
(1914) 07 MAD CK 0053
In the Madras High Court

Vijaya Bhushanammal

APPELLANT

Vs

C.N. Evalappa Mudaliar
Thriupathi Mudali and Others
Vs Ponnuranga Mudali

RESPONDENT

Date of Decision : 22-07-1914

Acts Referred:

Transfer of Property Act, 1882 — Section 67(d)

Citation : AIR 1915 Mad 344(1) : 25 Ind. Cas. 91

Hon'ble Judges : Tyabji, J;Sadasiva Aiyar, J

Bench : Division Bench

Judgement

1. There are no merits in this second appeal. Some technical objections are raised, but the only arguable objection is that Section 67 (d) of the Transfer of Property Act prohibits a suit by one of several co-mortgagees who is interested in part only of the mortgage money from suing for sale of a corresponding portion of the mortgaged property, "unless the mortgagees have with the consent of the mortgagor severed their interests under the mortgage", and that the present suit is such a suit.

2. The rather unhappy wording of the section, no doubt, lends some colour to this contention, but we do not think that the Legislature intended to enact that if the severance of the interests of the mortgagees took place in any other lawful mode legally binding on the mortgagor (say, by the decree of a Court of law in a suit to which the mortgagor was a party and which became binding on him though he did not give his consent to the passing of the decree which had the legal effect of creating the severance), the mortgagor could resist a suit for sale for recovery of a portion of the mortgage money on the basis of such severance. The Legislature merely intended to protect the mortgagor from the harrassment of a multiplicity of suits where the severance of the interests of the mortgagees took place without his consent. The decision of the Court of Justice creating such a severance and binding on the mortgagor must be at least as effective legally as the mortgagee's consent to the severance. In the present case, there was a

decree in a suit brought by the plaintiff's co-mortgagee to which suit the mortgagor was a party and it declared that there had been a severance of the mortgage binding on the mortgagor. That decree might be erroneous but it was not appealed against and has become final. The plaintiff's claim for recovery of his share of the mortgage" money on the basis of such severance cannot, therefore, be resisted by the mortgagor. "

3. This second appeal fails and is dismissed with costs. The connected Second Appeal No. 2601 of 1912 follows.

4. As regards the memorandum of objections in Second Appeal No. 2601, the District Judge was right in crediting the amount paid by the sale of a portion of the mortgaged property towards the principal of the mortgage-debt, in the absence of any specific appropriation by either party. The principal amount is the earlier debt and though by indication from circumstances a payment might in some cases appropriately be credited towards interest in the first instance See Section 60 of the Contract Act and Section 76, Clause (i), of Act IV of 1882 there might be circumstances indicating the other way also and we think the learned District Judge was right in holding that there were such circumstances in this case.

5. The memorandum of objections is dismissed with costs.