

In Re: Velu Panikkan

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Court : Chennai

Decided On : Oct-03-1928

Reported in : AIR1930Mad371; 117Ind.Cas.143

Appellant : In Re: Velu Panikkan

Judgement :

Curgenven, J.

1. The civil miscellaneous appeal is against a remand order passed in appeal under Order 41, Rule 23, Civil P C., requiring the trial Court to record a finding on issue 4, which dealt with the liability of the eastern portion of the property for the mortgage debt. When the case went back to the District Munsif the mortgagee gave up this portion of the hypotheca and contented himself with asking for the sale of the western portion, the subject of the present appellant petitioner's purchase. The civil revision petition is against the District Munsif's finding that the mortgagee was competent to take this course, with the result that the western portion becomes solely liable for the debt. The District Munsif cited the Pull Bench case Perumal Pillai v. Raman Chetti [1917] 40 Mad. 968 which lays down that when a mortgagee voluntarily releases part of the mortgage security, he can recover the whole of the debt from the remainder. I do not think that the circumstance that the appellant petitioner alleges himself to be a subsequent purchaser without notice can affect either the mortgagee's right so as to relinquish part of the security or the legal effect of such relinquishment, whatever remedies

he may possess, and be able to enforce against his vendors. It may be noted that the Full Bench case expressly dissented from Ponnasami Mudaliar v. Snnivasa Naicken [1908] 31 Mad. 333 which held that a mortgagee cannot relinquish to the prejudice of subsequent alienees; and the expression of a similar opinion in Arunachalam Chetty v. Murugappa Chetty [1916] 4 M.L.W. 327 must be taken to be also overruled. The result is that the District Munsif's decision, in my view, is correct and the civil revision petition is dismissed. The civil miscellaneous appeal is also dismissed, because owing to the exoneration of the portion of property referred to, the propriety of the appellate Court's order can no longer be in question.

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