

(1928) 11 MAD CK 0007
In the Madras High Court

Basana Simon and Others

APPELLANT

Vs

Mylavarapu Rangayya Naidu
Mekala Jogula Vs Vabbili
Reddi Pydithalli and Others

RESPONDENT

Date of Decision : 29-11-1928

Acts Referred:

Citation : 118 Ind. Cas. 105

Hon'ble Judges : Waller, J;Madhavan Nair, J

Bench : Division Bench

Judgement

In L.P.A. No. 186 of 1925.

1. This is an appeal under Clause 15 of the Letters Patent against the judgment of Spencer, J., in S.A. No. 197 of 1923 See 94 Ind. Cas. 639-

[Ed.] dismissing the plaintiffs' suit for redemption.

2. The facts are briefly these. The suit property belonged to one Anga Narasimhulu who died leaving a widow Rangamma and two daughters. The

widow put forward Anga Ramasami as having been adopted to her deceased husband. On the 6th of April, 1902, the suit property was

mortgaged in favour of the 1st defendant by the adopted son represented by the guardian, the adoptive mother. On the 2nd of May, 1906, another

mortgage Ex. B was executed by the widow as the guardian of the adopted son in which the prior mortgage was merged. The plaintiffs' suit out of

which this Letters Patent Appeal arises was instituted for the redemption of this mortgage, Ex. B. After executing the said mortgage the widow

Rangamma sold the suit property to the plaintiffs' father on the 2nd of July, 1910. On the 6th of July 1910, the adopted son who had attained

majority sold the property to one Veddadi Ramaswami who in his turn sold it to

one Venkata Rao. In O.S. No. 51 of 1910, on the file of the Subordinate Judge's Court of Vizagapatam the plaintiffs' father sought to eject the present defendants after declaring the suit mortgage to be

invalid. That suit was dismissed but the plaintiff's right to redeem the mortgage was left open and he was given liberty to institute another suit. In

O.S. No. 18 of 1912, on the file of the Subordinate Judge's Court of Vizagapatam the two daughters of the widow Rangamma obtained a

declaration that the adoption of Ramaswamy was invalid, and the Subordinate Judge's decision was confirmed by the High Court on appeal.

3. The plaintiff's suit was resisted by the defendants mainly on two grounds. (1) that the plaintiffs are estopped from questioning the validity of the

mortgage as their father's vendor, the widow Rangamma would be estopped from disputing that the adopted son had no right to convey the suit

property and 25 Ind. Cas. 576 : 27 M.L.J. 483 : 16 M.L.T. 163 that the suit is premature inasmuch as it has been brought before the expiry of 15

years,, the period alleged to be fixed in the mortgage. Both these grounds were overruled by the District Munsif and the Subordinate Judge who

gave a decree for redemption in favour of the plaintiffs. In second appeal preferred by the 1st defendant Spencer, J., overruling the plea of

estoppel, upheld the plea that the suit was premature and in consequence dismissed the plaintiffs' suit for redemption.

4. In this Letters Patent appeal filed by the plaintiffs both the grounds urged by the 1st defendant arise for consideration, as the respondent seeks

to support the learned Judge's judgment on the plea of estoppel also as he is entitled to do so, although the learned Judge decided against him on

that point.

5. We will first deal with the question whether the plaintiff's suit is premature on which the decision has been given against the defendants by

Spencer, J. Ex. B, the suit mortgage is dated the 2nd of May, 1996. It is contended that according to its terms, the period of the mortgage would

end only in 1921, and that, therefore the suit which was instituted in 1919, is clearly premature. The amount of the mortgage is Rs. 1,400.

