
AIR 1956 AP 114

Andhra Pradesh High Court

Case No: Second Appeal No. 163 of 1953

Dasari Venkatesu

APPELLANT

Vs

V. Bandi Rami Reddi

RESPONDENT

Date of Decision: Oct. 18, 1955

Acts Referred:

Transfer of Property Act, 1882 " Section 92

Citation: AIR 1956 AP 114

Hon'ble Judges: Viswanatha Sastri, J

Bench: Single Bench

Advocate: A.L. Narayana Rao, for the Appellant; A.V. Krishna Rao and G. V. R. Mohan Rao, for the Respondent

Final Decision: Allowed

Judgement

Viswanatha Sastri, J.

Defendant 1 is the appellant. Defendants 2 to 6 contracted to sell an extent of 73 cents of garden lands in favour of

defendant 1 for a sum of Rs. 1341/- under Ex. B-3 dated 9-5-1946. Apparently, there was some delay in executing a sale pursuant to this

contract and defendant 1 filed O. S. No. 269 of 1946 on. the file of the District Munsif's court, Guntur for specific performance of the contract

evidenced by Ex. B-3. The suit was filed on 10-6-1946.

On 12-6-1946 defendants 2 to 6 sold the 73 cents of land to the plaintiff under Ex. A-1 for a consideration of Rs. 2000/- part of which sum was

directed to be applied by the vendee to discharge a pre-existing mortgage on the property. The mortgage Ex. A-2 dated 9-7-1934 was in favour

of defendant 7 in O. S. No. 269/1946 for Rs. 700/-. According to Ex. A-1 the sale deed in favour of the plaintiff a portion of the mortgage money had been paid by the plaintiff pursuant to the contract of sale and the balance was directed to be paid to the mortgagee under the sale. Ex A-1 was registered on 18-6-1946.

2. In O. S. No. 269 of 1946 there was a decree in favour of the plaintiff in that suit for specific performance and the present plaintiff and his

vendors who were arrayed as defendants to that suit were directed to execute a conveyance of the property in favour of the present defendant 1

the plaintiff in that suit.

The plaintiff in the present suit therefore lost title to the property which he purchased under Ex. A-1 and in pursuance of a direction in which he had

paid money to discharge the prior mortgage Ex. A-2. Finding that his purchase under Ex. A-1 was in operative to convey title to the property, the

plaintiff sought to enforce the mortgage Ex. A-2 which he had discharged pursuant to the directions in the sale deed Ex. A-1.

The question is whether the plaintiff is entitled to enforce the mortgage. The answer depends upon the interpretation of S. 92, T. P. Act. That

section incorporates the law as it stood before 1930 subject to some modifications. Under the law as it stood before the enactment of S. 92, there

was a distinction between what were styled as legal subrogation and conventional subrogation.

In the case of legal subrogation, a person having a pre-existing interest in the property and discharging a prior mortgage or charge on that property

in order to protect his interest or incurring an obligation to meet a charge in excess of his liability could claim to be subrogated to the rights of the

encumbrancer whom he had discharged. In the case of conventional Subrogation, the purchaser or the mortgagee would be discharging only an

obligation which he had undertaken under a specific agreement with his mortgagor or vendor as the case may be.

Under S. 92, cl. (3), T. P. Act, as now amended a right on the footing of conventional Subrogation could be claimed only if there is a specific

contract to that effect between the mortgagor or the vendor and the mortgagee or the vendee respectively. "Where therefore a person purchases

property which is subject to a mortgage or takes a puisne mortgage and the consideration for the sale or puisne mortgage is the discharge of the

amount due on the mortgage which he is directed to pay off, the case falls within cl. 3 of S. 92, T. P. Act and where as in this case, there is no

registered contract for subrogation as required by that paragraph, the purchaser or puisne mortgagee is not entitled to be subrogated to the rights

of the prior mortgagee whom he has paid off.

This interpretation of S. 92, T. P. Act has been authoritatively laid down in a decision of the Full Bench of the Madras High Court in - Naduvile

Marathe Ikkali Amma's daughter tavazhi Manager Lakshmi Amma Vs. Karuppath Ammalu Amma's son Sankara Narayana Menon, . This

decision has also been followed in a subsequent case by a Division Bench of the Madras High Court in - Dadi Appala Naidu and Others Vs.

Kolluru Bhimalingam and Others, . Sitting alone I am bound to follow these decisions and following them, I allow the Second Appeal and dismiss

the suit of the plaintiff with costs throughout. No leave.