
(1900) 08 MAD CK 0004
In the Madras High Court

Kandasami Gramani

APPELLANT

Vs

Jagathamba Ammal and Another

RESPONDENT

Date of Decision : 31-08-1900

Acts Referred:

Citation : (1900) 10 MLJ 353

Judgement

1. We think the District Judge is mistaken in holding that there is an estoppel which can operate to affect the plaintiff's claim.

2. The only question between the parties is, whether where a mistake has been made in a decree to which both plaintiff and 2nd defendant were

parties, the result of which is "that one or the other must be a loser, the plaintiff or the 2nd defendant should, in the circumstances, be the sufferer.,

In the previous suit the present 2nd defendant was plaintiff in an action for specific performance of a sale of land against the 1st defendant, of which

the present plaintiff was a mortgagee. The present plaintiff was 3rd defendant in that suit. A decree was passed in favour of the plaintiff in that suit

2nd defendant in this suit), which directed him to pay to the purchaser money (in which was included the mortgage amount) into court to the credit

of the 1st defendant, the mortgagor. The decree, no doubt, was wrong. It should have provided for the payment of the mortgage money to the

mortgagee first. Both the plaintiff and the 3rd defendant (2nd defendant and plaintiff respectively in the present litigations) would have had this set

right, no doubt, by applying to the court, but neither of them did so. The plaintiff, instead, called upon the 2nd defendant to pay the mortgage

money, and the 2nd defendant, thereupon paid the money into court to the credit of the mortgagor and informed the plaintiff of the fact. The result

of this has been that the whole of the money so paid into court "" has been dissipated without the mortgage having been paid off. The mortgagee now sues both the mortgagor and the 2nd defendant of the land mortgaged. And the question is whether the mortgagee should lose his security, or whether the purchaser of the land who has omitted to see that it was freed from the mortgage on his paying the purchase money into court, should be ordered to pay the mortgage amount over again. It seems to us that there was no obligation on the part of the mortgagee to do anything more than he did do. He might no doubt have applied to the court to alter its decree and direct that the purchase money should be paid to him, but he was under no obligation to do so. He did in fact call the purchaser's attention to the fact that his mortgage had not been paid before the purchaser paid the purchase money into court. The purchaser could, if he had chosen, have then applied to the court to alter its decree before parting with his money. He did not do so. He was not obliged to do so, but if he parted irrecoverably with the purchase money without first seeing that the mortgage property, of which he had become purchaser, was freed from all liability for the mortgage debt he did so at his peril and must take the consequences. The natural consequence of that course is exactly that which has occurred. The purchase money is dissipated, and he is called upon to pay over again.

3. We are aware of no law or equity which relieves him from this responsibility, which is the natural consequence of his own acts, and we must hold accordingly that the plaintiff is entitled to a decree for the amount of the mortgage debt as against the mortgaged property now in the possession of the 2nd defendant.

4. The decree of the District Judge must be varied by giving plaintiff a mortgage decree against the land in possession of the 2nd defendant for the amount sued for with interests and costs throughout in addition to the decree already given against the 1st defendant. So much of the decree of the Lower Court as gives costs to the 2nd defendant is reversed.