
(1924) 01 MAD CK 0061
In the Madras High Court

S. Sundararamiah and Others

APPELLANT

Vs

T. Venkatasubbiah and Others

RESPONDENT

Date of Decision : 09-01-1924

Acts Referred:

Madras Estates Land Act, 1908 — Section 5

Citation : AIR 1924 Mad 619

Hon'ble Judges : Krishnan, J

Bench : Division Bench

Judgement

Krishnan, J.—In this suit the competition is between the purchasers of the plaint property in execution of a mortgage decree obtained by the plaintiffs and the purchasers in a rent sale in execution of a rent decree which the Zamindar had obtained against the pattadar of the lands in question. The father of the plaintiffs had obtained on this property a mortgage in 1897 evidenced by Ex. A. In 1909 the amount due under that mortgage came to about Rs. 508 and a new mortgage was then taken for a part of it Rs. 300 which was the principal of the old mortgage, and that deed is Ex. B. That deed was executed, as is evidenced by its date, after the passing of the Estates Land Act. That deed says that it is taken for Rs. 300 due under the previous deed, and there is a statement that Rs. 208 are still due under the old deed. The plaintiffs brought a suit on the second of these deeds, Ex. B, and obtained a decree and brought the property to sale and purchased it themselves. But before they did that, the Zamindar, as already stated, obtained a decree in the Revenue Court (the judgment in which case is Ex. K) and had the properties brought to sale and purchased some of the properties himself, and the other properties were purchased by the other defendants.

2. The question that has been argued in this case is as to whether the plaintiffs' purchase prevails, or whether it is the purchase of the defendants that prevail. u/s 5 of the Estates Land Act, the landholder gets for his rent a first charge on the holding, but this is subject to Section 125 of that Act, which says, "When a

holding or part of a holding is sold for arrears due in respect thereof, the purchaser shall take, subject to any right or interest which the ryot has created therein with the landholder's permission in writing registered and subject also to any encumbrance created before the passing of this Act." The contention of the respondents before me is that the encumbrance under Ex. A having been created before the passing of the Act, although they brought the suit on Ex. B, they must be allowed to fall back upon their rights under Ex. A and use those rights as against the defendants, whose charge should, therefore, be treated as subject to the rights of the plaintiffs. On the other hand, it is contended that the plaintiffs having taken Ex. B in 1909, which was after the passing of the Act, any rights which they had under Ex. A, except as regards Rs. 208 still reserved under it, had become extinguished, and that, as the suit was for the enforcement of the Rs. 300 included in Ex. B, it must be held that their sale was not (or any encumbrance created before the Act, but, it was for an encumbrance created after the Act and as there was no permission of the landholder to create such encumbrance, their (defendants') first charge should prevail. This, I think, overlooks the principle that a man by taking a further security for his money that is charged upon land, does not, and cannot be taken thereby to have intended to give up his rights under earlier deed which he had. A case very similar to this case was considered by the Privy Council in *Shankar Sarup v. Mejo Mal* (1901) 23 All. 313. There was a first mortgage in May, 1883, to the plaintiffs for Rs. 15,000 and odd. Then in June, 1883, there was another mortgage in favour of the defendant. Then again in November, 1883, the plaintiffs took a third deed over the same properties including a further sum of money for a total of Rs. 20,000. The property was sold in Court auction and the question arose as between the defendant and the plaintiffs as to who had priority for payment out of the sale-proceeds: It was held by the Privy Council that, although the mortgage on which the suit was brought was the mortgage of November 1883, that is, the third mortgage, still the plaintiffs could not be taken to have abandoned their rights under the first mortgage and that they were entitled to use those rights as against the second mortgage and claim" priority and to have their amounts paid in the first instance. It seems to me that that case really covers this case.

3. Some confusion was introduced into this case by reference to rights of subrogation. I do not think any question of subrogation arises in this case at all, because the second document, Ex. B, was taken by the same person who had the rights under the first document, Ex. A. Subrogation rights can only arise when persons pay off debts charged upon the land in favour of third parties. It is difficult to understand how such a question can arise except in a case where a person claims to stand in the shoes of the person who had the original right as against any mesne encumbrancers. Here no such question arises, because the document Ex. B was for a sum of money which was due under Ex. A and only created a further security of making one more person liable under it than was originally liable. No new properties have been added, or new debts created either. In these circumstances, I think that the principle clearly applies and that

the plaintiffs, who were the persons entitled to the rights under Ex. A, are entitled to rely upon those rights as against the defendants, whose rights must, u/s 125 be treated as subject to their rights. Taking this view, I do not think it necessary to consider the other points in the case.

4. I would, therefore, dismiss the second appeal with costs.