

R. M. M. C. T. Vyravan Chetti and another - - - - *Appellants*

v.

V. K. N. S. P. Subramanian Chetti and another - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 26TH APRIL, 1920.

Present at the Hearing :

LORD BUCKMASTER.

LORD DUNEDIN.

SIR JOHN EDGE.

MR. AMEER ALI.

[*Delivered by* LORD BUCKMASTER.]

Their Lordships think it unnecessary to trouble Counsel for the respondents in this case.

The appellants are the first mortgagees of certain property. The respondents hold a second mortgage upon the same estates. It is unnecessary to determine the circumstances under which those mortgages arose, or the history of the title of the mortgagor. It is sufficient to say that on the 14th March, 1907, an agreement was entered into between the first mortgagees and the second mortgagees which has given rise to the present dispute. The effect of that agreement was to put the first and the second incumbrances on a relative position of equality with regard to the security. The appellants having realised part of the estate, the respondents instituted the proceedings out of which this appeal has arisen for the purpose of obtaining their share of the proceeds to which they claimed to be entitled by virtue of the agreement. The answer that was raised was, first, that the agreement required registration, and not having been registered could not be given in evidence; and, secondly, that in any circumstances no consideration had even been given

by which the agreement could be supported. With regard to the question of consideration it is sufficient to say that the learned Judge before whom the case was first heard found that there was consideration from the fact that contemporaneously with the execution of this agreement there had been an arrangement made by which the defendants had profited by loans that the plaintiffs had made to the extent of Rs. 42,000, and the question was not further raised in the High Court. The point therefore is not open to the appellants; but if it were, their Lordships think there was abundant evidence to support the conclusion of the Subordinate Judge.

The real question, therefore, which now arises is whether or no the agreement of the 14th March, 1907, required to be registered for the purpose of enabling it to be given in evidence upon these proceedings. That depends entirely upon the consideration of clause 3 of the agreement. Clause 3 of the agreement, after referring to the total amount of rupees that is owing to both the mortgagees and stating that interest is due to the first and second mortgagees under the documents, provides that their rights shall be arranged in the following way, that "both parties should, as regards rights, stand in the same position without claiming prior or subsequent rights, and divide and appropriate in equal halves, as per terms mentioned herein, whatever amount may be realised, on the date of realisation." The clause is open to two interpretations. It may be that the provision that the rights, both prior and subsequent, should stand on the footing of equality, is explained and limited by the following words, which state that the amounts of realisation shall be divided and appropriated in equal halves, or it may mean that two separate and distinct results are effected by the clause: first, that the rights should stand on a footing of equality; and, secondly, that the proceeds should be equally divided. Whichever interpretation is taken there is no objection to the lack of registration in such proceedings as those out of which this appeal has arisen, for, if the whole effect of the agreement is to provide merely that the realised money is to be divided in equal shares, then there is nothing in this agreement which requires to be registered, and if, on the other hand, there are two distinct provisions, the one relating to rights of property and the other with regard to the division of the realisation moneys then, as these proceedings relate merely to the question of the realised money, it need not be registered for the purpose of being given in evidence in this suit, although it may be that it would require to be registered for the purpose of being given in evidence in a suit relating to the regulation of the rights against the estate itself.

For these reasons their Lordships think that the judgment of the High Court was quite right, and they will humbly advise His Majesty that this appeal should be dismissed with costs.

In the Privy Council.

R. M. M. C. T. VYRAVAN CHETTI AND ANOTHER

vs.

V. K. N. S. P. SUBRAMANIAN CHETTI
AND ANOTHER.

DELIVERED BY LORD BUCKMASTER.

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