

(1924) 03 MAD CK 0095
In the Madras High Court

Muthusami Naidu

APPELLANT

Vs

Rayalu Naidu

RESPONDENT

Date of Decision : 31-03-1924

Acts Referred:

Citation : AIR 1924 Mad 848

Hon'ble Judges : Phillips, J

Bench : Division Bench

Judgement

Phillips, J.—In this case the plaintiff, the defendant and one Subba Konar were sureties for one Muthukrishna Naidu, in respect of two promissory notes for Rs. 500 each. Subsequently the defendant obtained a hypothecation bond from the principal debtor, Muthukrishna Naidu, for Rs. 3,500. Part of the consideration was an undertaking by the defendant to discharge the promissory notes for which he and the plaintiff were jointly sureties. Subsequently a suit was filed on these promissory notes, and a decree was obtained and in execution, Rs. 615 was realised from the plaintiff. Meanwhile the defendant obtained a decree on his hypothecation bond and has purchased most of the properties belonging to the mortgagor. The plaintiff's suit is to recover the money which he had to pay on account of the suretyship. The District Munsif decreed the suit on the ground that the defendant having undertaken by the hypothecation bond B-1 to discharge the promissory notes was bound to contribute the money to the plaintiff. The District Judge on appeal has dismissed the plaintiff's suit on the ground that it was based on unfounded representations and arrangements and was misconceived. On the finding that the defendant has received from the principal debtor a counter security for the liability, which he undertook jointly with the plaintiff, he is liable to bring in, for the benefit of the plaintiff and his co-sureties, whatever he has received from that source. This principle is laid down in *Steel v. Dixon* (1881) 17 Ch. D. 825 and it is not suggested that the above facts would not be applicable in this case. In neither of the lower Courts does this particular affect of the case seem to have been considered, although apparently there were the necessary materials for it. It is now argued for the respondent that

certain other facts might have been elicited if the parties had known exactly the case they had to meet. In view of the fact that the plaint is not very clearly drafted, and does not in terms contain the plea which is taken here, I think it is only fair to the defendant to give him an opportunity of meeting the case, by adducing further evidence, if he thinks fit. The District Judge's decree is set aside and the appeal is remanded for fresh disposal. If necessary the Judge can send it back to the trial Court for further evidence.

2. Costs to abide the result. Court-fee paid on the second appeal to be refunded.