

(1911) 11 MAD CK 0010
In the Madras High Court

Variangattil Paksseri Raman Menon, Karnavan of the Tarwad	APPELLANT
Vs	
Sankara Subba Pattar's son Chandra Sekharan Patter and Others	RESPONDENT

Date of Decision : 28-11-1911

Acts Referred:

Citation : 13 Ind. Cas. 203

Hon'ble Judges : Ralph Benson, J;Abdur Rahim, J

Bench : Division Bench

Judgement

1. The position in this case is somewhat curious. The plaintiff in the suit mortgaged certain properties to the father of the 1st defendant for about Rs. 1,000, and the mortgagee, for about Rs. 700, executed at sub-mortgage.

2. The plaintiff, after the execution of the sub-mortgage, paid off the mortgage, and then the sub-mortgagee, in a suit to enforce his sub-mortgage, recovered a judgment against the present plaintiff for the amount of the sub-mortgage. The present plaintiff in this suit, who was a defendant in the suit of the sub-mortgage, appealed against the decree, but, pending the appeal, instituted the present action against the first defendant and his son, the second defendant, for a decree for payment to him of the amount decreed in the sub-mortgagee's suit or for an order directing the defendants to deposit the amount in Court for payment to the plaintiff. Now, the decisions of this Court lay down that a person cannot maintain a suit for indemnity unless he has actually incurred the loss against which he seeks to be indemnified. Patti Narayanamurthy Iyer v. Marimuthu Pillay 26 M.P 322 and Doraisami Tevar v. Lakshmanan Chetty 14 M.L.J. 285 show that it would debar the plaintiff from obtaining a decree for the payment of

the amount decreed against him. But, the case of *In re Richardson* (1911) 2 K.B. 705 : 80 L.J.K.B. 1232 shows that in equity a plaintiff in a case of this nature may still be entitled to a relief in the nature of the alternative remedy asked for in his plaint. The learned Vakil for the appellant further states, that since the institution of the second appeal, his client has satisfied the decree obtained by the sub-mortgagee and he asks for leave to amend the plaint so as to enable him to obtain decree for the amount so paid to him. We think this is a proper case in which the amendment should be allowed. The effect of such amendment will enable the plaintiff to obtain, in the present state of facts, a remedy more complete than he was entitled to on the date of the institution of the suit. But it would not, in our opinion, be a case of converting one cause of action into another, and under the new Code of Civil Procedure, the powers of the Court to allow amendment are very wide. We think, by allowing the amendment, the question at issue between the parties will be completely disposed of and would obviate the necessity for afresh suit. We, therefore, set aside the decree of the lower Courts and order that the plaintiff may be allowed to amend his plaint by alleging that he has paid the amount sought to be recovered from the defendants to the sub-mortgagee. The District Munsif will, on receiving the amended plaint proceed to dispose of the suit according to law. The defendant will be at liberty to file additional written statement in so far as it may be occasioned by the amendment, and the parties will be permitted to adduce such fresh evidence as may be necessitated by the amendment. The costs of the 2nd and 3rd defendants incurred in this Court will be paid by the plaintiff. The costs in the Court of first instance will be costs in the cause.