
(1911) 11 MAD CK 0043
In the Madras High Court

Cheriyonni alias Aninhat Moothavar styled Payyoramala Kothe
Raman

APPELLANT

Vs

Nhera Poyile Parkum Minjer Packer and Another

RESPONDENT

Date of Decision : 15-11-1911

Acts Referred:

Citation : 13 Ind. Cas. 174

Hon'ble Judges : Sundara Aiyar, J; Ralph Benson, J

Bench : Division Bench

Judgement

1. The first defendant, a Stani, executed a hypothecation-bond in favour of the plaintiff for a debt borrowed for the purpose of paying arrears of

Government revenue on properties belonging to the Satnom. The document, Exhibit A., after setting out the purpose for which the loan was taken

says: "I shall pay you the said sum of Rs. 200 before 30th Makaram 1078 next and receive back this deed.... If I fail to pay the amount at the

prescribed time, I agree to your realising the principal with interest accruing at 10 per cent, a year from the prescribed time so long as it remains

unpaid by causing sale of my jenmam and all other rights in the properties hypothecated, and to pay the deficit, if any, in person.... " It will be

observed that the parties depart from the phraseology ordinarily employed in hypothecation documents, that the amount may be recovered both

from the property hypothecated and from the debtor personally and provide that the debt is to be recovered by sale of the hypotheca in the first

instance and only the deficit, if any, from the debtor. The debt was borrowed for a purpose which would justify charging it on Stanom property

and the purpose is recited in the document.

2. There is, no doubt, a general covenant to pay the debt within the time specified, which would ordinarily render the covenantor personally liable

but the specific stipulation relating to the creditor's rights in case of default shows, in our opinion, that the plaintiff was bound to proceed against

the hypotheca before claiming a personal decree against the first defendant. In the plaint he asked for recovery of the debt by sale of the

mortgaged property, but subsequently gave up that claim. We must hold that he is not entitled to a personal decree against the first defendant. The

case of *Madappa v. Rama Krishna* 13 Bom. L.R. 698 : (1911) 2 M.W.N. 1 : 15 C.W.N. 962 : 14 C.L.J. 245 : 35 BP. 327 : 12 Ind. Cas. 42,

relied on by Mr. Madhavan Nair, affords him no help. The Privy Council in that case merely held, on the construction of a particular document,

that there was a covenant to pay interest for a disputed period.

3. Mr. Madhavan Nair also raised a preliminary objection that no second appeal lies in this case, as the prayer for sale of the hypotheca was

withdrawn and the amount sued for is less than Rs. 500. But it is the nature of the suit as originally framed that determines the question whether a

second appeal is properly maintainable. We reverse the decrees of the Courts below and dismiss the suit with costs throughout.