

RANGASÁMI
v.
MUTTU-
KUMARAPPA.

hypothecation being clearly distinguished on the principle enunciated by Holloway, J., in the case last above cited; and although the courts in a suit for that purpose would make a decree for the sale of the pledgor's interest in the land and for payment of the debt out of the proceeds, this was done irrespective of any condition for sale contained or implied in the contract, and an implied contract for such sale cannot, as I am now satisfied to hold, be inferred from the fact that such contracts may have been entered into by the parties with a knowledge of or even with reference to the usual practice of the courts in the case of suits brought for the recovery of money under such contracts, and there is not any such transfer of property or of an interest in property as to constitute the transaction a mortgage as distinguished from a charge in the nature of a pledge or hypothecation not being a mortgage.

PARKER, J.— I have nothing to add to the opinion I have already expressed in *Aliba v. Nanu*(1). I am of opinion that the instrument creates a charge and that art. 132 is applicable.

The second appeal was accordingly allowed and the decree of the District Munsif restored.

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Parker.*

THANGAMMÁL (PLAINTIFF), PETITIONER,

and

THYYAMUTHU AND OTHERS (DEFENDANTS), RESPONDENTS.*

Civil Procedure Code, s. 622—Small Cause suit to recover money paid by the plaintiff in discharge of a decree-debt against him and the defendants—Jurisdiction of Court to go into facts of former suit.

A sued four persons, against whom, together with A, a money decree had been passed in a previous suit, to recover a proportionate part of a sum paid by A in discharge of the decree-debt. Two of the defendants pleaded that they had not appeared in the former suit, and have been unnecessarily brought on to the record by A:

Held, that the Court had jurisdiction to inquire into the circumstances of the previous suit. *Sput Singh v. Inrit Tewari*, I.L.R., 5 Cal., 720, followed.

PETITION under s. 622 of the Code of Civil Procedure praying the High Court to revise the decree of T. Kanagasabai Mudaliar,

(1) I.L.R., 9 Mad., 218.

* Civil Revision Petition No. 107 of 1886.

Subordinate Judge of Tanjore, in Small Cause Suit No. 299 of 1885. THANGAMMAL
v.
THEYAMUTHU.

This was a suit to recover together with interest, the amount paid by the plaintiff for the defendants in discharge of a decree-debt payable jointly by the plaintiff and the defendants. Defendants Nos. 1 and 2 pleaded that they had been unnecessarily joined as defendants by the present plaintiff in the former suit in which they did not appear. The Subordinate Judge found that this plea was true and dismissed the suit as against defendants Nos. 1 and 2.

The plaintiff presented this petition.

Mr. *Norton* and *Subramanya Ayyar* for petitioner. The Subordinate Judge travelled beyond his jurisdiction in going into the facts relating to the previous suit; he had only to decide the plaintiff's claim with reference to the decree on which it rested.

Respondents were not represented.

The further arguments adduced on this petition appear sufficiently for the purpose of this report from the judgment of the Court (Collins, C.J., and Parker, J.).

JUDGMENT.—This is not a suit for contribution brought by one of several debtors against his co-debtors, in which an obligation *quasi ex contractu* may be inferred as in *Govinda Muneya Tiru-yan v. Bapu*(1). Nor is it a case in which there is no right of contribution, because plaintiff and defendants were joint wrong doers. Defendants Nos. 1 and 2 seem to have been quite needlessly included in the former litigation, and the only contesting and interested defendant was the present plaintiff. If she caused persons to be unnecessarily brought in, that fact will hardly give her a right to call upon them to contribute to costs which have been levied from her, though they by their non-appearance may have rendered themselves liable for costs to the original plaintiff.

We think, therefore, that in this case, the Subordinate Judge had jurisdiction to go into the facts *Suput Singh v. Imrit Tewari*(2). The petition must be dismissed.

(1) 5 M.H.C.R., 200.

(2) I.L.R., 5 Cal., 720.

