

Periyanayagammal Vs. Batcha Sahib and anr.

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Court : Chennai

Decided On : Jul-14-1944

Reported in : AIR1945Mad45

Appellant : Periyanayagammal

Respondent : Batcha Sahib and anr.

Judgement :

Byers, J.

1. This civil miscellaneous second appeal arises out of a compromise decree in a suit Under Order 21, Rule 63, Civil P.C. Under the terms of the compromise, plaintiff's title to the property in suit was recognized and she was to pay the plaintiff in the prior suit Rupees 600 with subsequent interest. The compromise went on to recite that a mortgage right in the property was thereby created in favour of the decree-holder and that on payment of the amount this mortgage was to stand discharged; in default of payment of the amount the suit properties were to pass to the decree-holder by right of purchase and he was to be allowed to take possession of the property by means of a warrant obtained in execution proceedings. The amount was never paid and eventually the decree-holder applied for possession of the property; this was ordered in the executing Court, and the appeal against it was dismissed by the learned Subordinate Judge.

2. Part of the argument in this Court is that the compromise amounts to a clog on the equity of redemption, and there has also been some discussion regarding the right of the holder of a compromise decree for money to seek execution against properties charged for the payment of the amount, but it seems to me that both these contentions ignore the main issue in the case. According to the terms of the compromise, the plaintiff's title which she asserted in her suit Under Order 21, Rule 63, Civil P.C., was recognized and she undertook to pay a sum of Rs. 600 and subsequent interest to the decree-holder. This the decree-holder was at liberty to enforce, and if a charge was created on the property for the payment of this amount the decree-holder could doubtless enforce the charge; but it is difficult to see how the parties could by their agreement provide that what was to all intents and purposes a simple decree for money should by default of one of the parties automatically become a decree for the possession of immovable property or, according to another line of argument, a mortgage decree for sale. If only a charge was created, as is maintained by Mr. Basheer Ahmed Sayeed, the decree-holder can proceed against the property to enforce payment; but if, on the other hand, a mortgage was created, in which connexion it is of interest to note that the decree was properly registered, then the decree-holder can only proceed against the property by seeking to enforce the mortgage. Whether it is a charge or a mortgage, I purposely refrain from stating at

this stage, but I am quite satisfied that under this compromise decree the decree-holder cannot ask for possession of the property as if he had got a decree for possession. The decree-holder can acquire title to the property either by a properly executed and registered transfer or by means of a decree for possession, but title cannot pass in the manner contemplated by the parties automatically by default for non-performance of a condition precedent in a razinamah decree. In the result the appeal is allowed and the petition for delivery of possession is ordered to be dismissed with costs throughout. Leave to appeal is refused.

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