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Court : Chennai

Decided On : Nov-07-1930

Reported in : AIR1931Mad601

Appellant : Krishnaswami Pathar and ors.

Respondent : Ramachandra Ayyar and ors.

Judgement :

Madhavan Nair, J.

1. Defendants 3, 4 and 5 are the appellants. This second appeal arises out of a suit instituted by the plaintiff to recover a sum of Rupees 612 14-0 alleged to be due under two registered mortgage bonds assigned to him under Ex. 0 by the original mortgagee. The contesting defendants set up Ex. 1 to prove that the mortgagee agreed to receive only Rs. 425 in discharge of the mortgage bonds and a promissory note for Rs. 20. The District Munsif admitted Ex. 1 in evidence and gave a decree to the plaintiff for Rupees 156 only on the strength of this agreement. In appeal it was argued that Ex. 2 was inadmissible for want of registration under Clause (b), S. -17, Registration Act.

2. This argument was accepted by the learned District Judge and the decree of the lower Court was accordingly modified with the result that the plaintiff was given a decree for Rs. 405-14-0 with costs and subsequent interest, a larger amount than what was awarded to him by the District Munsif.

3. In second appeal it is argued that the lower Court was wrong in allowing the appellant to argue that Ex 1 was inadmissible in evidence inasmuch as that objection was not taken before the District Munsif and that the District Judge's decision that Ex. 1 is inadmissible is wrong. There are decisions of the Privy Council to show that, when a piece of evidence is irrelevant, the erroneous omission before the lower Courts to object to the admission of that evidence does not make that evidence relevant: see *A.B. Miller Official Assignee of the Estate of Ramkishan Das v. Babu Madho Das* [1897] 19 All. 76 and *him Yam Hong v. Lam Choon & Co.* A.I.R. 1928 P.C. 127; see also *Marahari v Ambabai* [1920] 44 Bom. 192. It therefore follows that the learned District Judge did not act wrongly when he allowed the appellant before him to raise the objection regarding the admission of Ex. 1 though it was not raised in the first Court.

4. The next question is whether Ex. 1 is inadmissible for want of registration. It is described as a receipt. It mentions that a certain amount of principal and interest was remitted by the executant, the mortgagee and that he has agreed to receive Rs. 425 in satisfaction of all claims. Then it says that towards that amount he has received Rs. 100 and ends with saying:

after receiving the balance of Rs. 325 (three hundred and twenty-five), I shall credit the same on the said three documents and hand them over to you along with the title-deed. This is the receipt therefor.

5. Mr. Krishnaswami Ayyar argues that this is a receipt and nothing more and that in no way it 'declares,' 'limits' or 'extinguishes' the executant's right or interest of the value of more than Rs. 100 in the mortgage security (the immovable property) within the meaning of Section 17, Clause (b), Registration Act. My attention was drawn to various decisions both by the appellant and the respondent; but I do not think it is necessary to discuss these cases as it is clear that the determination of the question must depend upon the construction of the particular document in the case. The words of Section 17, Clause (b), are very wide. As observed by Napier, J. in *Lakshmana Chetti v. Chenchuramayya* [1918] 44 I.C. 132:

It would hardly be possible to find words of wider import than we have in Clause (b), Section 17, Sub-section (2), Registration Act' which purport or operate to

create, declare, assign, limit or extinguish whether in present or in future any right., title or interest.

6. It is true that Ex I describes itself as a receipt but reading the document as a whole there can be no doubt that it limits the right or interest of the mortgagee to Rs. 325 only in the mortgage security. That is clear from the last part of the document which I have quoted. As it thus limits his right in the mortgage security to a sum which is more than Rs. 100 it clearly comes within the scope of Clause (b), Section 17, Registration Act. In my opinion Ex. I either declares or limits the right or interest of the mortgagee of the value of more than Rs. 100 in the mortgage security and therefore requires registration. I agree with the opinion of the lower Court on this question. No other question arises for decision in this second appeal. In the result, this second appeal is dismissed with costs.

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