

Krishnier Vs. Arappuli Iyer and ors.

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Court : Chennai

Decided On : Sep-19-1904

Reported in : (1904)14MLJ488

Appellant : Krishnier

Respondent : Arappuli Iyer and ors.

Judgement :

1. The defendant obtained a mortgage from the plaintiff in January 1891 and was put into possession of the mort-gaged land. Under the mortgage instrument the mortgagee was to pay the Government revenue payable on the land mortgaged and to take the profits in lieu of interest without reference to whether the profits were more or less in particular years. The mortgage money was payable on the 11th May 1898. In 1895 the Govern-menb revenue on the land mortgaged was enhanced from Rs. 5 to Rs. 41 and this the mortgagee paid for three years and then declined to pay more than Rs. 20 and the mortgagor paid the balance and brought this suit in 1901 for the amount so paid by him.

2. It may be a question whether in the absence of a specific con-tract to that effect a mortgagor in the position of the plaintiff could claim the amount except in a suit to redeem. As, however, no such objection was taken in this case in the courts below and as the decree in the Court of First Instance against the defendants for what should have been paid by him, with reference to the amount of revenue as it stood prior to the enhancement, has been accepted by him without any appeal

being preferred against it, we think that the question of construction raised in the lower courts and dealt with by them should be decided; and we agree with them in holding that, according to the proper construction of the instrument the mortgagee was not under obligation to pay the increased portion of the assessment. Though both the parties should be taken to have been aware that Government revenue payable on the land mort-gaged was liable to revision, there is nothing to show that the term of the mortgage as to the payment of the revenue by the mortgagee had reference to any other than the then existing settlement. Considering that the profits remaining after payment of the Government revenue were to go in lieu of interest on the money, the reasonable view is that the revenue payable under the settlement in force was all that the mortgagee undertook to pay, the ultimate responsibility in respect of any addition to the land revenue devolving on the mortgagor. See *Kamaya V. Devapa* I.L.R. 22 B. 440 and *Hira Lall v. Ganesh Pershad* L.R. 9 I.A. 68.

3. The appeal, therefore, fails and is dismissed with costs.

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