

(1924) 04 MAD CK 0015
In the Madras High Court

D. Deynan Kunhathamma

APPELLANT

Vs

P. Avulla and Others

RESPONDENT

Date of Decision : 17-04-1924

Acts Referred:

Citation : AIR 1925 Mad 351

Judgement

1. In this case the plaintiff is the owner of one share in the equity of redemption of the plaint properties which have been mortgaged to the second

defendant. The Subordinate Judge held that the plaintiff was entitled to a decree for redemption of her share alone, but, as the plaintiff was not

willing to take such a decree, her suit has been dismissed, and now in appeal she contends that she is entitled to redeem the whole of the property

on payment of the whole of the mortgage amount. This is in accordance with the decision in Huthasanam Nambudri v. Parameswaram Nambudri

(1899) 22 Mad. 209 and also the decision in Mora Joshi v. Ramachandra Dinkar Joshi (1891) 15 Bom. 24 and Narayan v. Ganpat (1897) 21

Bom. 619 but the former decision was expressly dissented from in a later one reported as Rathna Mudali v. Perumal Reddy (1912) 38 Mad. 310.

Our attention has, however, been called to a very recent ruling of the Privy Council reported as Mirza Yadelli Beg v. Tukaram AIR 1921 P.C.

125 in which it is held that, subject to the safeguarding of the equal title to redeem of any other person who had a right of redemption, the owner of

a partial equity of redemption is entitled to redeem the entire mortgage. It follows that if the plaintiff is to be allowed to redeem the entire mortgage,

we must in accordance with the above ruling provide for safeguarding the interests of her co-owners. It would be quite possible for the plaintiff to

obtain a decree for redemption and then in collusion with the mortgagee allow that decree to become barred by non-payment) of the mortgage

amount and, consequently, deprive her co-owners of their right to redeem. We think that in this case it will be admissible to send the case down to

the lower Appellate Court in order to ascertain the amount due upon the mortgage, including the value of improvements and to pass an order

directing the plaintiff to deposit that amount in Court within three months of its ascertainment, and directing on such deposit being made a decree

for redemption to be passed. If the plaintiff fails to deposit the amount her suit will have to be dismissed. We, therefore, send back the suit to the

lower Appellate Court for disposal in the light of the above remarks.

2. Ordinarily a mortgagee is entitled to his costs : but, as he has failed in this Court the plaintiff would be entitled to her costs so far as this second

appeal is concerned; but considering the fact that the learned Subordinate Judge's decision was in accordance with the latest ruling of this Court

and was arrived at before the decision of the Privy Council was reported as *Mirza Yadelli Beg v. Tukaram* AIR 1921 P.C. 125, we think that

each party should bear his own costs in this second appeal.