
(1931) 08 MAD CK 0030
In the Madras High Court

Changat Chathu Nambiar

APPELLANT

Vs

Changatodayoth Kunhiraman Nambiar

RESPONDENT

Date of Decision : 04-08-1931

Acts Referred:

Citation : 136 Ind. Cas. 337

Hon'ble Judges : Curgenven, J

Bench : Single Bench

Judgement

Curgenven, J.—I think on the merits that the learned District Munsif has come to a right decision. He has bound that the defendant as mortgagee is liable on the terms of the document to pay the enhanced assessment. Several cases originating in this Court have been cited with regard to the effect of such provisions in mortgage documents, but I do not think I need go further than the Privy Council decision in *Abid Hussain Khan v. Kanie Fatima* 80 Ind.Cas.1019 : 46 A. 269 : 19 L.W.703 : A.I.R.1924 P.C.102 : 10 O. & A.L.R.281 : 22 A.L.J.284 : 34 M.L.T.78 : 27 O.C. 72 : 11 O.L.J.427 : (1924) M.W.N.657 : 29 C.W.N.214 : 51L.A.157 : L.R. 5 A. (P.C.) 212 : 1 O.W.N. 33 (P.C.) which makes it clear that in the absence of a contract to the contrary it is the mortgagee who is liable to pay any enhanced assessment. This case is noticed by Phillips, J., in *Vasteva Holla v. Mahabala Rao* 91 Ind. Cas. 943 : A.I.R.1926 Mad.405. together with two earlier cases, *Krishnier v. Arappuli Iyer* 14 M.L.J.488. and *Panigatan Kanaran v. Raman Nair* 17 M.L.J. 517. which were in a somewhat contrary sense. That being so, we must read the provisions of the mortgage bond in the light of the general liability which the law would cast upon the mortgagee. The bond states that the mortgagee will pay the mortgagor "at the rate of Rs. 6 being the proportionate Government revenue for the land". Inasmuch as it defines specifically what the Rs. 6 is to signify it is distinguishable from the two cases: *Mati Lal v. Darjeeling Municipality* 18 Ind. Cas. 844] 13 Ind. Cas. 844 : 17 C.L.J.167. and *Kunchu Menon v. Narayanan Ezhutessan* 25 Ind. Cas. 611 : 16 M.L.T.317. which recited only a fixed sum. It may very well be taken, therefore, to mean that the mortgagee was to pay the proportionate Government Revenue for the land,

which at that time was Rs. 6. However that may be, as I have said, I think the mortgagee must bear the burden of the doubt occasioned by any ambiguity in the mortgage document and I cannot therefore say that the learned District Munsif has come to a wrong conclusion that he and not the mortgagor is liable for this enhancement.

2. It is then urged that the decision in a previous suit O. 8. No. 791 of 1916 renders the matter *res judicata*. It is true that the Court in that suit found, when the plaintiff sued the defendant for some earlier amounts, that the latter was liable for the assessment only at the old rates. The District Munsif has declined to hold the matter *res judicata* on several grounds, the only one which need be noticed being that the subject matter is not the same, the claim in the present suit arising subsequent in point of time to that in the prior one. For the respondent Broken Hill Proprietary Co. v. Broken Hill Municipal Council (1926) A.C.94., a Privy Council decision originating in Australia and relating to the valuation of a mine in successive years for purposes of taxation has been cited. But I am not clear that that can fairly be regarded as a parallel case. While in that case the only provision common to the series of operations was a provision of law, here we have a document which has to be construed equally in the earlier case and in the later. On the other hand, I cannot find in the case relied on by the petitioner *Bader Bee v. Habib Merican Noordin* (1909) A.C.615 : 78 L.J.P.C.161 : 101 L.T.161. any such principle enunciated as can be applied to the circumstances of this case. I should in any event be indisposed to disturb the finding of the learned District Munsif upon this ground, because it seems clear that the earlier decision is based upon an erroneous view of the law and, therefore, to substitute it for the present one is hardly the function of a Court sitting in revision. For these reasons I decline to interfere with the decree and dismiss the Civil Revision Petition with costs.