
(1896) 11 MAD CK 0027
In the Madras High Court

Subbaraya Chetti and Another

APPELLANT

Vs

Ganga Razulungaru and Others

RESPONDENT

Date of Decision : 24-11-1896

Acts Referred:

Citation : (1897) 7 MLJ 18

Judgement

1. Two points are raised in this appeal. The first relates to the claim for interest accruing after the due date fixed for the payment of the principal in the mortgage instrument of the 19th December 1882. The District Judge considers that the instrument contains no stipulation, express or implied, to pay interest after the 14th July 1886, by which day the mortgagor undertakes to pay the principal. He refers to one of the numerous cases dealing with the question of interest payable under a mortgage. It is not necessary to discuss those cases, firstly, because the question is entirely of the construction to be answered with reference to the language of the particular instrument, and secondly, because we have a recent ruling of the Judicial Committee by which we must be guided in construing that instrument. In appeal Mathura Das and Anr. v. Baja Naming Bahadur Pall and other from the Allahabad High Court.

2. In this case, after stating how the sum of Rs. 4,797-10-6 has come to be due, the instrument goes on to say that "for the payment of the principal and interest which may accrue at the rate of rupee per cent, per mensem we have hypothecated, &c." Then the property is described and the instrument proceeds to state how the money shall be paid. The interest is to be paid on the 30th Panguni of each year and in case of default compound interest. The principal is to be paid by the end of Ani of the Parthiva year.

3. Now, it is true that there is not in terms a stipulation to pay interest after the end of Ani in the year Parthiva, and hence it is argued that the parties did not intend such payment to be made. But we have to look at other parts of the instrument besides the covenant to pay the principal on a fixed date. The amount found to be due and secured as principal is arrived at by calculating interest on

sums originally due by the mortgagors, and the hypothecation is expressed to be for the payment of that principal and interest as it may accrue. That seems to show that interest was to be paid in the future as well as in the past. Then there is the clause providing for compound interest which certainly points to a liability for interest accruing after the due date. These provisions are more consistent than otherwise with an intention which in itself is the most probable one, when to use the language of the Judicial Committee regard is had to "the ordinary expectations of persons entering into a mortgage transaction." We should only be defeating those expectations if we held with the District Judge that the mortgage document carried no interest after the due date. We are, therefore, of opinion that, according to the right construction of the instrument, the mortgagor incurred the obligation to pay interest on the principal amount remaining unpaid on the 14th July 1896.

4. The other point taken is that which is raised by the sixth issue.

5. The District Judge has held that the sale of the mortgaged property made at the instance of the plaintiff, must be subject to the 5th defendant's claim. That claim arises in this way. On the date of the plaintiff's mortgage, another mortgage of the same property was executed by the same mortgagor in favor of one Chengalraya. On this mortgage, Chengalraya sued and obtained the ordinary decree, the plaintiffs not being made parties to that suit. That decree was satisfied by means of money borrowed from the 5th defendant, who thereupon took a fresh mortgage dated the 21st August 1893. It is contended that, as the 5th defendant's money has gone to pay off Chengalraya's mortgage, he must be entitled to the benefit of that mortgage, and that, accordingly, his claim must have priority over the plaintiffs. It is more than doubtful whether Chengalraya's mortgage ought to be treated as prior to the plaintiff mortgage of even date executed in Virasami's favour; but, apart from that, there is the circumstance that Chengalraya's mortgage has become merged in the decree obtained upon it. The 5th defendant cannot be in a better position than he would be if he had taken an assignment of Chengalraya's mortgage, and as assignee, he clearly could not rely on the mortgage after it had passed into a decree. He might have obtained a transfer to himself of the decree; but this he has not done and a transfer is now impossible since satisfaction has been entered up. In *Seetharama v. Venkatakrishna* ILR (1891) M., 94 the fact that there had been a decree on the mortgage seems to have been overlooked, and the point now raised was not considered. On the second point also we think the District Judge has erred.

6. The appeal must, therefore, be allowed and the decree of the lower Court modified in the following respects:

(1) The portions of it referring to the priority of the 5th defendant's mortgage must be expunged;

(2) The date for calculating the interest due to plaintiffs on V their mortgage must be extended from the 14th July 1886, up to the date of suit viz., 30th

September 1893:

(3) The date for payment by defendants Nos. 2 and 3 and 1st defendant's representative must be altered into the date, six months after the date of this decree, and

(4) The costs of the 5th defendant made payable by the plaintiffs must be disallowed, and the 5th defendant must be directed to pay the plaintiff's costs in both Courts to the extent to which he is liable on the case set up by him. The defendants Nos. 2 and 3 and 1st defendant's representative must further pay the plaintiff's costs throughout on the larger sum now decreed against them.