

(1939) 03 MAD CK 0022
In the Madras High Court

Chaganti Veeresalingam

APPELLANT

Vs

Mallampalli Subbarayudu and Others

RESPONDENT

Date of Decision : 13-03-1939

Acts Referred:

Citation : AIR 1939 Mad 932 : (1939) 50 LW 198 : (1939) 2 MLJ 282

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—The third respondent filed a suit in the Court of the District Munsif of Tanuku against the appellant and his

mother-in-law, one Brahmaramba, for the recovery of certain jewels or, in the alternative, damages for conversion, and obtained a decree against

both the defendants for the payment of Rs. 1,275-1-0, including costs. The appellant and his mother-in-law filed an appeal in the Court of the

Subordinate Judge of Narsapur and pending the hearing applied for an order staying execution of the decree. The application was granted on the

condition that they deposited the full amount of the decree in the trial Court with liberty to the decree-holder to withdraw the amount on furnishing

security. The appellant deposited the amount and it was withdrawn by the third respondent on a security bond being signed by the first and the

second respondents. The second respondent has died during the pendency of the appeal and his estate is represented by the fourth respondent.

The Subordinate Judge set aside the decree of the District Munsif so far as it affected the appellant, but dismissed the appeal of his mother-in-law.

As the result of this decision the appellant applied to the District Munsif for an order against the third respondent and the sureties for the refund of

the money. The District Munsif granted the application. The sureties challenged the correctness of this order so far as it affected them in an appeal

to the Subordinate Judge. The Subordinate Judge allowed the appeal, basing his decision on the wording of the security bond. Although the third

respondent had not appealed the Subordinate Judge also set aside the order as against her. The appellant then appealed to this Court. The appeal

was heard by Cornish, J., who concurred in the decision of the Subordinate Judge so far the sureties were concerned, but restored the order of the

District Munsif against the third respondent.

2. It is quite clear from a perusal of the security bond that the decision of Cornish, J., is correct. The bond recites that the defendants, namely, the

appellant and his mother-in-law, should deposit the money in Court and the condition of the bond was this:

If the defendants should succeed in the appeal (preferred) in the Subordinate Judge's Court we agree that the said amount may be recovered by

means of the property given as security and also from us personally; and we have given the under mentioned property as a security for the said

amount, retaining the same in our possession.

3. It will be observed that the liability of the sureties is here made dependant on both the defendants succeeding in the appeal. The appellant

succeeded, but his mother-in-law failed. We are asked to read the word ""defendants"" as meaning the defendants or either of them. This would

mean reading into the bond something which is not there. Surety bonds have to be construed with strictness. A surety can only be held to his bond

if the condition of liability has been fulfilled. The condition of liability has not been fulfilled in the present case. It is unfortunate for the appellant, but

no other construction is open to the Court. It is incumbent upon a party especially upon a party who is to be benefited by it, to see that the security

bond is properly drawn up. The appellant did not take the precaution which he should have done and he must suffer for his neglect. The appeal will

be dismissed with costs in favour of the first respondent.