Generally stated, the document provides that, out of Rs. 147 the rent accruing from the property, a sum amounting to Rs. 84 at the rate of 6 per

cent, on the principal should be deducted towards the interest and the balance of

Rs. 63 was to be kept by the mortgagee towards the discharge of the principal. Then come the following provisions: "The said amount of principal shall, by 15 years" time, be discharged by seven instalments of not less than Rs. 200 each, with the amount of deposit with you being added to it and the payment got endorsed by me on this instrument. I shall on the end of the mortgage, take back the lands and the bond. You yourself shall enjoy the usufruct of the palmyrah and other trees on the said lands". It is contended on the strength of these provisions that the mortgagor cannot redeem the mortgage until after the expiry of 10 years from its commencement. It seems to us that this contention cannot be upheld on a construction of all the terms of the document. The bond provides that "it shall be discharged by 18 years" time "", and this is to be done by making payments in seven instalments of not less than Rs. 200 each, adding to this sum the amount lying in deposit with the mortgagee. The amount of the instalment is mentioned but not its duration. It is clear that according to the terms the instalments could be paid annually and then within a period of seven years the mortgage-debt would be discharged. As the duration of each instalment is not mentioned, if it suits the mortgagor, he may make even more than one payment in a year. If we assume that the payments are made annually then according to the arguments of the respondent the mortgagee will be entitled to keep possession of the property for a period of eight years after the complete discharge of the entire mortgage-debt; that is to say, the mortgagor would not be entitled to redeem the property though he has paid the mortgage- debt; and the mortgagee would be entitled to enjoy it though all his debt has been discharged. We do not think that such a state of affairs would have been in the contemplation of the parties when the mortgage-deed was executed. It seems to us, therefore, that the expression "" by 15 years" time "" in the document means ""before the expiry of 15 years "" and not "" after the expiry of 15 years "" as contended for by the respondent. It was argued that the sentence beginning with ""I shall on the end of the mortgage take back the lands etc."" as given above is not a correct translation of the original which, it was urged should be translated as appearing in the plaint as "" I shall on the expiry of the period of the mortgage, take back the lands etc."" But, even if this is so what the period of the mortgage is has to be found out on a construction

of all the terms of the document since, admittedly no definite term has been prescribed as its period. As the question we have to decide depends

upon the construction of the particular terms of the document Ex. B, no useful purpose will be served by examining the various decisions that were

brought to our notice, in which the terms of the documents involved in those cases were considered. The decisions in Musammat Bakhtawar

Begam Vs. Musammat Husaini Khanam, and Bir Mohamed Rowther v. Nagoor Rowther 25 Ind. Cas. 576 : 27 M.L.J. 483 : 16 M.L.T. 163 do

not apply as the period of the mortgage was specified in the terms of the document. We agree with the principle that a mortgagor cannot be

allowed to redeem the mortgage before the expiry of the term mentioned in the mortgage-deed, unless there is a contract to the contrary in favour

of the mortgagor. In this case, as we have already mentioned no period has been fixed for the mortgage and the provision that we have examined

distinctly shows that the mortgagor is entitled to redeem before the expiry of 15 years. In this connection, reference may also be made to the

decision in Purna Chandra Sarma v. Peary Mohan Pal 15 Ind. Cas. 287 : 39 C. 828 : 17 C.W.N. 149. In our opinion the terms of Ex. B do not

warrant the conclusion that the plaintiffs can redeem the mortgage only after the period of 15 years and it, therefore, follows that the decision of the

learned Judge that the suit is premature is wrong and should be set aside.

6. The next question for consideration is whether the plea of estoppel urged by the 1st defendant can be upheld. On this point Spencer, J., held

against the 1st defendant (the present respondent). In view of the decisions in O.S. No. 51 of 1910 and O.S. No. 18 of 1912, we think it is not

open to the respondent to plead that the appellants are estopped from contending that Anga Ramaswamy had no title to convey the property. In

the former suit the present 1st defendant who was the 3rd defendant there contended that the suit mortgage was valid. By virtue of that decision he

is now equitably estopped from denying the plaintiff's right to redeem. In the latter suit to which all the persons interested in the transaction were

parties it was held that the adoption was invalid and that the suit mortgage was binding on the estate. In view of that decision which is binding on

the defendants, we fail to see how the present plea of estoppel can be successfully urged by the 1st defendant. On this point we agree with the

decision of Spencer, J.

7. As we have held that the plaintiffs' suit is not premature, we set aside the decision of the learned Judge and restore the decree of the

Subordinate Judge with costs here and in the second appeal.

In C.R.P. No. 279 of 1926.

8. No question of jurisdiction is involved in this civil revision petition and it is dismissed but without costs.