

Malireddi Ayyareddi - - - - - *Appellant*

Adusumilli Gopalakrishnaaya 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 NOVEMBER, 1923.

Present at the Hearing :

LORD DUNEDIN.

LORD PHILLIMORE.

SIR JOHN EDGE.

MR. AMBEER ALI.

[*Delivered by LORD PHILLIMORE.*]

Certain Indian landowners within the district of Masulipatam effected 1st, 2nd and 3rd mortgages on their property; the 1st and 3rd being on the lands alone, the 2nd on the crops also. They were afterwards sued to judgment by some creditors for ordinary debts, and their lands were sold in execution of the judgment but subject to the mortgages. The purchaser of the equity of redemption was one Pingala, who paid rupees 1,000, and thereout the judgment debt was satisfied.

The second mortgagee then instituted his suit to enforce his mortgage, making the original mortgagors the third mortgagee and Pingala defendants; and having obtained judgment, he from time to time obtained orders for sale of the crops. In one case it would seem as if the crops were actually sold in execution; in others, Pingala, or the present respondents who bought Pingala's interests during the course of the proceedings, paid the second mortgagee sums of money and saved the crops from seizure.

While this was going on, the third mortgagee, who is the present appellant, brought a suit, making the original mortgagors and Pingala parties ; and in this suit the lands were sold out and out, freed and discharged from the mortgages. After payment of the amount due to the first mortgagee and the expenses of the sale and so forth, there remained in Court to the credit of the cause a sum of rupees 1,327 with some annas and pies.

The respondents, the purchasers from Pingala, who had been added as supplemental defendants in the suit brought by the appellant, thereupon claimed to be subrogated to the second mortgagee, and in right of the latter, to receive this sum out of Court. They made this claim on the 22nd July, 1918, for the following reasons: At the time of the decree in favour of the third mortgagee which was made on appeal by the High Court on the 13th February, 1917, there was still due to the second mortgagee the sum of rupees 1,990. Now the decree of the High Court provided that Pingala or his assignees should be at liberty to pay the amount due under the decree obtained by the second mortgagee, and that by doing so, they would be relegated to the rights of that mortgagee. Accordingly the respondents paid rupees 1,990 to the second mortgagee, and on the 20th of December, 1917, full satisfaction by payment through the Court was recorded.

The application of the respondents for the payment out of the money in Court was resisted by the appellant, who contended that when the owner of a property subject to several mortgages pays off a prior mortgage, he is not entitled to stand in the shoes of the prior mortgagee but is to be taken as clearing the property from prior incumbrances for the benefit of the later mortgagee.

Now quite apart from the general law on the subject, the decree of the High Court, from which there was no appeal, had provided that in respect of any payment made by the owner of the property to the second mortgagee he should acquire the right of the second mortgagee. This would be sufficient for the determination of the question immediately in dispute, because the sum in Court, rupees 1,327 odd, is less than the sum of rupees 1,990 which the respondents paid to the second mortgagee when final satisfaction was entered. And accordingly the Subordinate Judge had no difficulty in deciding the immediate application in favour of the respondents.

From this decision the present appellant appealed to the High Court at Madras. This Court, in affirming the actual decision, went further and stated a principle in accordance with which the present respondents will not only be entitled to stand in the shoes of the second mortgagee in respect of rupees 1,990, paid at the time of the final satisfaction, but also in respect of several payments that they or Pingala had made from time to time to save the crops from being seized. This question, as the Judges in the High Court rightly pointed out, was not determined by the previous decree of the High Court, which only affected payments made subsequent to that decree.

It is therefore necessary to investigate matters a little more closely. It is now settled law that where in India there are several mortgages on a property, the owner of the property subject to the mortgages may, if he pays off an earlier charge, treat himself as buying it and stand in the same position as his vendor, or to put it in another way, he may keep the incumbrance alive for his benefit and thus come in before a later mortgagee. This rule would not apply if the owner of the property had covenanted to pay the later mortgage debt, but in this case there was no such personal covenant. It is further to be presumed, and indeed the statute so enacts (Transfer of Property Act, Section 101), that if there is no indication to the contrary the owner has intended to have kept alive the previous charge if it would be for his benefit.

So far therefore as Pingala or the respondents can be supposed to have bought the rights of the second mortgagee at the various times when they paid sums to him, so far they are entitled to stand in his shoes and claim priority over the present appellant, who is the third mortgagee. This could hardly be disputed by counsel for the appellant, having regard to the decisions of this Board. (*Gokuldoss Gopaldoss v. Rambux Seochand*, 11 I.A., page 126; and *Dinobundu Shaw Chowdrey v. Jogmaya Dasi*, 29 I.A., page 9; and *Mahomad Ibrahim Hossein Khan v. Amrika Pershad Singh*, 39 I.A., page 68). The point, however, on which he really relied arose under the peculiar conditions of the second mortgage, which was upon the crops as well as upon the land. He contended that sums paid to the second mortgagee to save the crops from seizure must be deemed to be sums paid in reduction of the second mortgage, and not purchases *pro tanto* of that mortgage.

Their Lordships fail to follow the contention. There was an incumbrance upon a composite security, land and crops. It became necessary for the owner subject to the incumbrance, to pay sums of money to the incumbrancer to prevent his enforcing his charge from time to time. The incumbrancer could sell his charge or portions of his charge to anyone, and there is nothing in law or good sense to eliminate the owner of the property from the list of possible purchasers. It is to the benefit of the owner that the proceedings should be deemed to be a purchase and not a redemption, and no reason appears why it should not be assumed that he intended to act in the way most beneficial to himself.

If instead of the mortgage being on lands and crops it had been on three separate estates, and proceedings had been taken against one of them only, money paid to stave off such proceedings might certainly be considered to be purchase money and not redemption money. So in the case of these crops. Any sums paid by Pingala or the respondents to save the sale of crops should be deemed to be *pro tanto* purchases of the second mortgage. It is suggested by the appellant that the sum of rupees 2,058 odd received in April, 1914, was not paid by Pingala but was the fruits of a sale in execution. If this should prove to be

so, and there is nothing to qualify it, the present respondents would not in respect of that sum be entitled to stand in the shoes of the second mortgagee. But in all cases where they have paid the money, they are entitled to the benefit. *A fortiori* they are entitled to keep the order made in their favour by the Judge of the Subordinate Court and confirmed by the High Court, and to have the money in Court paid out to them. Their Lordships will therefore humbly advise His Majesty that this appeal should be dismissed with costs.

In the Privy Council.

MALIREDDI AYYAREDDI

v.

ADUSUMILLI GOPALAKRISHNAYYA AND
ANOTHER.

DELIVERED BY LORD PHILLIMORE.

Printed by

Harrison & Sons, Ltd., St. Martin's Lane, W.C.

1923.