

Madras High Court

Kannappa Samiyar And Ors. vs The Madura Hindu Permanent Fund on 19 January, 1909

Equivalent citations: 1 Ind Cas 909

Bench: A White, Benson

JUDGMENT

1. We are unable to agree with the Commissioner and the District Judge as to the principle on which the accounts in this case should be taken. We think the monthly payments which have been made under Rule 2 of the Articles of Association of the Fund should be credited towards the mortgage loan. The 1st defendant when he became a member of the Society was under a contractual liability to pay Rs. 20 a month as the subscription on his shares. If he had incurred no liability by taking an advance on mortgage, he would, if he paid Rs. 20 a month for 7 years, have been entitled to receive from the Society Rs. 2,050, the amounts of his subscriptions plus interest. When he took an advance on mortgage he covenanted by the mortgage deed to pay interest on the mortgage and also pay Rs. 20 a month. No doubt this Rs. 20 a month is described in the mortgage deed as the money which he had agreed to pay under Rule 3, but the fact that he covenanted to pay this amount in the mortgage deed seems to us to indicate that the intention was, that these payments should be treated as payments on account of the mortgage. Otherwise there seems no object in inserting this covenant in the mortgage deed, since the subscriber was already under a contractual obligation to pay the Rs. 20 as a member of the society holding 20 shares. Further, this Rs. 20 a month is referred to in a later portion of the deed as instalments. This expression would be inappropriate if, according to the case for the respondents, these payments were not to be allocated pro tanto to the discharge of the mortgage debt.

2. We must, therefore, ask for a finding by the District Judge in accordance with the judgment as to the amount, if any, due under the mortgage.

3. The finding should be submitted within four months from this date. Ten days will be allowed for filing objections.

4. The second appeal coming on for final hearing after the return of the finding the Court delivered the following Judgment

5. On the finding, which we accept, we dismiss the suit as against the 6th defendant and as against the property purchased by the 6th defendant with costs throughout. We modify the decree as against defendants Nos. 1 to 5 by adding Rs. 748-5-7 to the sum of Rs. 202-14-8 in Clause (b) of paragraph 3 of the District Judge's judgment. The defendants Nos. 1 to 5 must pay the plaintiff's costs in the Court of first instance. There will be no further order as to costs.