
(1903) 10 MAD CK 0012
In the Madras High Court
Case No : Appeal No. 210 of 1901

Mutha Venkatachelapati

APPELLANT

Vs

Pyanda Venkatachelapati

RESPONDENT

Date of Decision : 28-10-1903

Acts Referred:

Evidence Act, 1872 — Section 92

Citation : (1903) 10 MAD CK 0012

Hon'ble Judges : S. Subrahmania Ayyar, O.C.J.; Bhashyam Ayyangar, J

Bench : Division Bench

Advocate : P.R. Sundara Ayyar and V. Ramesam, for the Appellant; V. Krishnaswami Ayyar, for the Respondent

Final Decision : Allowed

Judgement

1. It is contended on behalf of the Appellant that exhibit A, on which the suit is based, is a sale-deed and not a mortgage and that therefore the

Plaintiff is not entitled to sue for the recovery of the money and for sale of the property for realising the mortgage debt. In our opinion this

contention is well founded. Exhibit A is an absolute sale-deed. But the Subordinate Judge, relying on exhibit K, held that reading A and K together

the transaction was one of mortgage with a covenant to pay and that therefore the Plaintiff was entitled to a decree for sale on the footing of

mortgage. We assume that exhibit K records the contemporaneous terms agreed to at the time of the execution of exhibit A. So far as Section 92

of the Evidence Act is concerned, there can be no objection to the admissibility of exhibit K, notwithstanding that it contradicts, varies, adds to, or

subtracts from the terms of exhibit A, and if K had been registered the decision of the Subordinate Judge could be upheld. But it has not been

registered, and in our opinion it cannot be received as evidence of a mortgage transaction not below Rs. 100. Such a transaction can be created

only by a registered instrument. The registration of exhibit A alone which, on the very face of it, is an absolute and unconditional sale, cannot be

regarded or operate as the registration of a mortgage.

2. Though there is nothing in law to prevent the whole of a mortgage transaction being reduced in any form to writing on different papers, whether

attached together or detached from each other and the Court, in cases in which the terms as appearing in the different papers are contradictory or

inconsistent, has to ascertain the intention of the parties by reading all the papers together as forming one document though each paper on the face

of it purports to be a separate document, yet the requirement the Transfer of Property Act making registration compulsory the validity of such a

transaction cannot be held to have complied with if some of the papers are registered while the of are left unregistered. We are also of opinion that

exhibit K its very face and according to its proper construction, creates interest in immoveable property in favour of the Defendant entitling him to

redeem on payment of the sums therein mention and that its registration was compulsory u/s 7 of Registration Act. Excluding therefore exhibit K

from consideration, the Plaintiff cannot maintain this suit on the strength exhibit A, which is an absolute sale-deed. On this ground must allow the

appeal, and, reversing the decree of the Suborning Judge's Court, we dismiss the suit. Having reference to the pleadings of the parties and the

contentions on which the case proceeded especially in the Court below, we think each party must bear his costs throughout.