
(1938) 09 MAD CK 0007
In the Madras High Court

Pachigolla Satyanarayanamurthy

APPELLANT

Vs

Chavala Gangaya and Others

RESPONDENT

Date of Decision : 21-09-1938

Acts Referred:

Transfer of Property Act, 1882 — Section 70

Citation : AIR 1939 Mad 684 : (1939) 49 LW 578 : (1939) 1 MLJ 692

Hon'ble Judges : Varadachariar, J

Bench : Division Bench

Judgement

Varadachariar, J.—This appeal arises out of a suit for the recovery of money due under certain mortgages executed by defendants 1 and 2

in favour of the plaintiff between June 1927 and June 1928—Exs. A to D series. Defendants 3, 5 and 7 are the contesting defendants and the

dispute between the plaintiff and the defendants relates to the extent of the property comprised in the mortgages in plaintiff's favour.

2. The plaintiff's mortgages comprise properties described in three Schedules A, B and C. Schedule A relates to certain house property with

which we are not concerned. Schedule B refers to a tiled building which was being constructed on a site belonging to Gangachalam and others and

purports to pass the walls, beams, door frames, etc., of the building. From the body of Ex. A it will be seen that this site had been taken on lease

for a period of 12 years for the purpose of constructing a building thereon for a rice mill. Schedule C comprises an engine which is said to be

known by the name of Sree Kanakadurga Rice Mill and the various parts of the machinery pertaining to the engine or to the Huller which was then

intended to be set up to work with the help of the engine. The concluding words of the C Schedule refer to all samans connected with the rice mill

and other samans necessary to fit up the mill and the Huller and all accessories. There is also a clause to the effect that if the mill should be fitted up

in some other place, the property should nevertheless continue to be under the mortgage. It is admitted that for some time the concern was

working only as a Huller. In the latter part of 1928, the mortgagors decided to work as a Sheller also with the power derived from the engine. For

purchasing the Sheller and for incidental purposes, they borrowed moneys from defendants 3, 5, 7 and certain others under Exs. I and II in July

and November, 1928. In due course, the Sheller was also set up in the shed that had already been constructed and the third defendant admits in

his deposition that the Sheller system was fixed in the earth that it was connected by a belt with the Huller system and that power from the same

engine was used for working both the systems. It also appears from the evidence that the Sheller system can be separated from the Huller system

merely by removing the belt and that for accounts purposes, the two systems are kept distinct. On the above facts, the question for determination is

whether the plaintiff can claim that the machinery pertaining to the Sheller system is also comprised in his security. The learned Subordinate Judge

has held that it is not. The plaintiff has appealed and contends that it should be held to be included in the security.

3. In support of the appellant's contention, Mr. Lakshmanan relied on Section 70 of the Transfer of Property Act and the decisions in Bank of

Upper India v. The Administrator-General of Bengal I.L.R.(1917) 45 Cal. 653 R.M.P.M. Chettiar Firm v. Siemens (India), Ltd. I.L.R.(1933) 11

Rang. 322 Punjab and Sind Bank v. Kishen Singh-Gulab Singh I.L.R.(1934) 16 Lah. 881 and Nannu Mal v. Ram Chandra I.L.R.(1930) 53 All.

334 (F.B.). It does not seem to us necessary for the purpose of this case to consider whether and how far the rules of the English law governing

fixtures are to be followed in this country. It is sufficient to say that in respect of particular species of transfers, the Legislature has made express

provisions In the Transfer of Property Act, see for instance Section 8 and Section 108, Clause (h). We are prepared to assume that in certain

circumstances, machinery existing in the mortgaged premises on the date of the mortgage and even machinery subsequently installed there may

pass under a mortgage of the premises. But the question will, in our opinion, have to be determined in each case in the light of various facts. It may

not be possible always to treat machinery brought into a building as an "accession" within the meaning of Sections 63 and 70 of the Transfer of

Property Act. It may in some cases become necessary to consider how far the definition of the expression "attached to the earth" in Section 3 of

the Transfer of Property Act will bear upon the decision of this question. According to Clause (c) of that definition, what is attached must be

attached for the permanent beneficial enjoyment of that to which it is attached.

4. In the present case, we are of opinion that there is no scope for the application of the rule relating to fixtures or of the principle enunciated in

Section 70 of the Transfer of Property Act, because we are not satisfied that the site to which the Sheller System of machinery is said to be

attached, is comprised in the mortgages to the plaintiff. It also appears to us that on the construction of the mortgage deeds, the machinery

specified in Schedule C was mortgaged not as part of or as passing with the immovable property but independently and as movable property.

Schedule B to the mortgage deed refers only to the building that was then under construction; and while it specifies in elaborate detail the various

parts of the structure of the building, it significantly omits to refer to the site. This does not seem to us an accidental omission; it is apparently

explained by the fact that the site itself was held by the mortgagor only for a term of 12 years. That the machinery was dealt with independently of

the building is also shown by the provision at the end of Schedule C that even if the machinery should be removed from this building and be fitted

up elsewhere, the machinery should nevertheless continue subject to the mortgage. If, as we have held, the leasehold site is not comprised in the

plaintiff's security, it would follow that the Sheller system machinery would not become part of the security merely by its having been subsequently

fixed up on the site. Even if a different view should be taken as to the scope of Schedule B, we feel no doubt that the parties intended to deal with

the machinery independently of the building and only as movable property. Reference is no doubt made in Schedule C to the mill and the

arguments before us have been urged as if the word "mill" means the whole premises including the machinery. But it is obvious from the way in

which the description is set out in Schedule C that the documents use the word "mill" as referring only to the engine and not as referring to the

whole premises. The mere fact that the Sheller system is connected by a belt with the pre-existing Huller system or worked by power derived from

the pre-existing engine will not of itself suffice to bring the Sheller system within the security created by Exs. A to D nor attract to the Sheller

system the principles of the English law relating to fixtures-see Northern Press and Engineering Co. v. Shepherd 52 Solicitors' Journal 715.

5. The appeal fails and is dismissed with costs of respondents 3, 5 and 7.