

(1912) 11 MAD CK 0029
In the Madras High Court

Veeraraghava Iyer and Others

APPELLANT

Vs

K. Lakshmana Iyer and Others

RESPONDENT

Date of Decision : 24-11-1912

Acts Referred:

Contract Act, 1872 — Section 69

Citation : (1913) 25 MLJ 248

Hon'ble Judges : Miller, J;Abdur Rahim, J

Bench : Full Bench

Judgement

Miller, J.—While certain Immovable property was under attachment, after a money decree and before it was sold by the Court the plaintiff

obtained a mortgage of the property and undertook, as a part of the consideration thereof, to discharge the amount of the decree. He failed to do

so and the property was sold. The judgment-debtor then had recourse to the appellant and giving him a mortgage on the same property, obtained

from him the payment required by Section 310 A, of the former CPC and got the sale set aside. The appellant now claims that his mortgage should

be given priority to that of the plaintiff. Mr. Ramachandra Aiyar put his claim on four grounds. He claimed that u/s 69 of the Indian Contract Act,

his client was entitled to a prior charge, that he was also entitled u/s 70 of that Act and, failing either of those two sections, claimed priority on the

principle of Section 101 of the Transfer of Property Act and lastly he claimed a salvage lien on the ground that he has saved the property for the

plaintiff by his payment. Now as regards Section 69 of the Indian Contract Act, the answer to his claims seems to me to be that he was not

interested in the payment of the money. His only interest is that created by his mortgage. As I understand Section 69, the interest must be an

existing interest, an interest which the payment is intended to protect and not an interest which may be said to be created by the payment or as part of the transaction in which the payment was made or which is merely security for payment. The appellant had no such existing interest when he undertook to lend some money to the judgment-debtor and took the mortgage as security therefor. There is no interest which this payment protected. He was in no way interested in the satisfaction of the decree. Consequently the payment does not come within Section 69 and I do not think it is within Section 70 for the reason that the payer did not make the payment in any way for the plaintiff. It is suggested (but I do not propose to investigate the suggestion) that the plaintiff has been benefited by the payment but as I understand the decision in *Yogamba Boyee Ammani Ammal v. Nayina Pillay Marakayar* ILR (1909) M. 15 Section 70 will not apply to cases where the person who makes the payment, makes it for himself and not for the other person against whom his claim for reimbursement is made. Here there is nothing to suggest that this mortgage money was advanced by the appellant in the interests of the plaintiff and, consequently, he is not entitled to claim on that account priority over the plaintiff though indirectly he may have benefited the plaintiff. Then as to the third ground, there is no earlier security which the appellant would be entitled to retain as a shield. He is seeking rather to create a security where none was before. The further claim is as a salvor and the answer to that is again that the appellant has no interest in the property which he says he has saved. So far as I know, where charges of this kind have been allowed the cases are those in which the person who has paid money had an interest to preserve and here, as I have said in discussing the question of Section 69 of the Contract Act, I think that the appellant had no interest which could support his claim to save the property at the plaintiff's expense on grounds such as those on which the decision" of the Full Bench in *Raja of Vizianagaram v. Raja Satrucherla Somasekararaz* ILR (1903) M. 686 was based. It seems to me that all these four grounds fail and that the appellant must be content to take, what he certainly in terms took, the mortgage as security for his payment, subsequent to that of the plaintiff. I would, therefore, dismiss the appeal with costs.

Abdur Rahim, J.

2. I agree.