

(1919) 01 MAD CK 0010
In the Madras High Court

G. Aravamuda Chariar and Others

APPELLANT

Vs

Aramanai Krishna Iyer and Others

RESPONDENT

Date of Decision : 29-01-1919

Acts Referred:

Citation : 50 Ind. Cas. 815

Hon'ble Judges : John Wallis, C.J.; William Ayling, J

Bench : Division Bench

Judgement

1. This is a suit for damages brought by the plaintiffs who purchased certain properties from defendants Nos. 1 to 3. Defendants Nos. 1 to 3 had

purchased one half share of these properties from the 4th defendant, the guardian of his minor daughter, Ponnammal, who had inherited them from

her deceased mother. After Ponnammal's marriage a suit, Original Suit No. 43 of 1915, was filed on her behalf to recover back her share of the

properties with mesne profits from the present plaintiffs. The plaintiffs gave notice to the 4th defendant to come in and defend the title but he failed

to do, and, in these circumstances the plaintiffs on the 28th September 1916 consented to a decree by which they became liable to pay

Ponnammal Rs. 5,925 in settlement of her claims, which sum they duly paid, and then sued to recover the amount as damages from their vendors,

defendants Nos. 1 to 3, and the 4th defendant and his son, the 5th defendant.

2. At the trial the plaintiffs said they Would be satisfied with the return by defendants Nos. 1 to 3 of the one-half of the purchase money which was

attributable to Ponnammal's half share in the lands With interest at 6 per cent, and the Subordinate Judge has given judgment against them for this

sum. The appellants object that the plaintiffs' claim for damages for breach by

defendants Nos. 1 to 3 of their covenant of title h barred, as time ran from 1898, the date of the sale deed, Exhibit B. For the plaintiffs it is argued that the suit must be regarded as instituted to recover damages for breach of a covenant to quiet enjoyment. There is no implied covenant for quiet enjoyment in a deed of sale, and the plaint does not allege that there was any such covenant in the sale-deed, Exhibit B, or base the suit: upon it. In paragraph 10 of the plaint, it is merely stated that since the defendants Nos. 1 and 2 and their father, and the 3rd defendant's father, the late Srinivasa Raghava Chariar made the 1st plaintiff believe that the plaint A schedule properties belonged to them undisputedly and sold the same to him and since the responsibility of protecting the said properties and delivering them to the plaintiffs free of dispute lies upon them according to law, and since they are legally bound to discharge the encumbrance which was, created upon them by the said Original Suit No. 43 of 1915, and since they have not so discharged it, they are liable to make good all the loss which has accrued to the plaintiffs." This is more like a claim for breach of covenant of title and does, not contain any averment of a covenant for quiet enjoyment nor was any issue framed as to whether. Exhibit B contains such a covenant, nor does any such contention appear to have been put forward at the trial. The suit would appear to have been treated by the Subordinate Judge, at the suggestion of the plaintiffs, as a suit for return of the purchase money as on a failure of consideration, which was not barred according to the decision in Subbaraya v. Rajagopala 23 Ind. Cas. 570 : 38 M.P 887 : 15 M.L.T. 240 : (1914) M.W.N. 376.

3. The appellants object that on this basis, the plaintiffs ought not to have been allowed interest on the purchase money for the years during which they were in, possession and in receipt of the rents and profits. They were, however, obliged to compromise Ponnammal's suit for recovery of possession and for mesne profits for Rs. 5,925 which is considerably more than the principal and interest awarded, and in these circumstances there does not appear to be any sufficient reason for depriving them of the interest on the purchase money. The appeal is dismissed with costs of plaintiffs.