

APPELLATE CIVIL.

*Before Mr. Justice Nánábhái Haridás, Mr. Justice Birdwood, and
Sir W. Wedderburn, Bart., Justice.*

DA'MODAR GANGA'DAR, MORTGAGEE, v. VA'MANRA'Y LAKSHMAN,
MORTGAGOR*.

1885.
January 16.

Stamp—Mortgage—Stipulations not creating fresh obligation.

Under the ordinary law of mortgage the mortgagor is bound, so long as the equity of redemption remains with him, to indemnify the estate against expenses incurred in protecting the title. So that where a mortgage bond contains stipulations under which the mortgagor engages to repay to the mortgagee any costs he may incur in suits brought against him by the mortgagor's co-sharers, and also any debts charged upon the mortgaged property which the mortgagee may pay, the stipulations do not create any fresh obligation, and require no additional stamp duty.

This was a reference by the Commissioner, C. D., under section 46 of Act I of 1879, for the orders of the High Court.

The Commissioner stated the case thus :—

“ Vámanráv Lakshman passed a mortgage bond† to Dámodar Gangádar.

* Civil Reference, No. 1 of 1885.

† The following are the stipulations contained in the mortgage bond passed by Vámanráv Lakshman to Dámodar Gangádar :—

“ I became indebted to people for the marriages of my daughter and son and for family expenses. In order to pay off the same, I had formerly borrowed Rs. 999 from Rájashri Bálkrishna Mahádev Gadre on the security of Chiranjiv Rájashri Balvant Amrit Gole. The period thereof having expired, Gadre demanded the money from the security. In consequence of the same, the said Balvant pressed me for payment, and as Gadre pressed Balvant very hard, he (Balvant) borrowed moneys from you and paid to Gadre Rs. 1,049, and paid me Rs. 101 for paying off my debts due to other persons. In all he received from you Rs. 1,150, and in respect of the said debt he (Balvant) asked me to pay you off; but as I did not succeed in obtaining the sum from others, it has been agreed between him, you, and me that I should pass a mortgage bond in writing. The principal sum due to you is Rs. 1,150, interest on the said sum is Rs. 47-7, and the cash received for the costs of this document is Rs. 17-9. In all, Rs. 1,215 are due to you. The interest on the same is agreed to be paid at the rate of annas 12 per cent. *per month*, to be calculated at compound interest. The time for the payment of the same is fixed at twelve years.

Should the moneys remain unpaid beyond the fixed time, I shall be paying the interest as heretofore agreed until all the moneys are paid off. As to the account which is to be calculated thereon, the same should be made up at every Diválí,

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"The condition, that the mortgagor is liable for any expenses the mortgagee may have to incur in consequence of any dispute among the kinsmen, inserted in the mortgage deed, cannot be considered as matter necessarily connected with a mortgage pure and simple. It must, therefore, be viewed as matter forming the basis of an indemnity bond, and section 7 of Act I of 1879 should accordingly be made applicable to the case. If the amount of consideration on which the stamp duty is assessable cannot be ascertained, the party concerned should be asked to state the same, he being informed that he will not be able to claim more under the instrument than the amount so stated."

The parties did not appear before the High Court.

WEDDERBURN, J.—In this case the mortgage bond contains certain stipulations under which the mortgagor engages to repay to the mortgagee any costs he may incur in suits brought against him by the mortgagor's co-sharers, and also any debts charged upon the mortgaged property which the mortgagee may pay. The Commissioner, C. D., is of opinion that these are conditions. And it has been agreed that the amount of interest be paid quarterly, and Rs. 100 out of the principal sum be paid every year. According thereto, I will be paying the same. Until the amount of the interest and the sum of Rs. 100 out of the principal amount is paid in full, I will not ask you to calculate the interest at '*katmitti*' (1). Although the abovementioned time is fixed, still should I get moneys sufficient to pay at once, you are not to refuse to receive the same. The mortgage for the security of this is certain property situated at mauje Pariche of taluka Purandhar in the district of Poona which has been given into your possession. As to whatever Government dues, local-fund cess, and whatever settlement dues on *inām* lands which are now required to be paid, or whatever dues may be in future fixed thereon after an increase or decrease is made therein, or should assessment be levied on houses, all that I shall pay to the Government officers at appointed places and times, and shall repair dams and stone embankments and preserve the land-marks. Should I fail to do so, and should you have to make payments, &c., for the same, the said sum in that case, or should my brothers and relatives or others raise any dispute in the way of your enjoyment of the property, whatever costs you will have to incur for settling it, all that I shall pay, and should the property be found encumbered by debt or otherwise, and should you pay the said sum, the same I shall pay, and should there be any occasion for filing or defending a suit in a Civil Court, or in a Revenue Court of the *Māndatdār*, or in a Criminal Court, I shall render such assistance as shall be reasonably required for the same. Whether the same is gained or lost, whatever

(1) "*Katmitti*," is a mode of settling the interest upon a loan, *viz.*, of reducing the principal from time to time according to the several payments made, with their accrued interest.

not necessarily connected with a mortgage pure and simple, and the question is, whether an additional stamp should be charged as for an indemnity bond? It appears to us that the question should be answered in the negative. Under the ordinary law of mortgage, the mortgagor is bound, so long as the equity of redemption remains with him, to indemnify the estate against expenses incurred in protecting the title, (*vide* Fisher on Mortgage, 3rd ed., Vol. II, page 947). The stipulations referred to do not appear to create any fresh obligation, and only tend to maintain in favour of the mortgagee the original security which is the purpose of the instrument.

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Answer accordingly.

would be the amount of costs which may be incurred therein, I shall first pay off the same after calculating the interest on the whole sum at the end of each year at the rate of one per cent. *per* month from the respective dates of such costs, and then pay off the whole above mentioned sum and redeem the mortgaged property. I shall pay your amount out of the mortgaged property; or, if the same be not sufficient to make up the sum, I shall pay it myself without going to the Court. You are to receive out of the profits whatever expenses may be annually incurred for the management of the said property together with interest thereon, and deduct from the remaining profits the amount of interest on the mortgage amount, and as to whatever surplus amount of profits will remain, you are to credit the same, towards the payment of the abovementioned mortgage debt. Should the amount of interest perhaps exceed that of the profits, the profits should be deducted from the interest; and as to whatever sum of the interest will remain unpaid, the same should be entered on the debit side. I will pay interest thereon according to the above stipulations.

“The surety for this is Balkrishna Vaman Gole, who says: ‘All the terms of the agreement given in writing by my father are agreed to by me. He, (my father), will abide by the same, and pay off your sum. Should he fail to do so, I will pay off the whole amount according to the conditions abovementioned.’”