(1931) 08 MAD CK 0006

In the Madras High Court

Changat Chatu Nambiar APPELLANT

Vs

Changat Odayothi Kunhiraman Nambiar RESPONDENT

Date of Decision : 04-08-1931

Acts Referred:

Citation : AIR 1932 Mad 154 : (1931) 34 LW 804

Hon'ble Judges : Curgenven, J

Bench : Division Bench

Judgement

Curgenven, J.—I think on the merits that the learned District Munsif has come to a right decision. He has found 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. Kaniz Fatima AIR 1924 P.C. 102, 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 and Another Vs. P. Mahabala Rao, , together with two

earlier cases, Krishnier Vs. Arappuli Iyer and Others, , and Panigatan Kanaran v. Raman Nair [1907] 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.

2. In as much as it definies specifically what the Rs. 6 is to signify it is distinguishable from the two cases Matilal v. Darjeeling Municipality [1913]

18 I.C 844, and Kunchu Menon v, Naraynan Ezhutessan A.I.R.1915 Mad.100, 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.

3. It is then urged that the decision in a previous suit O.S. 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, 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.

