
(1897) 07 MAD CK 0003
In the Madras High Court

Pokree Sahib Beary

APPELLANT

Vs

Pokree Beary

RESPONDENT

Date of Decision : 21-07-1897

Acts Referred:

Transfer of Property Act, 1882 — Section 72(a)

Citation : (1898) ILR (Mad) 32 : (1897) 7 MLJ 238

Judgement

1. The lower Courts have properly held that Exhibit 3 is not binding upon the plaintiff and that the 1st defendant is not therefore entitled to the sum

therein mentioned. The next question is whether the 1st defendant is entitled to all or any of the sums allowed by the District Judge as payable by

the plaintiff before he can recover possession of the mortgage property. The sums are claimed as due in respect of costs incurred by the 1st

defendant in certain suits (Exhibits V, VI and VII). The sum in Exhibit V represents costs incurred by 1st defendant in a suit for rent due by the

original mortgagor as a tenant of the 1st defendant. The tenancy was created subsequent to the mortgage, and the rent was not made a charge on

the property by the contract between the parties. Moreover the decree in the suit was only a personal decree. In these circumstances, we are

unable to hold that these costs are incurred for the due management of the property and the collection of the rents within the meaning of Section 72

(a) of the Transfer of Property Act, 1882. To hold otherwise would in many cases enable the mortgagee to recover from the mortgagor the

expenses incurred by the former in attempting to recover rents from tenants put into possession by himself. Should such tenants fail to pay, there is

no reason why the mortgagor should be responsible for the expenses of the litigation, unless, of course, he has entered into any contract with the

mortgagee to be responsible. The fact that in the present case the mortgagor is the tenant can make no difference in principle, since she was sued as tenant and not as mortgagor. The 1st defendant is not entitled to make those costs a charge on the property. As regards the costs incurred in the other suit to which Exhibits VI and VII relate, we observe that in that suit the mortgagor's title was impeached by the present plaintiffs and the costs were incurred by the 1st defendant--the mortgagee--in defending the mortgagor's title. Such costs are clearly within the rule in Section 72 (c) of the Transfer of property Act. The law to this effect was laid down long ago in *Godfrey v. Watson* 8 Atk., 617, and *Parker v. Watkins* (Johns 133) is no exception to the rule. For, all that was there decided was that "if some litigious person chooses to contest his (mortgagee's) title to the mortgage, that should not affect the parties interested in the equity of redemption." The Vice-Chancellor, moreover, expressly observed that where a mortgagee has been put to expense in defending the title to the estate, the defence being for the benefit of all the parties, he is entitled to charge these expenses against" the estate," p. 137. The latter is precisely the present case. The District Judge was, therefore, right in allowing these costs. The District Judge has not given any finding as to the amounts to be allowed with reference to the repairs of the embankment and the trees cut; but the sum is trifling, and the respondent's vakil does not press to have the ease sent back for a finding on those matters.

2. Both parties have to some extent failed to establish their respective contentions. We shall, therefore, allow the 1st defendant only half the costs throughout. The plaintiff must bear his own costs. The decree for redemption will be modified in accordance with these findings and the time for redemption will be three months from this date.