
(1936) 09 MAD CK 0035
In the Madras High Court

Chaganti Veerasalingam

APPELLANT

Vs

Mallampalli Subbarayudu and Others

RESPONDENT

Date of Decision : 09-09-1936

Acts Referred:

Citation : AIR 1937 Mad 229 : 166 Ind. Cas. 890 : (1936) 44 LW 838

Hon'ble Judges : Cornish, J

Bench : Division Bench

Judgement

Cornish, J.—The appellant is defendant 2. With defendant 1, his mother-in-law, he was sued for the conversion of certain articles. A decree

was made against them directing the return of the articles alleged to have been converted or to pay the value of them. The decree, in my opinion,

fixed the defendants with a joint and several liability. The defendants appealed, and on an application for stay of execution pending the appeal the

Court ordered that the decree amount, a sum of Rs. 1,275, should be paid into Court. This money was paid into Court by the appellant (defendant

2). It is so found as a fact by the first Court and upon the evidence given in the case I think there can be no doubt about it. The plaintiff, who is

respondent 3 before me, applied to take the money out of Court, and an order was made to that effect on her furnishing security for the amount.

Respondents 1 and 2 became sureties and executed a bond for the amount. In the appeal defendant 2 was successful and the decree against him

was set aside, but the decree against defendant 1 was confirmed. Having succeeded in the appeal defendant 2 applied u/s 144 to the executing

Court for restitution of the money which he paid into Court.

2. The first Court held that he was entitled to restitution against the plaintiff and

the two sureties. On appeal the Subordinate Judge reversed this decision and held that the appellant was not entitled to restitution against the decree-holder or the sureties. The plaintiff had not appealed against that order of the first Court. The first question which is to be decided is whether defendant 2 is entitled to restitution against any of the parties. In my opinion he is certainly entitled to restitution against the plaintiff. The principle upon which restitution is granted has been stated by Anantakrishna Ayyar, J. in Shanmugasundara Mudaliar and Others Vs. S. Ratnavelu Mudaliar, to be that a party who has been ultimately successful as the final result of the litigation is to be restored to the same position which he would have occupied had not the injury suffered by him in the litigation been done. In that case defendant 1, a successful appellant, had deposited half the decree amount into Court in order to have a stay of execution pending the appeal. The appeal was successful so far as he was concerned and also so far as certain other defendants appellants were concerned. The other defendants had not appealed and the decree stood as against them. It was held that defendant 1 who had paid the money into Court was entitled to restitution from the plaintiff and to receive back that money. Another similar case is reported in Rajendra Kumar and Others Vs. Rajendra Nath and Others, where it was held that the same principle applied even where one defendant had paid the money into Court on behalf of himself and other co-defendants who had succeeded in the appeal. Therefore, on principle and on authority, I think that the appellant (defendant 2) is entitled to restitution of this money from the plaintiff. The appeal therefore as regards the plaintiff respondent 3 succeeds and is allowed with costs. The more difficult question however is whether restitution can be obtained against the sureties by enforcement of their bond against them. This must depend upon the construction of the bond. This bond states inter alia that ""the defendants deposited the said amount in Court for the sake of the plaintiff"" and it is conditioned that:

If the defendants should succeed in the appeal preferred in the Sub-Court, we agree that the said amount may be recovered by means of the property given as security and also from us personally.

3. Under the bond the sureties have undertaken a personal liability. But it has to be seen whether this liability arises unless the conditions stated in

the bond have been directly fulfilled. The learned advocate for the appellant has referred to the proposition stated in Vol. 10, Halsbury, p. 316,

with regard to the construction of bonds where it is said:

The Court leans against the separation between the nature of the covenant and the nature of the interest, and where the interest is joint the covenant

will be joint if the words are capable of construction; where the interests are several, the covenant will in the same manner be construed, if

possible, as several. The express language must not be contradicted, but it will be moulded to suit the interests according as they are joint or

several.

4. The bond in this particular case must, in my opinion, be construed as an undertaking by the obligors to the obliges jointly. I think the covenant

must be taken to have that meaning. Their liability was so conditioned that it was only if the "defendants" should succeed in the appeal they were to

be liable. It is a well known principle of construction that the terms of a surety bond are to be construed, where there is ambiguity, in a way

favourable to the surety. But if the words in a bond are not ambiguous, but make it clear that the liability is only to come into force upon the stated

conditions, there is no reason for putting a construction upon the bond other than according to its clear and unambiguous language. I do not think

that upon the language of this bond the sureties can be held to have undertaken a liability except upon the condition that the appeal of both the

defendants succeeded. In these circumstances I think the lower appellate Court was right in holding that no restitution on the footing of the bond

could be obtained by the appellant against respondents 1 and 4. The result is that so far as they are concerned, the appeal is dismissed with costs

of respondent 1. I hold therefore that the appellant is entitled to restitution from the plaintiff with interest at six per cent per annum from 10th

October 1927. (Leave to appeal to defendant-appellant 2. No leave to appeal to the plaintiff.)