

**Burle Jagganna and ors. Vs. Yelugula Latchanna and anr.**

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**SooperKanoon Citation :** [sooperkanoon.com/801490](http://sooperkanoon.com/801490)

**Court :** Chennai

**Decided On :** Aug-15-1910

**Reported in :** 7Ind.Cas.871

**Judge :** Miller and ;Krishnaswamy Aiyar, JJ.

**Appellant :** Burle Jagganna and ors.

**Respondent :** Yelugula Latchanna and anr.

**Judgement :**

1. There is nothing in the mortgage deed which debars the mortgagor of his right to redeem until the debt is satisfied by enjoyment of the profits of the land.
2. The plaintiffs must, therefore, get a decree for redemption of the half of the land of which the mortgagee took possession under the mortgage ; but to enable us to give him this decree, we must have findings on the 8th and 12th issues.
3. The findings should be submitted within six weeks from this date and seven days will be allowed for filing objections.
4. In compliance with the above order, the Subordinate Judge submitted the following

**FINDINGS**

1. The High Court having in S.A. No. 1446 of 1907 called for findings from this Court on the 8th and 12th issues in the suit, I proceed to record the following findings.

2. 8th Issue : The assignments referred to in this issue are those covered by Exhibits F and II. By Exhibit F dated 10th December 1886, the original mortgagee, D. Pedda Somayya, transferred his interest in the mortgage deed, Exhibit I, to D. Raman Dora, a minor by his mother and guardian Linga-yamma. By Exhibit II, date 19th February 1888, Lingayamma, as guardian of her minor son, transferred Rama Dora's interest in Exhibit I to Sri Rajah Mallu Dora Garu. The 1st defendant in this suit got his interest in Exhibit I from the said Mallu Dora Garu. There is nothing on record to show how the 1st defendant got Mallu Dora Garu's interest in Exhibit I transferred to himself. On plaintiffs' behalf, it was mentioned that the 1st defendant got his rights by a gift from Mallu Dora Garu and this was not denied by the 1st defendant. Exhibit F recites that on its date Rs. 1,923-0-0 were due under it and that by the transfer, the mortgagee took from the assignee Rs. 360 in cash and gave up the balance of Rs. 1,563-0-0 to the assignee, the latter and his father, who was the assignor's divided son, having attended on him and merited a favourable treatment at his hands. The transaction, therefore, represented by Exhibit F was not wholly a sale. It was a sale to the extent of Rs. 360-0-0 and a gift so far as the remaining sum of Rs. 1,563-0-0 was concerned. Under the law then in force, Section 135 of the Transfer of Property Act applied to the transaction so far as the transfer for Rs. 360-0-0 was concerned. The transfer of the mortgagee's interest in Exhibit I to the extent of Rs. 1,563 having been made by gift, Section 135 did not apply. Thus the 1st assignee of the mortgage covered by Exhibit I was entitled to recover the full amount of Rs. 1,923-0-0 due under it on the date of Exhibit I. But the second assignment under Exhibit II was made for Rs. 600-0-0 and no portion of Exhibit II operates as a gift. Ultimately the 1st defendant got the interest in Exhibit I transferred to himself by a gift.

2. The question is whether 1st defendant was entitled to recover the full amount of Rs. 1,923-0-0 referred to in Exhibit F, or whether he was entitled to recover only the sum of Rs. 600-0-0 mentioned in Exhibit II. The view of the lower Court, as expressed in para. 12 of its judgment, to the effect that the assignee could recover

