

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Munro.

NAGARURU SAMBAYYA (DEFENDANT), APPELLANT,

v.

TANGATUR SUBBAYYA (PLAINTIFF), RESPONDENT.*

1903.
January 8, 9.
March 18.

Civil Procedure Code—Act XIV of 1882, s. 545 Transfer of Property Act, ss. 58, 59—Security bond given under s. 545, Civil Procedure Code, mortgaging immoveable property of above Rs. 100 in value requires registration under ss. 58, 59 of the Transfer of Property Act.—Registration Act, s. 17, exception (i), does not apply to the case.

A security bond given to the Court under section 545 of the Civil Procedure Code was in the following terms : -

Until the disposal of my appeal in the District Court I pledge my immoveable property which is described in the schedule annexed and which free from all encumbrances, such as mortgage, etc., to others, to the Court, for Rs. 1,382-4-9 which is the amount of the decree due to the plaintiff.

If the result of the appeal be against me I hereby bind myself to allow the plaintiff to recover the whole amount of the said decree which I should pay, by my immoveable property, and, if the said property be insufficient, from me. Until the whole decree amount is discharged I will not sell or make a gift of the said property to others. I thus executed this security bond.

The bond was attested by two witnesses but was not registered.

The order of Court "Security accepted" was endorsed on it:

Held, that the security bond amounted to a mortgage within the meaning of section 58 of the Transfer of Property Act and, not being registered, was invalid under section 59 of the Act as a mortgage and did not affect the property.

The bond was also compulsorily registrable under section 17 of the Indian Registration Act.

The words "Security accepted" hereby show that the Court thought the security sufficient. The bond does not derive its validity from these words, and it cannot therefore be brought within section 17, exception (i) of the Registration Act.

Tokhan Singh v. Girwar Singh, (I.L.R., 32 Calc., 494), followed.

THE facts of the case were as follows :—

The plaintiff, in Original Suit No. 802 of 1898 on the file of the District Munsif's Court, Proddatur, obtained a decree against

* Second Appeal No. 378 of 1904, presented against the decree of J. W. Hughes, Esq., District Judge of Cuddapah, in Appeal Suit No. 17 of 1904, presented against the decree of M.R.Jy. K. S. Kothandarama Aiyar, District Munsif of Proddatur, in Original Suit No. 516 of 1903.

one Korapolu Kondayya on the 25th September 1899. On the 3rd January 1900 Kondayya applied to the Munsif's Court for a stay of execution of the decree offering to give security. The District Munsif suspended execution pending the receipt of an order from the District Court staying execution. Kondayya filed Appeal Suit No. 47 of 1900 and obtained from the District Court an order, dated 3rd April 1900, staying execution on his furnishing security. On 18th April 1900 Kondayya executed a security bond in the terms set out in the judgment in this case. The Munsif passed orders on 19th April 1900 accepting the security bond and staying execution of the decree. On 19th March 1901 the appeal was dismissed, and the District Munsif's decree was confirmed. In the meanwhile Kondayya transferred the property which he had given as security to his wife; and a claim preferred by the wife was dismissed. The wife then brought a suit to enforce her claim. That suit was dismissed. In the meantime, and after the date of the security bond, the defendant Sambayya in this suit filed a suit against Kondayya, Original Suit No. 404 of 1901, and obtained a decree. The property given as security for the plaintiff's decree was sold through Court, and Rs. 914-3-0 was realised. Sambayya claimed rateable distribution of the sum realised in satisfaction of his decree and an order was passed allowing him to such, and in pursuance of this order he obtained from the Court Rs. 429-7-9 on the 8th October 1902. The plaintiff contended that the defendant was not entitled to get anything out of the sale-proceeds of that property until the full satisfaction of the decree for which it was given as security, and that the defendant was liable to refund that money to the plaintiff, and also to pay interest at 9 per cent. per annum. Hence this suit.

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The defendant pleaded *inter alia* that the bond not being registered could not affect the property comprised therein.

Both the lower Courts held that the security bond did not require registration and decreed the plaintiff's claim.

The defendant appealed to the High Court.

