Privy Council Appeal Nos. 47 & 74 of 1937

Maung Po Hla and another - - - -

v.

Ma Ngwe Sint and others - - - - -

Same - - - - - - -

v.

Ma Ngwe Sint and others - - - -

(*Consolidated Appeals.*)

FROM

THE HIGH COURT OF JUDICATURE AT RANGOON

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 12TH MAY, 1938.

Present at the Hearing:

LORD WRIGHT.

SIR SHADI LAI.

SIR GEORGE RANKIN.

[*Delivered by* SIR GEORGE RANKIN]

In this case two appeals from the High Court at Rangoon have been consolidated. They arise out of two mortgage suits brought by the appellants in the District Court of Pyapon. In each suit there were three defendants—two of whom were impleaded in both suits.

In appeal No. 47 the mortgage sued upon was a sub-mortgage of some 125 acres of paddy land in Pyapon township to secure a loan of Rs.7,000 with interest at 18 per cent. per annum. In appeal No. 74 the mortgage sued upon was of four pieces of paddy land in the same township to secure a loan of Rs.13,000 with interest at 16½ per cent. per annum. These mortgages were effected by registered deeds both dated 23rd September, 1924. The appellants' suit to enforce the sub-mortgage was brought on the 19th June, 1933, and their suit upon the other mortgage on 23rd January, 1934. The suits came on for hearing in October, 1934, and October, 1935, respectively, before different Judges in the same District Court and in each case the plaintiffs succeeded at the trial in obtaining a preliminary decree for sale on the footing that the whole of the loan and of the interest due under the mortgage deed was due and unpaid. On appeal to the High Court these decrees (dated 31st October, 1934, and 9th October, 1935) were set aside and both suits were dismissed on the ground that the whole of

the debt and of the interest had in each case been satisfied and discharged before the suit was instituted. The ultimate decision of the High Court (Mya Bu J. and Baguley J.) in the case upon the sub-mortgage was given on 18th August, 1936, after an application for review had been allowed. The result of the review was to confirm the Court's original decree of 14th November, 1935, dismissing the suit. In the case upon the other mortgage there was a difference of opinion between the two learned Judges of the Appellate Bench (Mackney J. and Mya Bu J.) and the case was under article 34 of the Letters Patent of the Court laid before Mosely J., who, agreeing with Mya Bu J., allowed the appeal and dismissed the suit.

The defence which has been accepted in both suits by the High Court is that the mortgage debts had been paid off by the supply of paddy to the plaintiffs' rice mills. The mortgagors in the case of the sub-mortgage were Sein Su and his mother: in the case of the other mortgage Sein Su, his mother and his brother Sein Kar. The plaintiffs Po Hla and Po Cho are Chinese brothers who owned rice mills at and near Rangoon. The defendants say that the loans were made by the plaintiffs to enable the defendants to obtain and deliver paddy to be milled by the plaintiffs. The High Court has accepted the defendants' evidence in respect of the following deliveries the value whereof has in the opinion of the High Court been proved to exceed the sums due upon the mortgages in suit:—

2,515 baskets of Ngasein paddy on 28th September, 1924.
2,267 baskets of Ngasein paddy on 29th October, 1924.
5,006 baskets of Kauknyin paddy in October, 1925.
4,000 baskets of Midon paddy in December, 1927.

The defendants say that they have from time to time endeavoured to get the plaintiffs to come to a settlement as to the exact sums due in respect of these deliveries and they produce accounts purporting to show the cost to the defendants of these consignments. The plaintiffs' case is that the monies lent by them were lent as an investment upon a high rate of interest and upon security of the land: though no doubt the defendants wanted the money to trade with. The plaintiffs have been in possession throughout of the mortgage deeds and no receipt for any principal or interest has at any time been given or indorsed thereon. Upon the question of the deliveries of paddy the plaintiffs produce no accounts, saying that their practice is to destroy their accounts after three years. The plaintiffs do not deny that paddy was at times delivered to their mills by the defendants, but say that the transactions were settled at the time. This the defendants deny save that it is agreed that Rs.1,000 was paid at the time of delivery on account of the sum due in respect of the 4,000 baskets of Midon paddy.

The controversy is clearly one of fact. It has given much difficulty to the Courts in Burma: the two District Judges and Mackney J. being in favour of the plaintiffs, while Mya Bu, Baguley and Mosely JJ. were in favour of

the defendants. For the purpose of estimating the probabilities of the case local knowledge is particularly important: and the learned Judges of the High Court at Rangoon are in this respect specially qualified—in some cases by long experience of the paddy market in Burma; whereas the habits and business methods of Chinese rice millers and of Burman cultivators are matters upon which their Lordships have no special means of knowledge. Upon a careful examination of the evidence their Lordships are not prepared to dissent from the conclusions arrived at by the High Court. They think it proved that paddy was delivered to the plaintiffs' mills as alleged by the defendants, and they do not accept the contention that the loans were made by the plaintiffs merely as an investment upon the security of the land. They agree with the majority of the Judges in the High Court in thinking that the purpose of the loans was to enable the defendants to procure and deliver paddy to the plaintiffs' mills. They think that the sub-mortgage was not at all a likely choice on the part of the plaintiffs if they were merely seeking an investment, and that it is improbable that the plaintiffs should have settled with the defendants in respect of transactions in paddy without retaining anything in respect of the interest due upon the mortgages. The plaintiffs' explanation of the absence of all accounts—that their practice is to destroy all accounts after three years—cannot in their Lordships' opinion be readily accepted. It is for the defendants to prove that the loans were repaid, but if the evidence given on their behalf be accepted as true, the burden has been discharged notwithstanding that more business-like methods would have enabled them to give better proof. While the case presents some difficulty their Lordships think that the reasons given by the High Court, and in particular by Mosely J., who was the last Judge to deal with the matter, are sufficient to justify the decrees appealed from.

They will humbly advise His Majesty that the appeals should be dismissed with costs.

(49606—3A) Wt. 8168—30 200 5/38 P. St. G. 338

In the Privy Council

MAUNG PO HLA AND ANOTHER

v.

MA NGWE SINT AND OTHERS

SAME

v.

MA NGWE SINT AND OTHERS

Consolidated Appeals.

DELIVERED BY SIR GEORGE RANKIN

Printed by HIS MAJESTY'S STATIONERY OFFICE PRESS,
Pocock Street, S.E.1.

1938