the full amount due under the mortgage deed notwithstanding the provisions of Section 135 of the Transfer of Property Act, cannot be supported as the decisions therein referred to have been dissented from in the later Full Bench, decision of the Madras High Court in the case of Nilakanta v. Krishnasami 13 M. 225. Although the 1st assignee, Raman Dora, could realize from the mortgagor Rs. 1,923-0-0 due under Exhibit 1 on the date of Exhibit F, the 2nd assignee, Mallu Dora Garu, could not, by the operation of Section 135 of the Transfer of Property Act, realize more than Rs. 600-0-0 which he paid for the transfer obtained by him and the 1st defendant who got his interest from the said Mallu Dora Garu, cannot also claim to recover a greater sum. I find on the issue that the 1st assignee Raman Dora was entitled to recover Rs. 1,923 under Exhibit I and that the 2nd assignee Mallu Dora Garu and the 1st defendant who acquired his interest in the suit mortgage deed Exhibit I from the said Mallu Dora Garu could only recover Rs. 600 with the incidental expenses amounting to Rs. 7-0-0 and interest on the sum of Rs. 600-0-0.

3. The rate of interest to be allowed under Section 135 of the Transfer of Property Act is not necessarily the rate provided for by the mortgage deed which was the subject of transfer. It is, in my opinion, interest at a reasonable rate that can be recovered. In the present case, the amount due under Exhibit I. on the date of Exhibit II would be Rs. 9-8-0, for principal and Rs. 1,906-14-0 for interest as is shown in the statement appended to these findings. Rs. 600-0-0 being the amount that the 2nd assignee was entitled to recover by virtue of the assignment obtained by him and Rs. 9-8-0 only out of that sum being the principal, it is quite unreasonable to allow interest on the above sum of Rs. 600-0-0, which is almost wholly the interest due under the mortgage deed, at the rate of 24 per cent. per annum allowed by Exhibit I on the principal sum. In the circumstances of this case, having regard to the long period during which the mortgagee has already remained in possession of the land, it appears to me that even 12 per cent. per annum will be a high rate. I consider the ordinary Court rate of 6 per cent. per annum as the reasonable rate to be allowed in 1st defendant's favour. The fact that by the effect of Section 135 of the Transfer of Property Act, 1st defendant's assignor had to forego a considerable sum out of the interest due to him on the date of Exhibit II, cannot be allowed to influence the Court in raising the rate of

interest on the sum of Rs. 600-0-0, above referred to, as the sum due under the mortgage deed Exhibit I over and above the aforesaid sum of Rs. 600-0-0 was rightly disallowed by the legislature as a penalty for trafficking and speculation in litigation.

4. 12th issue: In determining the amount due to the 1st defendant, it has to be decided incidentally:

(i). Whether 1st defendant and his predecessors-in-title were right in crediting towards satisfaction of the suit mortgage deed only Rs. 50-0-0, a year until 1884 and at the rate of Rs. 10-2-0 from 1885 ;

(ii). Whether the above sum was to be credited first towards principal and then towards interest, or, whether it should be credited first towards interest and then towards principal and

(iii) Who was to bear the enhanced assessment of Rs. 39-14-0 imposed upon the half share in the mortgaged land in the possession of the 1st assignee Raman Dora.

5. With regard to the 1st question, it is contended by the plaintiffs that they were no parties to the proceeding by which the original mortgagor's nephew Venkatasamy acquired possession of half of the mortgaged land referred to in Exhibit I, that the mortgage was indivisible, that a sum of Rs. 100-0-0 having been mentioned therein as the lump sum to be credited annually towards the rent on the mortgaged land irrespective of vicissitudes of seasons, 1st defendant and his predecessors-in-title were bound to credit annually a sum of Rs. 100 towards satisfaction of the mortgage and that, if the transaction can on the ground of the mortgage having been deprived of half of the mortgaged land, he varied, 1st defendant may be compelled to credit at the rate of Rs. 100-0-0 a year up to the date of Exhibit D and at the rate of Rs. 180-0-0 a year afterwards, the latter being the amounts which the 1st defendant and his predecessors-in-title actually derived from the moiety of the mortgaged land in their possession as deposed to by the 1st defendant himself as defendant's 2nd witness in the suit. With regard to the rate of Rs. 180 per annum, it must be borne in mind that that was the result of the