T. Ethiraja Mudaliar for appellant.

V. V. Srinivasa Ayyangar for respondent.

JUDGMENT.—The question raised in this second appeal is whether a security bond given under section 545 of the Civil Procedure Code whereby immoveable property exceeding Rs. 100

NAGARURU in value is pledged to the Court, which is accepted by the Court
 SAMBAYYA requires registration in order to make it effective against the
 2. property.
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We are of opinion that the question must be answered in the affirmative. The terms of the bond are as follows:—"Until the disposal of my appeal in the District Court I pledge my immovable property which is described in the schedule annexed . . . to the Court for Rs. 1,382-4-9 which is the amount of the decree due to the plaintiff.

"If the result of the appeal be against me I hereby bind myself to allow the plaintiff to recover the whole amount of the said decree which I should pay by my immovable property and if the said property be insufficient, from me. Until the whole decree amount is discharged I will not sell or make a gift of the said property to others. I thus executed this security bond."

The document is signed by the obligor and is attested by two witnesses.

In our opinion this document effects a transfer to the Court of an interest in specific immovable property to secure a future debt which may become due from the defendant to the plaintiff, and, as such, it is a mortgage as defined in section 58 of the Transfer of Property Act, and it therefore requires registration under section 59 of the Act as amended by section 3 of Act VI of 1904 even though the amount of the mortgage be less than Rs. 100, and also under section 17 of the Indian Registration Act, III of 1877, when the amount is not less than Rs. 100. It is suggested that the order of the Court "Security is accepted" which is endorsed on the bond, is what gives the bond validity, and that the document therefore falls within exception (i) to section 17, but we do not think that this is so. The words "Security is accepted" are we take it merely an intimation by the Court that the property given as security is sufficient for the purpose.

The view we have taken is in accordance with the latest decision of the Calcutta High Court in *Tokhan Singh v. Girwar Singh* (1), and is not, we think, inconsistent with the case of *Thirumalai v. Ramayyar* (2) as explained in *Arunachellam v. Arunachellam* (3), or with the decisions of the Privy Council in *Pranal*

(1) I. L. R., 32 Calc., 494.

(2) I. L. R., 13 Mad., 1.

(3) I. L. R., 15 Mad., 203.

Anni v. Lakshmi Anni(1), *Bindosri Naik v. Ganga Saran Sahu*(2), which were cited in the argument before us.

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We may add that though the Civil Rules of Practice in force in the Courts subordinate to this Court are silent on the subject, yet the practice of the Courts is to register such bonds, and Rule 117 of the High Court Rules, Appellate Side (relating to appeals to the Privy Council) provides that "When the security offered consists of immoveable property, the appellant shall file a mortgage bond duly registered together with a specification of the surety's title."

Lastly, we would observe that registration appears to be necessary for the protection of third parties who otherwise might deal with property which had been given as security in ignorance of the incumbrances on it, thus frustrating one of the main objects of the Registration Act.

As the security bond in the case before us was not registered as required by law, it does not affect the mortgaged property, and the plaintiff's suit must be dismissed with costs throughout the decrees of the Courts below being set aside.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Miller.

PONNUSAMI MUDALIAR AND OTHERS (PLAINTIFFS), APPELLANTS,
v.
SRINIVASA NAICKAN AND OTHERS (DEFENDANTS Nos. 1 to 5, 9,
12 AND 14 TO 16), RESPONDENTS.*

1908.
February 27,
28.

Transfer of Property Act - Act IV of 1882, s. 85--Mortgagee releasing part of mortgaged property cannot enforce entire claim against the other portions--Section 85 of the Transfer of Property Act does not necessitate the dismissal of a suit where no relief claimed against persons not joined as parties.

A mortgagee cannot release a part of the mortgaged land and then seek to enforce his entire claim upon another portion in which third parties have become interested as assignees of the equity of redemption.

(1) I. L. R., 22 Mad., 508.

(2) I. L. R., 20 All., 171.

* Appeal No. 39 of 1905, presented against the decree of M. R. Ry. T. T. Ranga Chariar, Subordinate Judge of Kumbakonam, in Original Suit No. 72 of 1903 (*vide* Civil Miscellaneous petition No. 245 of 1903).