

Pathumsa Ammal - - - - - *Appellant*

v.

Rajagopala Mudaliyar - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 9TH NOVEMBER, 1926.

Present at the Hearing :

LORD PHILLIMORE.

LORD SINHA.

LORD BLANESBURGH.

LORD SALVESEN.

[*Delivered by* LORD PHILLIMORE.]

Their Lordships need not trouble Counsel for the respondent.

The greater number of the numerous and serious charges made in the plaint in this action have been disposed of in the Courts of first and second instance. Amongst those charges is the charge of negligence against the present plaintiff's guardian. The decree which is now complained of is admitted to have been well-founded and right, excepting in respect of two matters, the amount actually put into the decree and the short period of redemption. That it is usual to have a taking of accounts is, no doubt, the case; but if the result of taking them would be to give the same sum as that passed in the decree, there is no serious point in the Court not directing the account to be taken; and if the decree be rectified in respect of that amount, all that can be contended for is done. It is quite possible that the Judge who passed this decree did not quite, at the moment, see clearly how far the compromise went and how far he was bound, in dealing with the three defendants not parties to the compromise, to see that every item of the account and every point found against them was

proved by evidence and not founded upon the compromise. His decree could have been appealed against in respect of such matters as were not warranted by the evidence, because he could not, in reliance upon the compromise, give any judgment against those three defendants.

Now their Lordships would desire to see whether or not serious mischief would result from the fact that the decree erred in these respects. The way to do that is to imagine the decree to have been settled and to have been properly drawn. It ought, on the contention of the appellant, to have found a lesser sum due to the extent of perhaps 1,100 rupees. This their Lordships will assume, and, also that, though it is not an absolute rule of law, there should in the circumstances have been given the fullest possible term for redemption, that is, six instead of one month. Their Lordships will suppose that the decree is altered in those two points,—they still find no reason to suppose that the appellant would have benefitted if the decree had put her in that position. The appellant has not shown that she or her guardian could have done anything to save the property from sale. The sale proceedings are admitted to be regular; and the mortgagee is not making any personal claim against the defendant in respect of the deficiency still due on the mortgage. On the whole, their Lordships think that the High Court, very largely for the reasons which appear in the judgment of the learned Judges, came to the right conclusion and this appeal must be dismissed with costs. Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

PATHUMSA AMMAL

2.

RAJAGOPALA MUDALIYAR.

DELIVERED BY LORD PHILLIMORE.

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