improvements made to the above moiety of the mortgaged land by the 1st defendant at a cost of Rs. 2,000-0-0 as deposed to by the 1st defendant himself. From what my predecessor has written in paras. 2 to 6 of his judgment, it is plain that the 1st defendant has proved that the original mortgagee was dispossessed of a moiety of the mortgaged land by his brother's son Venkatasamy, that from the beginning of the mortgage only Rs. 50-0-0 being moiety of the rent of Rs. 100-0-0 referred to in Exhibit I was credited, on the mortgage deed and that the mortgagor's son was also present when some of the endorsements were made. The fact that the original mortgagee lost possession of half of the land was also mentioned in the lease, Exhibit III, dated 2nd August 1880 executed by Somayya, the son of the mortgagor and Butchi Tammayya, the son of the mortgagee. It is thus clear that both the mortgagor's son and the mortgagee acted with reference to Exhibit I as if it were a mortgage in respect of half of the mortgaged land and as if the mortgagee was liable to credit annually only Rs. 50-0-0 towards discharge of the mortgage. The above conduct on the part of the mortgagor's son must be taken to be binding on plaintiff's predecessor-in-title, who purchased the equity of redemption in the mortgaged land on 26th October 1881. It is admitted on both sides that from the year 1885 the assessment on the moiety of the mortgaged land in the possession of the original mortgagee was enhanced by Rs. 39-14-0. Under Clause (c) of Section 76 of the Transfer of Property Act, the mortgagee in possession must, in the absence of a contract to the contrary, pay the Government revenue out of the income of the property. As no contract to the contrary is proved in the present suit, I must hold that the mortgagor was liable to pay the enhanced assessment just as he was bound to pay the original assessment and that in virtue of Clause (3) of Section 76, the mortgagee was entitled to deduct the amount of the enhanced assessment from the sum of Rs. 50-0-0 which he was liable to credit towards discharge of the mortgage debt and to credit only the balance of Rs. 10-2-0. I hold, therefore, that the sum of Rs. 50 was credited rightly every year down to 1884 and that Rs. 10-2-0 was also rightly credited from 1885.

6. With regard to the 2nd question, the lower Court held that the rent on the mortgaged land was to be credited first towards principal and then towards interest. The reasons for arriving at that conclusion were mentioned in para. 15 of its judgment. My predecessor was also inclined to agree with the lower Court in

thinking that the sum should be credited first towards principal and then towards interest. I am also of the same opinion. I hold that the rent should be credited first towards principal and then towards interest.

7. With regard to the 3rd question, above referred to, I have already held in para. 5 supra that the mortgagor was bound to pay the enhanced assessment and that the mortgagee was entitled to deduct it from the sum of Rs. 50-0-0 and to credit the balance annually towards satisfaction of the mortgage.

8. Following the calculations made in the statement M appended to the lower Court's judgment, I have caused further calculations to be made and the statement of those calculations is appended to these findings. According to the finding on the 8th issue, what is due to the 1st defendant is the sum of Rs. 600, which was paid under Exhibit II, Rs. 7 for the expenses of stamp and registration in connection with Exhibit II and interest on Rs. 600 at 6 per cent. per annum from the date of Exhibit II. First defendant is, of course, bound under the terms of the mortgage deed Exhibit I to credit towards principal Rs. 10-2-0 on 12th January of every year from 1889. From the above statement it would appear that on 12th January 1910, 1st defendant was entitled to Rs. 377-4-0 for balance of principal and Rs. 649-10-1 for interest. Adding Rs. 7 to these two sums, the total would be Rs. 1,033-14-1.

9. I find, therefore, that 1st defendant is now entitled to recover from plaintiffs Rs. 1,033-14-1 with further interest on Rs. 377-4-0 at 6 per cent. per annum from 12th January 1910 till payment.

10. This second appeal coming on for final hearing, after the return of the findings of the lower Court, the Court delivered the following

5. We accept the findings and in reversal of the decrees of both the Courts below direct that the property be divided into two equal halves and the plaintiffs be placed in possession of one of those portions on payment within 4 months from this date of the sum of Rs. 1,047. In default of payment, the suit will stand dismissed. Each party will bear his own costs throughout.