

Privy Council Appeals Nos. 30 of 1932 and 98 of 1933.

Rajah Kocherlokota Venkata Jagannatha Rao Garu, Zamindar
of Polavaram - - - - - *Appellant*

v.

Maharajah Ravu Venkata Kumara Mahipati Surya Rao Bahadur,
Zamindar Garu of Pittapur, and others - - - *Respondents*

Maharajah Ravu Venkata Kumara Mahipati Surya Rao Bahadur,
Zamindar of Polavaram, and others - - - *Appellants*

v.

Raja Kocherlakota Venkata Jagannatha Rao Garu, Zamindar
of Polavaram, and others - - - - - *Respondents*

Consolidated Appeals

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 28TH APRIL, 1936

Present at the Hearing:

LORD THANKERTON.

SIR SHADI LAL.

SIR GEORGE RANKIN.

[*Delivered by* SIR SHADI LAL.]

The circumstances, which led to the action giving rise to these consolidated appeals brought by both the parties, may be shortly stated. One Krishna Rao, the late Zamindar of Polavaram in the Madras Presidency, borrowed, on different dates, from the Maharajah of Pittapur (to be described hereinafter as the plaintiff) large sums of money; and secured the payment thereof by executing three successive mortgages of his estate in favour of the creditor. The last of these mortgages was granted on the 22nd October, 1913, as a security for a loan of more than three lakhs of rupees; and it was on the strength of this mortgage that the plaintiff instituted, after the death of the mortgagor, a suit for the recovery of the debt, impleading as defendant the mortgagor's widow. She subsequently adopted a minor boy, Jagannatha Rao, as a son to her deceased husband, and the adopted son was then added as a defendant (to be referred to hereinafter as the defendant). The suit resulted

in a decree for more than four lakhs of rupees, to be realised by the sale of the mortgaged property. The decree-holder brought the property to sale, and on the 28th October, 1920, he himself purchased it with the leave of the Court for six lakhs of rupees. After deducting from that price the sum due to him under the decree, he deposited the balance, Rs.139,986-1-0 in Court.

It appears that the widow and her son were anxious to retain the village of Polavaram (with its hamlets), which was the ancestral property of the Zamindar; and it was, therefore, arranged between the auction purchaser and the minor's mother that the former should re-convey, for the sum deposited by him in Court, the village to the minor. But that sum was claimed by the puisné mortgagees, and it was then agreed that the minor's mother, who was his guardian, should pay Rs.139,986-1-0 for purchasing the village in question. Pursuant to this arrangement, the auction purchaser and the guardian submitted, on the 29th November, 1920, an application to the Court stating the terms of the compromise and asking it to sanction the compromise as a transaction beneficial to the minor. Thereupon the Court made the following order :—

“ The sale of the property sold in auction on 28th October, 1920, is confirmed, with the exception of the property set out in the compromise petition of 29th November, 1920, which the decree-holder has agreed to leave to the minor Zamindar of Polavaram on the terms of the compromise petition.

* * *

“ A sale certificate for the extent of property, the sale of which is confirmed, will be issued to the plaintiff.”

The guardian was, however, unable to find the money for payment to the plaintiff, but, as she was anxious to acquire the property for her minor son, she, on his behalf, granted on the 14th December, 1920, a simple mortgage of the village to the plaintiff as a security for the price, with her personal covenant for the payment thereof. But no payment was made to the mortgagee in satisfaction of the debt, and he brought in May, 1924, the present action against the defendant, who had attained majority; and sought to recover the money by sale of the mortgaged property.

To this action various defences were raised, but they were overruled by the trial Judge who granted a decree for sale. On appeal, the High Court held that the transaction could not operate as a mortgage, as the deed had not been attested as contemplated by the definition of the expression “ attested ” contained in the Transfer of Property (Amendment) Act, No. 27 of 1926. This finding has not been challenged on behalf of the plaintiff, and must be treated as final.

The plaintiff, however, sought the same relief on the strength of his alternative claim to have a vendor's lien for the unpaid purchase price, which constituted a charge on the property sold by him. This claim has been disallowed by

the High Court on the ground that the transfer in question was not a sale which would create a lien in favour of the plaintiff. The learned Judges did not, therefore, declare the debt to be a charge on the village, but treating it as an unsecured debt they directed that it should be realised from the "general assets" of the defendant.

