

(1920) 08 MAD CK 0042
In the Madras High Court

Sistla Sitaramaswamy Sastri

APPELLANT

Vs

Bonthu Basavayya alias Basivi Reddi

RESPONDENT

Date of Decision : 09-08-1920

Acts Referred:

Citation : 60 Ind. Cas. 114 : (1920) 12 LW 536

Hon'ble Judges : William Ayling, J;Odgers, J

Bench : Division Bench

Judgement

1. We think appellant in this case is entitled to discharge of his security in accordance with the provisions of Section 139 of the Indian Contract Act. In his surety-bond, he contract to be liable for any decree which the Court may pass against the defendants in the suit, who were four in number. Plaintiff, subsequently, with the leave of the Court, exonerated defendants Nos. 2 to 4 and proceeded with the suit against, defendant No. 1 alone and obtained a decree against him.

2. This materially alters the position of affairs from the surety's point of view, At the time he became surety there were four persons (equal co-parceners in family property, as we are told) against all of whom he would have his own remedy, if he had to pay anything under the decree. The after of the that of the Court and" decree-holder, is to destroy his remedy against three of these.

3. We think the principle of Section 139 giverns the case; and that the surety must be held to be discharged.

4. The order of the lower Court must, therefore, be set aside with costs in both Courts.

C.M.A. No. 102 OF 1919.

6. This follows Civil Miscellaneous Appeal No. 103 of 1919. The order of the lower Court is set aside and the execution petition dismissed with costs in both Courts.