

Rm. Pl. S. Sivaswami Chettiar Vs. Marudaiya Goundan and ors.

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Court : Chennai

Decided On : Aug-07-1939

Reported in : AIR1940Mad16; (1939)2MLJ759

Appellant : Rm. Pl. S. Sivaswami Chettiar

Respondent : Marudaiya Goundan and ors.

Judgement :

Wadsworth, J.

1. I see no reason why the appellant should not with reference to the terms of Section 146, Civil Procedure Code, be allowed to file an appeal against the dismissal of the suit instituted by his benamidar, the latter having released his right in the property claimed in the suit by a deed which recites that the appellant was the real purchaser of the property. Whatever may be said regarding the superfluous deed of assignment subsequently executed, it cannot be contended that the release deed offends against Section 6(e) of the Transfer of Property Act. And though Order 22, Rule 10, Civil Procedure Code, does not in terra apply, the Court has ample powers under Section 146, Civil Procedure Code, to permit the person in whose favour the plaintiff has released his rights in the property to file the appeal, The appeal is therefore allowed with costs and there will be a direction to the learned District Judge to permit the appellant to file the appeal as a person claiming under the plaintiff.