

(1951) 10 KL CK 0002
In the High Court Of Kerala
Case No : A.S. No. 261 of 1951

Narayanaru

APPELLANT

Vs

Kumaran Nadar

RESPONDENT

Date of Decision : 01-10-1951

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 2(1)

Citation : AIR 1954 Ker 124

Hon'ble Judges : Joseph Vithayathil, J;G. Kumara Pillai, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Vithayathil, J.—The 23rd Defendant in O.S. No. 82 of 1117 of the District Court of Nagercoil is the Appellant in this case. The appeal relates to an order in execution. The decree is one for mortgage money obtained by the Plaintiff against the 1st Defendant on the basis of a usufructuary mortgage executed by the latter in favour of the former. After the decree was passed the 1st Defendant executed a usufructuary mortgage in respect of some of the decree schedule properties in favour of a third person directing him to pay off the decree debt. Accordingly that mortgagee filed a petition on 10-8-1123 for allowing him to deposit the decree debt and to recover possession of the decree schedule properties. The decree-holder objected to this contending that the petition was not maintainable. While this petition was pending the 1st Defendant died. The Appellant claimed to be entitled to the mortgage properties as per a gift deed executed by the 1st Defendant and he applied to get himself impleaded as the legal representative of the 1st Defendant. Other heirs of the 1st Defendant objected to this and they wanted to get themselves impleaded as the legal representatives of the 1st Defendant. On 22-7-1124 the Appellant filed a petition for allowing him or the mortgagee of the 1st Defendant to deposit the decree amount and to obtain delivery of possession of the mortgage properties. The petition to get himself impleaded was allowed on 10-1-1125 and he was

impleaded as additional 23rd Defendant.

In the meanwhile the decree-holder's Advocate filed a memo in Court on 7-12-1124 to the effect that the decree-holder received the decree debt from the brother of the deceased 1st Defendant who was the Karnavan of the family and surrendered the decree schedule properties to him. This memo was, however, rejected by the Court on 10-1-1125. No reasons are given for rejecting the same. The petition, filed by the Appellant on 22-7-1124 was also" rejected by the Court on 29-9-1950. The appeal is from that order.

2. The reasons given by the lower Court for rejecting the petition of the Appellant are that the decree-holder had filed a memo to the effect that he had received the decree amount and that an adjudication of the respective rights of the Appellant and the Karnavan of the 1st Defendant's family was foreign to the scope of the proceedings in execution and hat the remedy of the aggrieved party was to file a fresh suit.

3. The lower Court has obviously lost sight of the fact that the memo filed by the decree-holder's advocate on 7-12-1124 has been rejected on 10-1-1125. We do not, however, find any reason why the Court should have rejected that memo. The Court had only to record the memo filed on behalf of the decree-holder and no further action on the part of the Court was called for in respect of that memo. Under Order 21 Rule 2 Sub-rule (1), Code of Civil Procedure.

Where any money payable under a decree of any kind is paid out of Court or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree and the Court shall record the same accordingly.

The Court was, therefore, bound to record the memo filed on behalf of the decree-holder and it had no jurisdiction to reject it. It must, therefore, be taken that the decree-holder in this case has certified payment of the decree debt under Order 21 Rule 2 Sub-rule (1), Code of Civil Procedure.

4. The further question for consideration is whether the judgment-debtor or his representative can compel the decree-holder to accept payment of the decree-debt and surrender possession of the mortgage property. It was argued by the learned advocate for the Appellant that in the case of a decree obtained by a mortgagee for mortgage money the mortgagor is entitled to deposit the mortgage amount and obtain delivery of possession of the mortgage property in execution of the decree without the necessity of a suit for redemption. The question whether the mortgagee is bound to surrender possession of the mortgage property when he receives the mortgage amount which has merged in the decree does not arise for consideration in this case, and we do not, therefore, propose to discuss that question. The question that arises for consideration in this case is whether, when the mortgagee-decree-holder certifies that he has received payment of the decree debt and when he does not want a further

payment of the amount he can be compelled to accept such further payment. We do not think that he can be so compelled. The decree is one for money and when the decree-holder certifies payment of the decree debt the Court has only to record such satisfaction. There is nothing further for the execution Court to do. We do not think that the decree-holder in this case can be compelled to accept payment of the amount offered by the Appellant or by the mortgagee of the 1st Defendant. If they have the right to redeem the mortgage their remedy is a suit for redemption. The question as to whether the Karnavan of the deceased 1st Defendant's family or the Appellant is entitled to redeem the mortgage will have to be decided in such a suit. We, therefore, confirm the order of the lower Court and dismiss this appeal with costs.