

(1927) 11 MAD CK 0022
In the Madras High Court

Konduru Dasaratharama Reddi and Others	APPELLANT
Vs	
Indoor Narasa Reddi and Others	RESPONDENT

Date of Decision : 11-11-1927

Acts Referred:

Citation : AIR 1928 Mad 601 : (1928) ILR (Mad) 484 : (1928) 28 LW 77 : (1928) 55 MLJ 109

Hon'ble Judges : Srinivasa Aiyangar, J

Bench : Division Bench

Judgement

Srinivasa Aiyangar, J.—It is to be regretted that having regard to the points that finally emerged and were argued in this second appeal on

behalf of the appellants, the only parties interested, namely defendants-respondents" 1 and 2, should not have been represented before us and we

should have had to hear this second appeal practically ex parte. We are, however, obliged to Mr. T.V. Muthukrishna Aiyar, the learned vakil who

appeared for the 16th respondent, for his having as amicus curiae placed before us the arguments on behalf of those parties.

2. We have come to the conclusion that the appeal should be allowed and that the dismissal of the plaintiffs" suit being set aside, a decree should

be passed in favour of the plaintiffs-appellants with regard to part of their claim.

3. The plaintiffs" suit was on a mortgage for the sale of the mortgage securities. The facts either as admitted or as finally established are these. The

mortgage was jointly in favour of the plaintiffs" family called in these proceedings the Kondur family and the family of the defendants 3 to 16 called

the Bezwada family. The family of defendants 1 and 2 were the mortgagors. About July, 1903, the family of defendants 1 and 2 having been

reduced in circumstances executed in favour of the Kondur family of the plaintiffs and the Bezwada family certain sale-deeds. The mortgage amount having been advanced by both the mortgagee families and those families being entitled to proportionate shares in the amount under the deed of mortgage, no question arises in this case with regard to the amount due to the Bezwada family, because it is admitted that the amount due to them had been paid off and discharged. We are, therefore, only concerned with the amount due to the Kondur family of the plaintiffs. The finding of both the Courts below was clearly to the effect that the 1st plaintiff did accept the sale-deed, Ex. G-1, in the case in full satisfaction and discharge of the mortgage. Mr. Varadachariar, the learned vakil for the appellants, did not wish to contest that finding. His argument was merely to the effect that the amount due to the plaintiffs' family at the time was considerably over Rs. 5,000 and that Ex. G-1 was merely a deed of conveyance in favour of the plaintiff's family of property worth Rs. 3,000, that the 1st plaintiff was not in law entitled to grant a discharge to the mortgagors accepting only a portion of the amount due and waiving the balance because though as a it was might be binding personally against the 1st plaintiff still as the two other members of the family at that time were minors it was beyond the power of the manager to waive such a large amount without any consideration whatever and that, therefore, the members of the family who were minors at the time were now entitled to seek to recover such balance from the mortgaged properties or such of them as have not been validly disposed of.

4. It was not argued that the manager of the joint family has no right to settle accounts or in the course of such settlement of account to grant any reductions and accept a smaller amount in full discharge. But it was maintained that it must appear as a bona fide settlement of account and not be a case of mere giving up a valid and substantial claim.

5. It was not also argued that if the 1st plaintiff had merely accepted the sale and conveyance of certain properties without fixing or estimating the value, in full satisfaction and discharge of the mortgage debt, it would still be open to the plaintiffs to question the same apart from any question of fraud. But the contention that was advanced was that in a case where we find that the property of which a conveyance is accepted is agreed and

estimated to be of certain value there is no question at all of something being accepted in lieu of entire debt and the position would only be the same as in the case of a payment of an amount equal to the value towards the debt.

6. The question, therefore, merely resolves itself into whether the manager of a joint family can validly give up a valuable claim of the family and extinguish it without any return or consideration. There can be no doubt that if in such a case a defence should have been put forward and proved such as that the mortgage securities were insufficient to pay the entire mortgage debt, that there were no other properties of the mortgagor and that therefore the acceptance of an absolute conveyance of some of the items of the mortgage security could be regarded as a prudent transaction, there cannot possibly be any question of mere waiver. Nor could there be any such question if in respect of the agreement to waive there had been valuable consideration alleged and proved such as even any agreement on the part of the other creditors similarly to reduce their claims provided, of course, that such reduction by other creditors could be regarded in the circumstances as ensuring in some manner for the benefit of the mortgagees. But unfortunately, and we say unfortunately because we cannot help suspecting that having regard to the circumstances it might have been possible to make good some such plea. No attempt has been made in this case to allege or prove any such consideration.

