(1898) 10 MAD CK 0007

In the Madras High Court

Jathavedan Namboodri APPELLANT

Vs

Parameswaran Namboodri and Others RESPONDENT

Date of Decision : 20-10-1898

Acts Referred:

Citation : (1898) 8 MLJ 309

Hon'ble Judges : Moore, J

Bench : Division Bench

Judgement

1. The question for determination in this case is whether the appellant who owns the equity of redemption in the land-plaint item, which forms part;

of the property originally mortgaged to the defendant for an entire sum, is entitled to redeem the whole of the land mortgaged or the said item only.

2. The District Munsif held that the appellant was entitled to redeem the whole and gave a decree to him accordingly. But the Subordinate Judge

reversed the decree and dismissed the suit, being of opinion that the appellant was not entitled to redeem the whole.

3. The view taken by the District Munsif seems to be clearly right. Hall v. Haward 32 Ch. Dn. 430 cited for the appellant is a direct authority in

favor of that view. The Court of Appeal consisting of Cotton, Lindley and Lopes L. J. 3.. there held, following the decision of Lord Hatherly in

Pearce v. Morris I.L. R. 5 Ch. 227 that as the owner of the equity of redemption of one of two estates comprised in the same mortgage cannot

insist on redeeming that estate separately, so he cannot be compelled to redeem it separately, his right being to redeem the whole subject to the

equities of the other persons interested. This decision and that which it followed were referred to by the learned Chief Justice and Bandley, J., in

Konna Panikar v. Karunakura I.L.R., 16 M. 328 with approval apparently; for the plaintiff there was refused relief, not because he was not

entitled to claim a redemption of the whole, but on the unquestionable ground that he could not do so without making the other person interested in

the equity of redemption a party to the suit which he had, however, failed to do, though that other person was known and could have been

impleaded, Reference may also be made to Norendar Narain Singh v. Dwarka Lal Munder, L. R. 5 I. A. , 18 where the Judicial Committee lay

down that in the case of a mortgage for an entire sum each and every one of the mortgagors was interested in the payment of the mortgage-money

and the redemption of the mortgaged estate and each and every one of them had a right by payment of the money to redeem the estate seeking his

contribution from others. Ib. 27. In the face of these authorities it is not necessary to notice the other cases cited in favor of the above view.

Arriyapatra v. Alamelu I.L.R., 11 M. 309 and Kudhai v. Sheo Dayal I.L.R., 10 A. 570 which were relied on behalf of the respondent, are not in

point, since in those cases the mortgagees had themselves become entitled to the equity of redemption in part of the property mortgaged, which is

not so here.

4. The pleader for the respondent urged strongly that the rule entitling a person to redeem the whole in circumstances like the present is opposed to

principle, inasmuch as a mortgagee for whose benefit the rule that a mortgage is indivisible has been introduced, may waive it. But mortgage for an

entire sum is from its very purpose indivisible. A division of such a mortgage, borrowing the language of a text writer, is conceivable in theory and

may be carried out in practice.

5. But in order that a mortgage may fully attain its end of securing satisfaction of the entire obligation in the rank and with the efficacy which the law

or the will of the paries determined, it is essential that it should not suffer any disintegration (Kelleher on Mortgage in Civil Law, p. 11.) This

character of indivisibility exists not only with reference to the mortgagee who may generally be more benefited but also with reference to the

mortgagor. And save as a matter of special arrangement and bargain entered into between all the persons interested, neither the mortgagor nor the

mortgagee, nor persons acquiring through either a partial interest in the subject can under the mortgage get relief except in consonance with the

principle of indivisibility referred to. It is upon this principle as pointed out by Mr. Bhashyam Iyengar for the appellant that the rule in question rests.

6. The appeal must, therefore, be allowed. The decree of the Subordinate Judge is reversed and that of the District Munsif restored with the

modification that the sum payable by the appellant for the redemption be increased by Rs. 400 as admitted on his behalf before us. The respondent

must pay the appellant''s costs in this Court. In the lower Courts each party will bear his own costs.

Moore, J.

7. I Concur