence of a transaction affecting immoveable property and, being unregistered, is inadmissible in evidence.

3. We think the principle of the decision in Achutaramaraju v. Subbaraju I.L.R. (1901) M. 7 applies to this case.

4. The Appeal must be allowed with costs in this Court and the suit dismissed. There will be no order as to costs in the Court of First Instance.