7. We must, therefore, regard the case as a simple case of the manager of the family waiving or giving up a sum of about Rs. 1,500 due to the family merely out of charity or sympathy with the mortgagors who had become reduced in circumstances.

8. From the very statement of the question it would seem to follow that no such waiver or giving up by the manager could be regarded as binding on the minor members of a family and therefore on the family as a whole.

9. The lower Courts were, therefore, clearly wrong in holding that the act of the 1st plaintiff as manager was binding on the other members of the family who were minors.

10. The lower appellate Court also came to the conclusion with reference to the sixth issue that the plaintiffs' suit was barred by the law of limitation. The learned District Judge held that there was no acknowledgment of

liability in the deed of sale executed in favour of the plaintiffs, Ex.

G-1. He was clearly wrong in that conclusion. In that sale-deed the debt due by the mortgagors is clearly referred to and acknowledged and it is

towards such debt the sale-deed is alleged to be taken. We must, therefore, hold that apart from other contentions the document contains a

sufficient acknowledgment of liability so as to give rise to a fresh starting point for limitation. That was in July, 1903, and the plaint was put into

Court within twelve years thereof, namely, in January, 1915. If, therefore, the lower Courts were wrong in dismissing the plaintiffs' action

altogether, the next question for consideration is in respect of what properties the plaintiffs are entitled to a decree.

11. It may be observed that the main object of the plaintiffs' suit appears to have been to obtain a decree in respect of certain properties sold by

the family of defendants 1 and 2 to the 5th defendant and sold by him in turn to the 17th defendant and by him again to the 18th and other

defendants. These deeds of sale were impeached by the plaintiffs to be merely benami and it is on that basis that the plaintiffs have prayed for a

decree against those items of property.

12. The most curious feature in this case is that the 5th and 7th defendants have admitted that the sales in respect of those items were as alleged by

the plaintiffs benami. But the 18th defendant has repudiated the allegation and it has been found by the lower Courts that so far as the 18th

defendant is concerned the properties obtained on sale by him were not purchased by him benami for the family of defendants 1 and 2. That

finding has not been questioned before us. It, therefore, follows that even though the plaintiffs may be entitled to a decree for the amount they

cannot, have such a decree in respect of any of the properties covered by the sale-deed to the 18th defendant or obtained from or through him by

any of the other defendants. But what was argued on behalf of the appellants was that having regard to the admitted sales in their favour as benami

by the 5th and 17th defendants if they are still in possession of any of the properties covered by the suit deed of mortgage a decree would have to

be passed in respect of such items and also against such of the mortgage items as may still be in possession of defendants 1 and 2.

13. We may observe in this connection that the case on behalf of the real

contesting defendant, namely the 18th defendant, was that the plaintiffs" suit was a collusive action for the purpose of recovering for the family of defendants 1 and 2 fraudulently the items in the hands of 18th defendant and the alienees from him. Having regard to the pleadings in this case there appears to be considerable basis for such a contention. But the attack against the 18th defendant having now been abandoned before us by the learned vakil for the appellant it would almost seem that the remedy now asked for in respect of the other properties is one for which the plaintiffs never seriously cared, but it may be that such a remedy is now applied for not for purposes of the actual enforcement of any rights but merely to save the fate of the plaintiffs" case. We have, however, nothing to do with such a consideration. As the plaintiffs want such a decree they would be entitled to one. The appeals must, therefore, be allowed and the decree of the lower Courts dismissing the plaintiffs" action must be reversed and set aside. Instead there will be a decree in favour of the plaintiffs" the usual mortgage decree for the amount claimed in the plaint with further interest on the principal amount till the date fixed for redemption. Time for redemption six months from the date on which the preliminary decree is finally passed as hereinafter provided. The decree will only be against the items of property included in the deed of mortgage and at present if any, in the hands of defendants 1, 2, 5 and 17 or in the hands of any alienees from defendants 1 or 2 under any alienations not made for the discharge of the suit mortgage. As these items, however, have not been ascertained, the case will have to be remitted to the Court of first instance for ascertaining those items and, on such ascertainment, a preliminary mortgage decree for sale will be passed in favour of the plaintiffs in respect of those items. There will be no personal decree. The plaintiffs-appellants will be entitled to add their costs throughout and recover the same from the properties in respect of which a decree is to be passed. There will be no personal decree in respect of costs. The appellants should pay the respondents in this second appeal, who have appeared, their costs one set.