
(1920) 01 MAD CK 0020
In the Madras High Court

A.A.R. Ponnambala Pillai and Others	APPELLANT
Vs	
Annamalai Chettiar (dead) and Others	RESPONDENT

Date of Decision : 27-01-1920

Acts Referred:

Citation : 55 Ind. Cas. 666 : (1920) 11 LW 429 : (1920) 38 MLJ 239

Judgement

1. We agree with the decision of the Full Bench of the Allahabad High Court in Bisheshur Dial v. Ram Sarup ILR (1900) All. 284 which was in accordance with the earlier Bombay decision in Lakshmidas v. Jamnadas Shankar Lal I.L.R.(1896)22 Bom 304 and has been followed in Calcutta in Mir Easuf Ali Haji v. Panchanan Chatterjee 11 Cal. L.J. 639. We have not been referred to any English authority in support of the opposite view. On the other hand, as pointed out in the last mentioned case, Lord Cottenham in Knight v. Marjibanks I.L.R.(1897) All. 23 cited with approval the statement in Sugden's Vendors and purchasers, Vol. 3 page 227, 10th edition ""that a sale by a mortgagor to a mortgagee stands on the same principle as a sale between parties having no connection with each other, and can only be impeached on the ground of fraud,"" and added "" that inadequacy of price would not be a sufficient ground to impeach such a sale."" The decisions that a mortgagee by purchasing a part of the mortgaged property extinguished the mortgage debt which were overruled in Nand Kishore v. Raja Hariraj Singh (1897) All. 23 and the further decisions that such a mortgagee-purchaser must credit the difference between the purchase price and the real value of the property purchased in discharge of the mortgage debt, which were overruled in Bisheshur Dial v. Ram Sarup ILR (1900) All. 284 appear to be quite

irreconcilable with the above statement. In this Court we have been referred to the decision of the Privy Council in *Dulichand v. Ramkishen Singh*

8 I.A. 98 which is discussed in the order of reference. The judgment no doubt contains passages which may be read as meaning that the mortgage

was discharged because the value of the property purchased by the mortgagee after deducting the purchase price exceeded the mortgage debt, but

there is no discussion of the principle involved, and in the absence of the judgment of the lower Court and of any report of the argument it is not

easy to say what was intended. If it had been a ruling after contest, it would have been dealt with in the head notes to the reports of the case. On

the other hand in the earlier case in *Nawab Azmut Ali Khan v. Jawahir Singh* 13 M.I.A. 404 the rule that the part of the mortgaged property

purchased by the mortgagee was only chargeable with a proportionate part of the mortgage debt was treated as plainly applicable. That is the rule

embodied in 9. 82 of of the Transfer of Property Act by which we are governed. If the legislature had intended to make an exception in the case of

mortgagee-purchasers, it would no doubt have done so in express terms, as in the case of the special restrictions imposed upon them by the now

repealed Section 99. Not only is there no provision to that effect, but the case of a mortgagee acquiring a share of the equity of redemption is

expressly dealt with in the last clause of Section 60 which recognises the mortgagor's right to redeem his own share in such a case upon payment

of a proportionate amount of the mortgage debt, leaving the balance to be borne by the mortgagee-purchaser, thus applying to this case the general

rule provided in Section 82. We answer the question in the negative and overrule *Sami Rowappa v. Kuppusami Iyengar* (1911) 2 M.W.N. 423.