The question which their Lordships have to determine is whether the transaction of the 29th November, 1920, whereby the village in question became the property of the defendant did or did not amount to a sale. That village, along with other mortgaged property, was, as stated, sold to the plaintiff on the 28th October, 1920; and the period, within which the judgment-debtor could apply to the Court for setting aside the sale, was 30 days from the date of the sale. During that period no such application was made by him, and the title of the auction purchaser became unimpeachable. On the 29th November, 1920, the Court executing the decree made an order confirming the sale in favour of the plaintiff in respect of all the property purchased by him except the Polavaram village. The reason for this exclusion was clear. In accordance with the compromise, which had received the sanction of the Court, this village was to become the property of the defendant, and it was, therefore, considered to be an act of supererogation, first to record a formal order confirming the judicial sale thereof in favour of the auction purchaser, and then to sanction its sale by him to the defendant. It is obvious that, after the expiry of the statutory period for setting aside the sale, there was no person who could question the title of the auction purchaser, and a certificate of sale granted by the Court would in such a case be a formal document of title. In the absence of an order setting aside the sale the Court is bound to confirm it, and the law does not prescribe any special period for an application for an order of confirmation.

Moreover, the transferee agreed to accept such right, title, and interest, as the transferor had acquired by the Court sale; and he cannot be allowed to impugn the character of the transaction which alone enabled him to keep the property.

It is, however, argued that the consideration for the transaction consisted of two parts, viz.: a sum of money, and a promise by the transferee to abstain from raising objections to the auction-sale of the mortgaged property; while sale, as defined by section 54 of the Transfer of Property Act, IV of 1882, is a transfer of ownership in exchange for a price. Now, the transfer was made apparently for a definite sum of money, and was described as a sale. It is true that the deed of compromise mentions also the promise in question but apart from the fact that this promise was valueless, there is hardly any instrument of sale which does not contain some stipulations by the parties; and if the addition of a covenant by the transferee

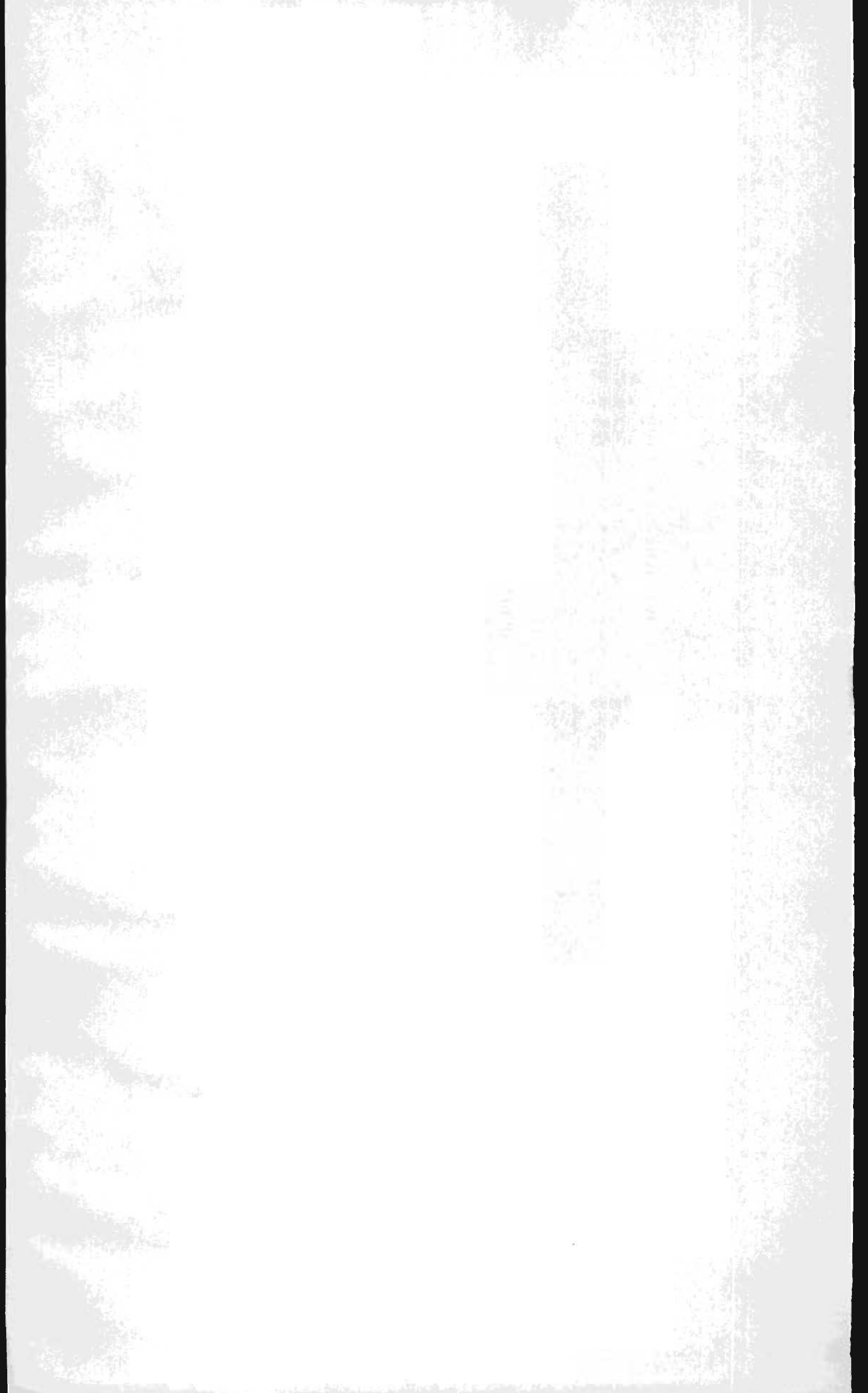
would change its real character, it would be difficult to find a transaction which could be held to be a sale. For example, a covenant by the purchaser giving the vendor a right of pre-emption does not convert the sale into some other transfer, even though the transferee would, in the absence of such a covenant, have paid a larger price for the property. There can be little doubt that both the parties intended the transfer in question to be a sale, and in substance it was nothing but a sale.

