

Narayanamma and ors. Vs. Ramayya Chetti

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Court : Chennai

Decided On : Aug-23-1898

Reported in : (1898)8MLJ199

Appellant : Narayanamma and ors.

Respondent : Ramayya Chetti

Judgement :

1. The wording of the bond does not in terms make the surety liable for the performance of the decree so as to bring the case clearly within the provision of Section 253, C.P.C. It is, however, contended for the appellant that Section 253 is applicable to all cases in which it may reasonably be inferred that the real intention was that the surety should satisfy the decree, notwithstanding that the bond does not expressly bind the surety to do so. As illustrations of such a liability cases of security taken under Sections 479 and 485, C. P. C., but in which the bonds failed to charge expressly the liability of the surety in the terms of the Code were referred to. In such cases, no doubt, the circumstances under which the security was given and the manifest object of taking the security might be properly considered, But the security in the present case was not taken under any of these provisions of the Code and we are not in a position to say that the direct object of the Court was to provide for the satisfaction of the decree. Under the terms of the bond, it was open to the Court to call upon the surety to perform his undertaking before any decree was passed and irrespective of any decree that was about to be passed. We agree with the District Judge that the case does not fall within the purview of

Section 253, and the liability of the surety cannot be enforced in execution.

2. We dismiss the appeal with costs.

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