

Dasaraju Jagannadha Rao Pantulu Garu - - - - *Appellant*

v.

Sri Vyricherla Suryanarayanaraj Bahadur Garu and others - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 23RD OCTOBER, 1924.

Present at the Hearing :

LORD DUNEDIN.

LORD ATKINSON.

MR. AMEER ALI.

LORD SALVESEN.

[*Delivered by* LORD DUNEDIN.]

This is a case which has the appearance of great complexity, owing to the meticulous enquiry into all sorts of circumstances which has been undertaken by the learned District Judge, and has been more or less taken up by the High Court on appeal; but in the end the real questions resolve themselves into two, and into two only. The case has to do with the fate of the Zamindari of Chemudu, which at the relevant time was possessed by a Zamindar of the name of Chandra Raj. During his life-time, and after him, the estate was more or less in the hands of a set of people who seem to have indulged in every form of money lending, in suits to evade their creditors, and, indeed, in every tortuous device which is, unfortunately, too well known in India. On the 19th January, 1888, the Zamindar executed a mortgage. The present suit is one in respect of a sale in execution of a very small debt of 300 rupees, and it was raised by one Jagannadha against the representative of Chandra Raj and against Appan Dhara, who was the mortgagee under the mortgage mentioned. There is extant a sale deed of the 12th March, 1889, and if that sale deed

is valid, it at once cuts out any possible claim against Chandra Raj, but it leaves, as will appear presently, a certain claim against Appan Dhora. The main question which was raised in the case was : Was this deed of the 12th March, 1889, a valid deed, or was it not ? Their Lordships do not think it necessary to go piece by piece through the various items of evidence which have been examined by the learned District Judge and the learned Judges in the High Court. In a case such as this, where the question depends, not upon any question of law, but upon the general conclusion that is to be drawn from many minute portions of the evidence, it is evident that Their Lordships would not disturb the judgment of the Court below unless there were brought before them particular instances of where the Court below had gone wrong. Their Lordships do not find any such instances here, and they have, therefore, no hesitation upon this point in affirming the judgment of the learned Judges in the Court below, and saying that they are quite satisfied with the sufficiency of the reasons that they have set forth. But while this disposes of the case so far as Chandra Raj is concerned, it does not entirely dispose of the case as far as Appan Dhora is concerned, because the sale deed is, of course, under the burden of the mortgage, and what is still due on the mortgage must be paid. The mortgage was in this form, there were only 10,000 rupees advanced in actual cash, the other consideration being that a certain scheduled list of debts was to be paid by the mortgagees. That scheduled list of debts is before their Lordships. It is at page 113 of the Record, and it is headed : "Particulars of all debts which constitute a charge on our estate . . . which have to be discharged by you, as stated by me." Then follow a number of debts due to various people. It is admitted that, so far as all these debts are concerned, the whole thing has remained a dead letter ; nothing ever was done under it. It is also admitted that so far as the 10,000 rupees in cash were concerned, they have been duly repaid ; but at the end of the list there is an item of 9,500 rupees, "the loan previously got through Appan Dhora and to be repaid to the same Appan Dhora." It is now pleaded that this at least ought to be given to the plaintiff in right of his judgment. Their Lordships admit that this matter has given them considerable trouble, because undoubtedly if there is a scheduled list of debts in a deed, it would be in general necessary to show that that was wrong. But, on the whole, their Lordships think that there is not enough to lead them to disagree with the learned Judges of the High Court.

The matter seems to stand thus. There is no evidence whatever, except the recital, that these 9,500 rupees were ever paid to Chandra Raj, and, moreover, there were these very pregnant circumstances. In the first place, who was Appan Dhora ? He was the confidential servant of Chandra Raj, of whom it is known that he attempted, falsely after Chandra Raj's death, to father on him a supposititious child, and who, on the attempt being opposed, disappeared. The deed was executed by a man of eighty-two

within two days of his death, and then there is the still more pregnant fact that although the 10,000 rupees were repaid, not only were these 9,500 rupees not repaid, but no claim was ever made in respect of them during all the twelve years that have elapsed. Those circumstances led the learned Judges of the High Court to consider that really there was no proof whatsoever that this sum remained due, and, accordingly, they did not give effect to the plaintiff's view upon this part of the case.

Their Lordships will therefore humbly advise His Majesty that the appeal be dismissed with costs.

In the Privy Council.

DASARAJU JAGANNADHA RAO PANTULLU GARU

vs.

SRI VYRICHERLA SURYANARAYANARAJ
BAHADUR GARU AND OTHERS.

DELIVERED BY LORD DUNEDIN.

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