

APPELLATE CIVIL.

*Before Sir Arnold White, Chief Justice, and Mr. Justice
Subrahmanya Ayyar.*

CHAKKA SUBBIAH (FIRST DEFENDANT), APPELLANT,

v.

MADDALI LAKSHMINARAYANA AND ANOTHER
(FIRST PLAINTIFF AND SECOND DEFENDANT),
RESPONDENTS.*

1905
December 19.

Declaratory decree—Not to be given when suit is for cancellation and when no consequential relief prayed.

A suit for cancellation of a mortgage-deed on the ground of fraud must be dismissed in the absence of evidence of fraud and a decree declaring plaintiff's right to a smaller amount cannot be made when at the date of the plaint the plaintiff was entitled to consequential relief which he failed to claim.

SUIT to set aside a mortgage-deed for Rs. 300, dated 15th April 1901, executed by the first plaintiff in favour of the first defendant and registered on 16th April 1901, as null and void, on the ground that it was obtained fraudulently and without consideration.

Issues 1 and 2 were—

(1) Is the suit bond not supported by consideration.

(2) Was it executed under the circumstances alleged in the plaint.

The District Munsif found that the suit bond was not proved to be unsupported by consideration, and on the second issue, that no circumstances were proved to have existed so as to invalidate the suit bond.

He dismissed the plaintiff's suit.

The plaintiff appealed.

The material portion of the Subordinate Judge's judgment is as follows:—

"All circumstances put together and anxiously considered drive me to the conclusion that the suit mortgage-deed has had no consideration to the extent of Rs. 170 and the rest was paid to or for the first plaintiff.

* Second Appeal No. 2477 of 1903, presented against the decree of M.R.Ry. I. L. Narayana Rao, Subordinate Judge of Kistna at Masulipatam, in Appeal Suit No. 147 of 1903, presented against the decree of M.R.Ry. K. Sundaram Chetty, District Munsif of Bezvade, in Original Suit No. 194 of 1901,

In the result I shall modify the decree of the lower Court and adjudge that the suit mortgage-deed has had no consideration to the extent of only Rs. 170 and that each party will bear his or their own costs in both Courts."

CHAKRA
SOBBIAR
v.
MADDAI
LAKSHMI-
NARAYANA.

First defendant preferred this second appeal.

C. Ramachandra Rau Saheb for appellant.

P. Naghabhushanam for first respondent.

JUDGMENT.—The Plaintiff (the mortgagor, sued for the cancellation of a mortgage-deed on the ground of fraud.

The Court of First Instance held that there was no fraud and dismissed the suit. The lower Appellate Court also held that there was no fraud but in effect made a declaration in the plaintiff's favour that the mortgage-deed was not a security for Rs. 300 but only for Rs. 130. As the lower Appellate Court found no fraud it ought to have affirmed the decree of the Court of First Instance dismissing the suit.

The lower Appellate Court appears to have thought it open to treat the suit as one for a declaration; but as at the date of the suit, according to the view taken by the lower Appellate Court, the plaintiff was entitled to consequential relief and failed to claim this relief, the declaration cannot be upheld. We set aside the decree of the lower Appellate Court and restore that of the District Munsif. We make no order as to costs.
