
(1937) 02 MAD CK 0021
In the Madras High Court

Thummalakunta Krishtappa

APPELLANT

Vs

Satrasala Adinarayanappa and Another

RESPONDENT

Date of Decision : 02-02-1937

Acts Referred:

Citation : AIR 1937 Mad 584

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—During the trial of the suit the respondent furnished security for the decree amount in case the plaintiff was successful. The

decree was passed and so the respondent became liable for the decree amount. In execution by the decree-holder against the principal debtor the

judgment-debtor appeared by a pleader and agreed to deposit Rs. 250 by 1st August 1933 and another Rs. 250 on the first of each month. This

offer was accepted by the other side and so the District Judge passed an order:

Mr. H. Narayana Rao agrees to deposit Rs. 250 by 1st August 1938 and to pay Rs. 250 on the first of each month. Mr. B. Krishna Sastri agrees.

Ordered accordingly. No execution unless appellant defaults. No costs.

2. The question is whether by giving time under this order the sureties are discharged. The District Munsif of Anantapur held that they were not; but

the District Judge of Anantapur, disagreeing with him held that they were. Mr. Somasundaram does not deny that in general an agreement by the

decree-holder to give time to the judgment-debtor discharges the surety. As was laid down in Bouse v. Bradford Banking Co. (1894) 2 Ch 32,

referred to in Annadana Jadaya Goundar Vs. Konammal and Another, :

The surety is entitled at any time to require the creditor to call upon the principal debtor to pay off the debt or himself pay off the debt; and when

he has paid it off he is at once entitled to sue the principal debtor and if the creditor has bound himself to give time to the principal debtor the surety

cannot do either the one or the other of these things until the time so given has elapsed.

3. But there is one exception to this general rule and that is when the decree, holder gives a concession to the judgment-debtor, but his right to

proceed against the surety is specifically reserved. It cannot be denied that the order of the learned District Judge as it stands does make it

impossible to execute the decree even against the sureties: for the last sentence but one of the order runs ""no execution unless appellant defaults"". It

is argued that this should be read with para. 5 of the affidavit; but I do not think that in the affidavit the judgment-debtor expressly states that the

right of the decree-holder to proceed against the sureties is strictly reserved. The paragraph runs:

When the respondents applied for attachment of houses before judgment in the lower Court, I gave two very solvent sureties for payment of the

amount in case of decree, and so there is no fear of the respondent losing anything if the execution is stayed.

4. It was not intended by this statement to reserve the right of the decree-holder against the sureties. It was merely a statement made to assure the

decree-holder that even if the judgment-debtor failed to act up to his undertaking to pay regularly by instalments there would still remain sureties

against whom the decree-holder could proceed in case of default. The right to proceed against the sureties not having been reserved the general

rule applies that the giving of time to the principal debtor absolves the sureties. That is what the lower appellate Court has found. The appeal is

accordingly dismissed with costs. No leave.