

**(1926) 07 MAD CK 0019**  
**In the Madras High Court**

Podapati Chendrayya

APPELLANT

Vs

Manduva Hanumayya and Others

RESPONDENT

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**Date of Decision :** 19-07-1926

**Acts Referred:**

**Citation :** AIR 1927 Mad 193

**Hon'ble Judges :** Devadoss, J

**Bench :** Division Bench

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### Judgement

Devadoss, J.—Appeal No. 1566 of 1923.--The plaintiff purchased some property under Ex. A from the defendants and he brought the suit with alternative prayers either to have the sale set aside or for a declaration that a certain encumbrance was not binding on him. The contention as put forward in the plaint is that he was not aware of the existence of the encumbrance at the time of the sale and that certain recitals in the document were introduced after the sale-deed was executed. Both the lower Courts have held against the plaintiff's contention and dismissed his suit. He has preferred this second appeal. The main question for consideration is: What is the meaning of the following clause:

If with reference to the land now sold any disputes ever arise in future from any quarter, you shall hold yourself alone responsible for the loss or gain thereby.

2. The contention of Mr. A. Krishnaswami Iyer is that this clause refers only to title. If this clause is as regards title alone then the plaintiff would be entitled to get relief in respect of any encumbrance which the vendor was under a statutory obligation to discharge. It is well-settled that the mere fact that a vendee is aware of the existence of an encumbrance does not relieve the vendor of the statutory liability to get the encumbrance discharged in the absence of a contract to the contrary by Mahamed Ali Sheriff v. Budharaju Venkatapathi Raju [1921] 39 M. L. J. 449 and Vellayappa Bowthen v. Bava Rowthen [1915] 29 I. C. 747.

3. The contention of the other side is that the clause refers not only to title but to encumbrances on the property as well. The Telugu word used is "thagadalu." If

this word has a well-recognized meaning no doubt the contention of Mr. A. Krishnaswami Iyer would be good; but the difficulty in this case is that the plaintiff came into Court with the averment in the plaint which is supported by his evidence on oath that this clause was interpolated after the execution of the document and a good deal of time of the first Court was taken up in deciding this point. Both the Courts have come to the conclusion that the plaintiff was perfectly aware of the insertion of this clause in the document at the time of execution of the sale-deed and that it was not an interpolation. If the parties intended that it should refer only to title is difficult to understand why the plaintiff was at such great pains to show that he was unaware of the insertion of this clause. In construing documents of this kind where terms "of art or terms which have got some well-defined meaning are not used the Court should see what meaning the parties intended to convey by what they wrote in the document. However inelegant the language may be the Court should try to see what the parties intended to convey by the terms or by the words used in the document. The fact that the plaintiff was fighting shy of this clause to my mind is a strong indication that both the parties meant by this clause all disputes whatsoever, whether they related to title or encumbrance. That is the view taken by both the Courts, and I do not think I would be justified in differing from both the lower Courts on this point. Now, as regards the expression used in this clause if it meant only dispute to title then the plaintiff would be entitled to relief; but, if this clause meant, as both the lower Courts have understood the clause to mean, disputes with regard to encumbrance as well then the plaintiff is not entitled to succeed.

4. In this connexion it has to be remembered that the defendants' contention was that they sold the property subject to the encumbrance, not that they simply mentioned the fact that there was an encumbrance, but that the plaintiff bought it subject to the encumbrance. That is the finding of the learned Subordinate Judge. The plaintiff argues that he was not asked to discharge this encumbrance and, therefore, he could not be said to have taken the property subject to the encumbrance. He should have adduced evidence to show that he paid full value for the property; in other words with the encumbrance he would have to pay a much higher worth.

5. Mr. Krishnaswami Iyer stated that he paid full value for the property under Ex. A. But there is nothing to show that. It is a very important circumstance which would, no doubt, weigh with the Court in coming to the conclusion whether the sale was subject to the mortgage. It was the duty of the plaintiff to show that what he paid under Ex. A was the full value of the property and, therefore, he could not have undertaken to discharge any encumbrance on the property. The defendants' case was consistent throughout that they sold the property to the plaintiff subject to the encumbrance. They wanted to prove that the plaintiff was aware of the existence of the encumbrance and that he got the property with the full knowledge that there was an encumbrance and that he undertook to discharge it. No doubt the encumbrance was not mentioned in the document, for

purposes such as saving of the stamp duty. It may be that both the parties thought that the encumbrance would be satisfied with a small amount if it was not recited in the document. But whatsoever was the reason, the clause referred to above is so wide as to include the encumbrance on the property.

6. Considerable argument was advanced on the vague expression used by the District Munsif and by the Subordinate Judge as regards the knowledge of the plaintiff as to the existence of the encumbrance. No doubt, the mere knowledge of the plaintiff that there was an encumbrance would not relieve the vendor of the statutory liability to discharge the encumbrance on the property which he sells. But the finding of the two Courts is that the sale was subject to the mortgage and I think that there is evidence on record to support such a finding; and it is based not merely upon the mere construction of this clause which, if Mr. Krishnaswami Iyer's construction is accepted, would entitle the plaintiff to succeed; but is supported by the conduct of the plaintiff and the way in which he presented his case in the lower Court.

7. In the result the second appeal fails and is dismissed with costs.

8. Appeal No. 1257 of 1923.--This second appeal is also dismissed with costs.