

(1964) 06 AP CK 0005
In the Andhra Pradesh High Court
Case No : A.A.A.O. No. 121 of 1961

Narahariappa

APPELLANT

Vs

Mohamed Moulana and Another

RESPONDENT

Date of Decision : 30-06-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 38 Rule 5
Registration Act, 1908 — Section 49

Citation : AIR 1967 AP 5

Hon'ble Judges : Kumarayya, J

Bench : Single Bench

Advocate : Vasant Rao Mukedkar, for the Appellant; N.K. Acharya, for the Respondent

Judgement

(1) The respondent stood surety in the suit proceedings for the defendant when an order under O XXXVIII, R. 5, Civil Procedure Code, was made by the Court. He executed a surety bond, creating charge on a plot of land of the value of Rs. 4,000. The undertaking given was to the effect that in case the suit is decreed, he would pay the suit amount of Rs. 3,309 together with the costs of the suit. Further if it be found that the property hypothecated is insufficient to meet the decretal amount, his person and other property would be liable for the balance. This document was executed on 13th September, 1957. It was accepted by the Court. After enquiry, the suit was dismissed by the trial Court. On appeal, the case was remanded. This time, the suit was decreed. After the dismissal of the suit in the first instance the surety was not called upon to execute any further bond. After the decree, nevertheless the decree-holder sought to enforce the liability under the original security bond against the surety by the attachment of the hypothecate. The surety this time raised two grounds: firstly that his security bond ceased to have its effect as soon as the suit was dismissed; and, secondly, since it was not registered, it cannot be acted upon, nor can it be used in evidence for determining his liability. Both these pleas found favour with the Courts below.

(2) The first contention was repelled on the basis of the dictum in *Seethai Ammal and Another Vs. K. Narayana Ayyangar*, *Balaraju Chettiar Vs. Masilamani Pillai and Others*, and *Gangappa v. Boregowda*, (S) AIR 1955 Mys 91 (FB). The Mysore ruling which is said to be on all fours with the facts of the present case was in fact made the basis of the finding against the decree-holder. On the second point, of course, there seems to be some conflict of opinion. But since the Madras rulings were in favour of the view in support of the surety, both the Courts accepted the contention of the surety and held that the security bond cannot be acted upon, as it required registration.

(3) What is contended for on behalf of the learned counsel for the appellant in this appeal before me is that the principle enunciated by the Privy Council in *Hemanta Kumari Debt v. Midnapur Zamindari Co.*, 46 Ind App 240 : (AIR 1919 PC 79), *Bindsri Naik v. Ganga Saran Sahtu*, (1898) 25 Ind App 9 (PC) and *Pranal Anne v. Lakshmi Annee*, (1899) 26 Ind App 101 (PC) was not before the learned Judges of the Madras High Court when they decided *N. Sambayya v. T. Subbayya*, (1908) 31 Mad 330. He there relied on the Full Bench decision of the Lahore High Court in *Kasturi Lal v. Goverdhan Dass*. AIR 1934 Lah 138 (FB) & also on *Jayappa Lokappa Narsinganawar Vs. Shivangouda Dyamangouda Patil*, for the proposition that the documents of this kind, i.e., security bonds, are not in sooth executed between the decree-holder and the surety but only between the surety and the court, and are therefore, steps in judicial proceedings and as such they fall within the purview of the general principle laid down by the Privy Council in (1898) 25 Ind App 9 (PC) that they are proceedings of Court, and as such do not require registration.

(4) There can be no doubt that the Bombay High Court has preferred to take a different view from the Madras High Court. It is also true that in (1908) ILR 31 Mad 330 the Privy Council rulings referred to above were not cited before the Division Bench. But those cases were considered by the Full Bench of the Madras High Court, and the learned Judges, after giving full thought, laid down that only where the terms of the agreement had been incorporated in a decree or order, registration of the agreement was unnecessary even with regard to immovable property outside the scope of the particular suit in which the decree (or order) was passed, as the entire agreement must be considered to have been incorporated in the decree (or order), the decree (or order) being sufficient evidence of its terms. The learned Judges did not choose to give to the expression "order or decree" such a wide meaning as was given by the Bombay and Lahore High Courts. It is however clear that the terms of the security bond were not embodied in any order of the Court. All that was done was that the security bond was accepted by the Court. This acceptance by itself will not make the order as a substitute for the security bond, so that it may be enforced without any reference to the bond. On the facts of the present case, there can be no doubt that in the view taken by the Madras High Court, the liability under the security bond could not be enforced unless it was registered. I, therefore agree with the view taken by both the Courts in this behalf.

(5) As regards the other point also, since the liability of the surety is determined by and is co-extensive with the terms of the bond, and since under the terms of the bond the liability could have been imposed only if the suit was decreed, the dismissal of the suit must have absolved him from the liability under the bond. The words of the document could not be given extended meaning so as to cover the cases where the decree is ultimately passed after the case has been remanded by the appellate Court. Be that what it may, since this appeal can be disposed of on the question of registration itself, an elaborate discussion in relation to the other point is unnecessary.

(6) The appeal, therefore, fails and is dismissed. There will be no order as to costs.

(7) The counsel for the appellant requests for leave. In view of the conflict of judicial opinion on the question, leave is granted.

(8) Appeal dismissed.