Maran and anr. Vs. Ramanna Goundan and anr.

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Court : Chennai

Decided On : Aug-10-1897

Reported in : (1897)7MLJ269

Appellant : Maran and anr.

Respondent : Ramanna Goundan and anr.

Judgement :

1. The question raised by this appeal is whether a payment made to one of two persons jointly entitled under a mortgage bond can be pleaded as a valid discharge of the debt in an action brought by the other person interested in the bond. It is found that the party who received payment was not the agent in that behalf of the plaintiff. On the other hand, it is not suggested that there was any fraud on the part of the defendants who made the payment. The appellant's vakil in support of his contention that the payment to one joint creditor was a valid discharge of the debt as against the other, referred to Section 38 of the Contract Act and to the English ease of Wallace v. Kelsall 4 De 9 J.S.R. 345. 'An offer to one of several joint promisees has the same legal consequences as an offer to all of them. ' That is the language of the last paragraph of the section.

2. In the first part of the section, it is provided that where an offer of performance has been made and not accepted, the promisor is not responsible for non-performance. It follows that when a legal tender has been made to one of two joint promisees and refused by him, the promisor is discharged from liability in respect

of his promise. It would be difficult to reconcile with this proposition the view adopted by the Subordinate Judge, viz., that the defenants were not discharged by the payment made to the party jointly entitled with the plaintiff. But it is argued on the respondent's behalf that Section 45 of the Act, by declaring the right of the several joint promisees to performance, makes it incumbent on the debtor to satisfy them also before obtaining a complete discharge. It is also suggested that the fact of the creditor being a mortgagee makes a material difference. With regard to S, 45, we cannot see that the declaration that several joint promisees are entitled to performance is otherwise than consistent with English law, or that, unless it be construed as converting the joint rights under a contract into several rights, it conflicts with the last paragraph of Section 38. To put that construction, the section would amount to saying, that where a contract is made in favour of more than one person they must be taken to be severally entitled under it, for they cannot be jointly and severally entitled. (Bull & Leake, p. 471).

3. There is no reason whatever to suppose that this was intended by the legislature. A somewhat similar contention was raised in Hemendro v. Rajendro 13 M. and W, with reference to Section 43 of the Act as affecting the obligation of persons liable for a debt. The point there decided on the authority of King v. Hoare 13 M. and W, was that a decree against one joint debtor was a bar to an action afterwards brought against the others. The Court refused to accede to the contention that, since the passing of the Contract Act, the rule in King v. Hoare had become inapplicable, because the effect of Section 43 was to enable a promisee to sue one or two of his joint promisors severally in two or more suits. Taking together Sections 42, 43 and 45, we find that the Legislature has declared against the common law rule of survivorship as well in the case of joint creditors as in that of joint debtors. Further, in Section 44, the Act has abolished the rule of English Law according to which the release of one joint debtor operates to release his co-debtors. For the proposition that the Legislature intended to go beyond this and refuse recognition altogether to rights or liabilities in solidum, we do not think that there is any foundation. We think that effect must be given to the plain language used in Section 38 and that the question above stated must be answered in the affirmative. So construed, the section is consistent with Section 165, which lays down the rule ' that a bailee who has taken goods from several

joint owners may deliver them back to one without the consent of all. It is also consistent with the common law case of Wallace v. Kelsall and does not, as far as we can ascertain, conflict with any other case except one which might have been cited in support of the respondents and which we think it well to mention, lest it should be supposed that it has been overlooked.' We refer to Steeds v, Steeds 3, the material facts of which are similar to those in Wallace v. Kelsall. In both the cases one of the joint creditors who joined in the action has been satisfied by payment or otherwise. In Wallace v. Kelsall the plea was held good on demurrer. In Steeds v. Steeds the statement of defence was held to be good only as regards the plaintiff who had been satisfied with his share of the debt. The cases cited in the judgment in Steeds v. Steeds do not, in our opinion, altogether support the conclusion arrived at. They go to show that, in equity, persons lending money to a third person are deemed tenants in common, and not joint tenants both of the bebt and of any security held for it. Some of the cases refer to the presumption in favour of tanancy in common as against the rule of survivorship while Watson v. Dennis I L.R., 8 C, 353 which is also cited is to the effect that a purchaser of property comprised in a mortgage would not be compelled to accept the title when it appears that the receipt for the money paid to discharge the mortgage was signed by one only of the mortgagees. Lord Justice Knight Bruce in holding that the estate was not fully discharged by such a receipt carefully avoids expressing an opinion as to the question which might arise in an action for the mortgage money. In the present case it may be that a purchaser of the mortgaged property might rightly have refused to complete on the ground that the plaintiff, one of the mortgagees, was not ready to give a receipt or acknowledgment for the mortgage money. But when the question arises in an action to recover the debt, we cannot see that it makes any difference that the debt was secured by a mortgage. If the debt has been satisfied by payment, the rights under the mortgage instrument are extinguished and the action must fail. The law entitles a mortgagor to a registered receipt for his mortgage money, but does not exclude other evidence of payment or make the giving of the receipt a condition precedent to the discharge of the property. In our opinion the mortgage amount was discharged by payment made to the plaintiff's mortgagee, and therefore the suit should have been dismissed.

4. The decree of the Lower Appellate Court is set aside and that of the District Munsif restored with costs in this and the Lower Appellate Court.