

Kempamma Vs. Racha Setty and ors.

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Court : Chennai

Decided On : Jan-09-1946

Reported in : AIR1947Mad329; (1947)1MLJ153

Appellant : Kempamma

Respondent : Racha Setty and ors.

Judgement :

Chandrasekhara Aiyar, J.

1. This second appeal preferred by the plaintiff raises a question of limitation with reference to a mortgage and we are concerned only with item 3. The suit was dismissed as regards this item on the ground that it was barred by limitation. The mortgage was on 20th August, 1919. In 1920, this item 3 was sold to the fifth defendant under Ex. D-1. Items 2 and 4 were sold in favour of the second defendant in 1937 under Ex. D-3. To save the suit from the bar of limitation, a payment of Rs. 36 by the first defendant's father as the mortgagor, made on 12th August, 1931, and endorsed on the deed was relied upon. Defendants 2 and 5 contested the suit, raising various defences. The plea raised by the fifth defendant that the suit was barred as regards item 3 because the payment by the father was long after its alienation in his favour, was accepted by the Courts below.

2. There is a difference between an acknowledgment of liability under Section 19 and a payment under Section 20 of the Limitation Act. On the date of the payment,

namely, 12th August, 1931, the first defendant's father remained the mortgagor, having possession of items 1, 2 and 4, though he had parted with item 3 long before. The Full Bench decision in Pavayi v. Palanivela : AIR1940 Mad470 gives rise to some doubt whether in such a case it could not be successfully urged that the suit was barred, but two later decisions have made it abundantly clear that, if a payment is made under Section 20 of the Act by the person liable to pay, a fresh period of limitation would start in favour of the creditor. The decisions are Thayyanayaki Ammal v. Sundarappa : AIR1942 Mad200 and Narayana Reddiar v. Venkatesa Reddiar : AIR1943 Mad395 . The second decision accepts the interpretation of the Full Bench decision, given by Wadsworth and Patanjali Sastri, JJ. The Chief Justice delivered the judgment in the Full Bench case as well as in Narayana Reddiar v. Venkatesa Reddiar : AIR1943 Mad395 . The principle is that so long as the mortgagor has not parted with his interest in the mortgaged properties and continues to be liable under the mortgage, he can make a payment which will serve under Section 20 of the Limitation Act to start a fresh period of limitation.

3. The view taken by the lower Courts is wrong and this appeal will stand allowed as regards item 3 with costs payable by the fifth defendant throughout, proportionate to the value of item 3.

4. It may be mentioned that the respondents did not appear at the hearing of this appeal. The fourth respondent is dead. The fifth respondent disowned any interest in the suit properties. Respondents 1 and 3 were personally served and the second respondent refused notice.

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