

S. Dhana Lakshmi Ammal and Others

Vs

T. Tharani Singh Gramani and Another

Civil Appeal No. 312 of 1967

(G. K. Mitter, K. S. Hegde, P. Jagmohan Reddy JJ)

13.03.1972

JUDGMENT

HEGDE, J. -

1. This is a plaintiff's appeal, by special leave. The plaintiff as one of the executors of her father's will, dated February 25, 1922, sued for a declaration that the properties described in the plaintiff-schedule 'A' were improperly sold by Mr. Y. M. Ranganatha Sastri, the Commissioner appointed in the mortgage decree in O.S. 623 of 1931 on the file of the High Court of Madras. She further asked for a decree for possession of that property free of the alienation. The suit was filed nearly 12 years after the impugned sale. The suit was instituted on the original side of the High Court of Madras. The trial judge decreed the suit as prayed for. But in appeal, the decree of the Trial Court was reversed and the suit dismissed with costs. The appellate bench inter alia held that the suit property was included in the mortgage which resulted in the decree in O.S. 623 of 1931.

2. In our opinion there is no merit in this appeal. There are good grounds to support the conclusion of the appellate court, as we shall presently see, that the decree in O.S. 623 of 1931 covered the suit property as well. That apart, the contention that Mr. Ranganatha Sastri had no authority to sell the suit property is unavailable to the plaintiff in view of the mortgage executed by the executors appointed under the will of Munuswamy, the father of the plaintiff as well as by the legatees thereunder in favour of V. L. Varadaraj on April 27, 1937.

3. The suit property belonged to Munuswamy, the father of the plaintiff. Munuswamy mortgaged some of his properties in favour of Vasa Varadiah Chetty. Thereafter the same properties were mortgaged by the executors under his will to some other persons. Finally on April 27, 1937, the executors as well as the legatees under the will mortgaged several items of the properties which originally belonged to Munuswamy in favour of V. L. Varadaraj. That mortgage proceeded on the basis that the properties included therein had previously been mortgaged to Vasa Varadiah Chetty and to some others. It was executed for the purpose of discharging some of the earlier mortgage debts. If the suit property is held to be mortgaged under that deed in favour of V. L. Varadaraj then it follows that the mortgagers therein were of the opinion that that property had been earlier mortgaged to Vasa Varadiah Chetty and others. One of the items of the property mortgaged under the deed of 1937 is that described in Schedule 'A' to that deed. It reads thus :

"Stable and Garden situated in the village of Mylapore, Vellala Teynampel, Mount Road bearing Municipal Nos. 113 and 114 within the registration district of Madras-Chingleput and in the Sub-registration district of Mylapore bounded on the north by Survey Nos. 1412 and 11/1-B, on the east by Survey Nos. 12/2, 11/1-B and 12, on

the west by Survey No. 1412 bearing old Survey No. 3027, Resurvey No. 11/1 and Collector's certificate No. 2722 and containing 1 cawnie 14 grounds 1,537 square feet (an extent of cawnies nil, grounds 8 and square feet 1,298 was acquired under Notification in the Fort St. George Gazette, dated July 25, 1911, Part I, pages 738 and 739 for a public purpose.

The suit property is described in the plaint as follows :

"House, ground and premises bearing Old Door No. 190, new Door No. 114, now numbered as 113 and 114, Mount Road, Vellala Teynampet, Madras bearing Resurvey No. 11/1 O.S. No. 3027 C.O. No. 1891 bounded on the North by R.S. 10, South by R.S. No. 11/1-A, East by R.S. No. 12/2, West by R.S. No. 11/1-A, situate in the registration district of Madras Chingleput and the registration sub-district of Mambalam, measuring 2 grounds 2169 sq. ft. out of the total extent as per Quit Rent Extract of 1 cawnie 14 grounds 1,537 sq. ft."

A comparison of these two Schedules goes to show that the suit property is a portion of the property mortgaged in favour of V. L. Varadaraj in 1937. The learned counsel for the appellants could not dispute this conclusion.

4. Under the mortgage deed of 1937, mortgagee was empowered to appoint Mr. Ranganatha Sastri as the Receiver of the property mortgaged to him in the happening of certain conditions. It is not disputed that Mr. Ranganatha Sastri had been appointed as the Receiver of the properties mortgaged under the deed of 1937. He was in possession of those properties as Receiver. In particular he was in possession of the suit property.

5. Mortgage in favour of V. L. Varadaraj empowered the mortgagee to sell the mortgage property without the intervention of the court for discharging all the debts under the mortgage. When the decree-holder in O.S. 623 of 1931 sought to execute his decree, V. L. Varadaraj applied to the court to appoint Mr. Ranganatha Sastri as the Commissioner for selling the properties mortgaged to him in accordance with the terms of the mortgage in his favour, to discharge the mortgage debts. The court accepted that prayer and appointed Mr. Ranganatha Sastri as the Commissioner to sell mortgaged properties by private treaties. Mr. Ranganatha Sastri sold the properties in accordance with the power conferred on the mortgagee under the mortgage deed of 1937. That power included the power to sell the suit properties without the intervention of the court. (It may be noted that the mortgage in favour of V. L. Varadaraj was an equitable mortgage). Hence it is immaterial whether the suit property was included in the mortgage which resulted in a decree in O.S. 623 of 1931 or not.

6. In view of the above conclusion of ours, it is not necessary to go into the other contentions arising for decision in this appeal.

7. The appeal is accordingly dismissed with costs.

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