

(1945) 08 MAD CK 0036
In the Madras High Court

Kuralla Suryanarayana

APPELLANT

Vs

Akumuri Purnachandra Row and Another

RESPONDENT

Date of Decision : 27-08-1945

Acts Referred:

Citation : AIR 1946 Mad 150 : (1946) ILR (Mad) 531 : (1945) 58 LW 596 : (1945) 2 MLJ 513

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—When the facts of this case are understood the decision of the appeal presents no difficulty.

2. On the 19th May, 1936, the land in suit was bought by two brothers, A. Brahmayya Sastri and K. Suryaprakasa Rao. They are referred to in the judgment of the trial Court as " the Sastri brothers " and it will be convenient to refer to them as " the Sastri brothers " in this judgment. They bought the land in their own name. The money belonged to their nephew, the first defendant in the suit. With the balance of the money belonging to the first defendant they commenced to build a house on the land. The money was not sufficient to complete the building and in order to raise further funds they mortgaged the property to the second defendant on the 20th August, 1936, to secure a loan of Rs. 2,000.

3. In Original Suit No. 434 of 1937, one K. Ramabrahmam had obtained a money decree against the Sastri brothers and in execution had attached the property in suit. On the 30th July, 1938, the first defendant, who is a nephew of the Sastri brothers, filed a claim petition in the execution proceedings. He averred that the property belonged to him. This application was dismissed and the sale then took place. At the auction the plaintiff bought the property for Rs. 1,020, subject to the mortgage of the second defendant. On the 12th September, 1938, the first defendant filed Original Suit No. 380 of 1938 under the provisions of Order 21, Rule 63 to establish his right to the property. On the 25th September, 1939, the suit was dismissed. The first defendant appealed and his appeal was allowed on

the 23rd December, 1940. The plaintiff then appealed to this Court, but he was unsuccessful. His appeal was dismissed on the 25th September, 1941.

4. On the 30th September, 1939, that is, five days after the first defendant's suit had been dismissed by the trial Court, the second defendant called upon the plaintiff as the purchaser of the property to pay the sum of Rs. 2,636-11-9, the amount then due upon the mortgage. On the 26th October, 1939, the plaintiff paid to the bank in discharge of the mortgage the sum of Rs. 2,654-2-6. The increase in the amount due to the second defendant represented additional interest.

5. On the 16th June, 1942, the first defendant, as the result of his successful appeal, filed an application asking for an order for restitution. This was granted and he obtained delivery of the property. On the 29th June, 1942, the plaintiff gave notice to the second defendant requiring the repayment of the Rs. 2,654-2-6. The second defendant refused to comply with the demand and the plaintiff filed the present suit on the 26th October, 1942.

6. The District Judge held that the mortgage was void as against the first defendant as the Sastri brothers had no right to charge the property. In fact their action amounted to fraud on the first defendant. The District Judge refused the plaintiff relief as against the 2nd defendant on the ground that in paying the Rs. 2,654-2-6 to the second defendant he was a mere volunteer. The plaintiff has appealed.

7. In the trial Court the plaintiff accepted the position that the property belonged to the minor. He could not do otherwise because he was a party to the minor's suit and on appeal it was held that the property did belong to the minor. He asked, however, that the property be charged with the Rs. 2,654-2-6 as that money had been spent on the completion of the house. As the property did belong to the minor and as the Sastri brothers had no authority to charge it, the plaintiff was clearly not entitled to any charge in respect of the money which he had paid to the second defendant. The case falls within the decision of this Court in *Ammani Ammal v. Ramaswami Naidu* (1918) 37 M.L.J. 113. Therefore the District Judge was right in holding that the plaintiff was not entitled to any relief against the minor or the minor's property. The question then is, is the plaintiff entitled to relief as against the second defendant? We think that he is and that the District Judge erred in his decision on this part of the case. Section 72 of the Contract Act says that a person to whom money has been paid, or anything delivered by mistake or under coercion, must repay or return it. When the plaintiff paid Rs. 2,654-2-6 to the second defendant he was under the belief, and so was the second defendant, that a valid mortgage had been created. That was a mistaken belief and it entitles the plaintiff to a decree for repayment as against the second defendant. The decision of this Court in *Sowdra Bai and Others Vs. Saraswathi Ammal*, has direct application. The District Judge was wrong in regarding the plaintiff as a volunteer.

8. In the course of his address on behalf of the second defendant Mr. B.V. Subramaniam accepted the position that Section 72 of the Contract Act applied as between the plaintiff and his client if the mortgage was invalid and that in such circumstances Sowdra Bai and Others Vs. Saraswathi Ammal, was directly in point. He attempted, however, to argue that the mortgage was binding on the first defendant. The second defendant was not a party to the suit filed by the first defendant under Order 21, Rule 63 and therefore the decision in that case was not binding on him. It was, however, open to the second defendant in the present suit to lead evidence, if he could, to show that the property did in fact belong to Sastri brothers. The first issue framed was to this effect. The second defendant did not lead any evidence on the question and as the record stands there is no material on which the argument can be based. Moreover, in the second defendant's written statement no relief was sought as against the first defendant. The only contest was whether the plaintiff was entitled to relief against the defendants or either of them.

9. In Ammani Ammal v. Ramaswami Naidu (1918) 37 M.L.J. 113, it was held that where the guardian of a minor purports to sell the minor's properties as his own, the minor is entitled to recover possession and mesne profits on attaining his majority without repaying the debts binding upon him discharged out of the purchase money. Therefore it is obvious that the second defendant cannot obtain relief against the first defendant and, as we have already pointed out, no relief was sought in the written statement. The present argument is merely an after-thought when it became apparent that the plaintiff was entitled to recover the Rs. 2,654-2-6 from the second defendant.

10. The result is that the appeal is dismissed as against the first respondent (first defendant) and is allowed as against the second respondent (second defendant). The appellant will pay the first respondent's costs and will receive costs from the second respondent who will also pay the appellant's costs in the trial Court.

11. The second respondent has filed a memorandum of cross-objections, but this has not been pressed. It is dismissed with costs as against the appellant.