

(1913) 01 MAD CK 0019
In the Madras High Court

Ramana Gounden

APPELLANT

Vs

Ramalinga Mudaliar and Others

RESPONDENT

Date of Decision : 30-01-1913

Acts Referred:

Citation : 20 Ind. Cas. 827 : (1913) 25 MLJ 24

Judgement

1. These second appeals arise out of the same suit brought by the plaintiff for contribution. The plaintiff alleged that he paid off a mortgage debt

which he and the appellants before us, who were defendants in the 1st Court, were bound to pay, and he sued accordingly to recover his share of

the mortgage debt. The main defence is that as between themselves the plaintiff alone was bound to pay the debt as declared by the decree and

judgment in suit No. 26 of 01. The question therefore depends upon the effect to be given to that decree and judgment. That was a suit brought by

one Guia Chettiar, who is not a party to this suit, for the recovery of a sum of nearly Rs. 3,000 by the sale of certain properties mortgaged to him

by the first 3 defendants in that suit. The 4th defendant in that suit is the plaintiff, who now claims contribution, and the 1st respondent before us.

He and the 5th defendant were made parties as purchasers of portions of the mortgaged property. The 5th defendant in that suit is the

predecessor-in-title of the 4th defendant here and the appellants in S.A. No. 881 of 1911. The 3rd defendant therein is the appellant in S.A. No.

882 of 1911. The plaintiff Guia Chettiar alleged that the 4th defendant therein (Respondent before us) had purchased the properties on the

understanding that he would pay off Guia Chettiar's mortgage. The written statements in that suit are not before us. But it is stated in the judgment

therein that the 4th defendant had first pleaded that he purchased without notice of the plaintiff's mortgage "" but at the first hearing withdrew this allegation as the prices paid by himself and his vendor proved the contrary, "" and his pleader declared that he was willing to pay the plaintiff what was due to him on his mortgage. A decree in favour of the plaintiff was given, but it directed that the mortgage debt should first be discharged by the sale of those properties which were in the possession of the plaintiff respondent and the balance if any by the sale of the properties in the possession of the defendants 1, 2 and 3 therein (the 3rd defendant as I have already stated being the appellant in one of these appeals before us) and then, if it became necessary, those in the possession of the 5th defendant in that suit, (the appellant in the other appeal before us,) were to be sold to satisfy the mortgage debt. The contention on behalf of the appellants before us is that these directions were embodied because the plaintiff was the person who, as between the parties to this suit, was the person liable to pay. The contention of the respondent (plaintiff) before us is that the decree indicated only a mode of discharging the debt. The terms of the decree itself are consistent with either view We will therefore turn to the judgment to see the reasons for the decree. We have already stated that Guia Chettiar in that suit alleged that the plaintiff had purchased the property on the understanding that he would pay off the mortgage and that the latter withdrew his plea, as the Judge states, "" as the price paid by himself and his Vendor proved the contrary. "" Now in deciding one of the issues in that case the District Judge stated that the 4th defendant, the present plaintiff, "" is in possession of the Bolampatti suit properties which are said by the 2nd defendant to be worth Rs. 6,000 under an agreement to pay off the whole of the suit mortgage "" and he finally decided that so far as the 5th defendant therein, the appellant in S.A. No. 881 was concerned, the property in his hands "" is only liable to sale in satisfaction of the suit mortgage in the event of the suit properties in the hands of the 4th defendant and defendants 1 to 3 proving insufficient to satisfy the same. This appears to be a clear decision that the liability of the 5th respondent arises only if the property in the hands of others proved insufficient to satisfy the debt. We are therefore clearly of opinion that so far as the appellant in S.A. No. 882 of 11 is concerned the suit must be dismissed with costs. As regards the other defendants, the appellants in S.A.

No. 881 of 1911 also the judge states in the judgment. ""The object of defendants 1, 2 and 3 and Ramasami Mudaliar in this transaction appears to have been to take steps to exact the amount from 4th defendant, the plaintiff in this suit, who by the terms of the sale to 4th defendant in O.S. No. 188 of 1900 from whom he bought is bound to pay it off. "" This taken with the other recitals in the judgment to which we have already referred places beyond all reasonable doubt the fact that the plaintiff in the present suit was, as between the parties to the present suit, liable to pay the mortgage debt himself and it was on the ground that he purchased the properties on the understanding that he was to pay off the debt that the decree was passed in the form in which it was passed. We hold therefore that the plaintiff is not entitled to recover any contribution. We reverse the decrees of the Lower Courts and dismiss the suit with costs throughout.