

In Re: Oruganti Appa Rao

In Re: Oruganti Appa Rao

SooperKanoon Citation : sooperkanoon.com/780772

Court : Chennai

Decided On : Mar-29-1951

Reported in : AIR1952Mad53; (1951)2MLJ86

Judge : Panchapagesa Sastri, J.

Acts : Court-fees Act, 1870 - Sections 17

Appeal No. : Appeal No. 315 of 1950

Appellant : In Re: Oruganti Appa Rao

Advocate for Pet/Ap. : Y. Suryanarayana and ;Y. Suryanarayana, Advs.

Judgement :

ORDER

Panchapagesa Sastri, J.

1. This matter has been posted before me for orders with reference to additional Court-fee now claimed by the office. The suit was for redemption of four usufructuary mortgages. The mortgages were all executed on the same day, by the same set of mortgagors, in favour of the same mortgagee. They purport to be anomalous (usufructuary) mortgages of the year 1886 for Rs. 8,500, Rs. 2,000, Rs. 2,600 and Rs. 1,500. In the lower Court the Court-fee was made up of the aggregate Court-fee as on four distinct subjects. In the High Court, however, the

learned counsel for the appellant totalled up all the amounts due under the four mortgages and paid 'ad valorem' Court-fee on that basis of the total figure. The office had no objection to it in the first instance and the appeal was registered and numbered as A. S. No. 315 of 1950. Sometime later, the office put up a note that the four mortgages must be regarded as four distinct subjects within the meaning of Section 17 of the Court-fees Act, and even in the appeal the Court-fee ought to be paid on that basis. The matter has now been posted before me.

2. The decision in 'Poliachi Town Bank, Limited v. A. S. Krishna Aiyar' 41 M.L.W. 327 is relied on as the authority in favour of the enhanced Court-fee being payable. This is a case which related to a suit by a mortgagee for sale, for recovery of amounts due under the mortgages. The present is a case of redemption of mortgage and whether this makes a difference or not, it is not necessary to consider the case in the special circumstances of this case. I am satisfied that though there are four mortgages, the transaction was intended and was really a single transaction. They are all of the same date, the property mortgaged is the same property, the mortgagors are all common and the mortgagee also is the same bank. In these circumstances, this is an exceptional case where it ought to be held on the facts that there is only one subject and not distinct subjects within the meaning of Section 17 of the Court-fees Act.

3. The Court-fee paid is sufficient and no further Court-fee is payable.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com