Their Lordships are, therefore, of the opinion that the transfer of the property by the plaintiff to the defendant constituted a sale; and under section 55 (4) (b) of the Transfer of Property Act the seller was entitled to a charge upon the property in the hands of the purchaser for the amount of the purchase money and for interest thereon. This charge can be enforced by a sale of the property under section 100 of that statute and under Order 34, Rule 15, of the Civil Procedure Code, as in the case of a simple mortgage.

The learned Judges of the High Court concurred with the trial Court that the plaintiff's claim amounted, on the 6th July, 1925, to Rs.202,591-9-0, and they awarded interest thereon at 6 per cent. per annum from that date until the date of payment. They also found that, as the defendant was a minor at the time of the transaction in question, he could not be held personally responsible for the payment of the debt. This finding has not been contested, and as the claim for the personal liability of the defendant is negatived, the plaintiff is not entitled to recover the money from the "general assets" of the defendant.

The decree granted by the High Court, which makes the entire property of the defendant liable for the debt, can not be upheld, and ought to be set aside. In lieu of that decree, the plaintiff must get a decree in the following terms:—That, in default of the defendant paying on, or before, the 30th September, 1936, the sum of Rs.202,591-9-0, with interest thereon at 6 per cent. per annum from the 6th July, 1925, until the date of payment, the village of Polavaram (with its hamlets as described in the mortgage-deed of the 14th December, 1920) shall be sold, and the proceeds of the sale (after deduction therefrom of the expenses of the sale) shall be paid into Court and applied in payment of the amount due to the plaintiff.

The appeals preferred by the parties are allowed *pro tanto*, but the defendant, having failed on the main issue, must pay, not only the costs of the Courts below as directed by the High Court, but also the costs incurred by the plaintiff here. Their Lordships will humbly advise His Majesty accordingly.



In the Privy Council.

RAJAH KOCHERLAKOTA VENKATA
JAGANNATHA RAO GARU, ZAMINDAR
OF POLAVARAM

^{2.}
MAHARAJAH RAVU VENKATA KUMARA
MAHIPATI SURYA RAO BAHADUR,
ZAMINDAR GARU OF PITTAPUR, AND
OTHERS

MAHARAJAH RAVU VENKATA KUMARA
MAHIPATI SURYA RAO BAHADUR,
ZAMINDAR OF POLAVARAM, AND
OTHERS

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RAJA KOCHERLAKOTA VENKATA
JAGANNATHA RAO GARU, ZAMINDAR
OF POLAVARAM, AND OTHERS

DELIVERED BY SIR SHADI LAL

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