

(1946) 08 MAD CK 0019
In the Madras High Court

Vellai Goundan alias Munisami Goundan and Others	APPELLANT
Vs	
Manian Rajagopal Mudaliar	RESPONDENT

Date of Decision : 06-08-1946

Acts Referred:

Citation : AIR 1947 Mad 310 : (1947) 60 LW 72 : (1947) 1 MLJ 68

Hon'ble Judges : Kuppuswami Ayyar, J;Kuppuswami Aiyar, J

Bench : Division Bench

Judgement

Kuppuswami Ayyar, J.—The defendants are the appellants and the appeal arises out of a suit for recovery of money due on a mortgage

bond for Rs. 400 executed on 5th February, 1931, by the first defendant, the father of defendants 2 and 3, in favour of the plaintiff. The trial Court

found that the mortgage bond was supported by consideration to the extent of Rs. 75 only and gave a decree for that amount and interest thereon.

On appeal by the plaintiffs, the learned District Judge of North Arcot at Vellore holding that the burden of proof was on the defendants following

the observations of the Privy Council in Bhagwan Singh v. Bishambar Nath (1940) 2 M.L.J. 452 : ILR 1940 Mad. 267 (P.C.) held that it is not

for the plaintiff to prove affirmatively the passing of the consideration and decreed the suit as prayed for. Hence this second appeal.

2. It is true in this case evidence was let in by both parties examining a witness each and the case could have been disposed of on that evidence

without advertng to the burden of proof. As a matter of fact the trial Court framed the issues as if the burden was on the defendants and evidence

was let in on the basis that the burden was on the defendants. So the learned District Judge could have easily disposed of the case on the evidence

on record and come to a conclusion with regard to the facts of the case but instead of doing so, he emphasised the fact that the burden was on the defendants stating that "" it was really unnecessary for the plaintiff to have called any evidence on the issue as to consideration, since the burden of proof was entirely on the defendants."" Since the judgment of the learned Judge is based on this observation of his, it is necessary to consider how far he was justified in coming to that conclusion. The document was executed only by the first defendant. Neither the second defendant nor the third defendant were parties to that document. It is stated by learned Counsel for the respondent-plaintiff that the third defendant was not born on that date. But the second defendant was born on that date and so far as he is concerned, the burden will be upon the plaintiff to prove the passing of consideration. The headnote in Bhagwan Singh v. Bishambar Nath (1940) 2 M.L.J. 452 : ILR (1940) Mad. 267 (P.C.) is rather too wide. In that case the consideration for the mortgage bond on which the suit was filed was made up of three items : payment in cash before the Sub-Registrar, the return of two documents and also payment of money in two banks. But it was pleaded that the money paid was taken back. That was the plea of the defendants. Consequently the burden was upon the defendants to prove, on account of the particular facts of that case, that the entire consideration did not pass. That case had to be considered by two Judges of this Court, Abdur Rahman, J., and Somayya, J., by the latter in Muthachi alias Nambiappa Muthirian Vs. Kandaswami Muthirian and Another, and by the former in Maddali Sreeramulu and Another Vs. Kavur Thandavakrishnayya and Others, . The facts of the Privy Council case are fully stated by Somayya, J., and as he has written an exhaustive judgment pointing out all the circumstances which led the Privy Council in that particular case to come to the decision at which it arrived, I entirely agree with him. It is unnecessary to repeat the observations of Somayya, J. Agreeing with him I should think the learned District Judge was wrong in having taken the decision of the Privy Council in Bhagwan Singh v. Bishambar Nath (1940) 2 M.L.J.452 : ILR (1940) Mad. 267 (P.C.) as one of universal application on the question of burden of proof with regard to all documents irrespective of the facts of the case and basing that finding on that opinion of his. I therefore set aside the decree of the lower appellate Court and remand the appeal for being reconsidered in the light of the

observations made above holding that so far as the second defendant is concerned, he being not a party to the document the burden is on the

plaintiff to prove consideration. Of course it will be open to the plaintiff to urge in the lower appellate Court that so far as the third defendant is

concerned he was born subsequently and therefore stands on a different footing. It is unnecessary to consider at this stage that aspect of the case.

So far as the first defendant is concerned, the burden is upon him, being the executant of the mortgage deed, to show that the consideration did not

pass as recited in the document. It is not for the plaintiff to show that the consideration passed in any other way than that recited in the document.

3. The decree of the lower appellate Court is set aside and the appeal is remanded to the lower Appellate Court for being disposed of in the light

of the observations made herein. The costs of this second appeal will abide and follow the final result of the appeal. The Court-fee paid on the

memorandum of second appeal will be refunded to the appellants.