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Present: The Hon. Sir Joseph T. Hutchinson, Chief Justice,  
and Mr. Justice van Langenberg.

MUTTUPILLAI v. CHINNAPILLAI *et al.*

D.C., Jaffna, 6,119.

*Action on a bond by a person not entitled to sue on the bond—Money paid under sanction of Court—Second action on the bond by person lawfully entitled to sue.*

The law will never compel a person to pay a sum of money a second time which he has paid already under the sanction of a Court of competent jurisdiction, provided that the person has done all that was incumbent on him to resist the payment.

A granted a bond in favour of B. After B's death, C, who was B's illegitimate child, alleging that she was the sole heiress of B, sued A on the bond and obtained judgment. And thereupon A paid the sum due on the bond to C. Subsequently D, who was the legitimate child of B, as administratrix of B's estate, sued A on a copy of the bond. Under the circumstances of this case, it was held that D could not maintain the action against A.

**T**HE facts are set out in the judgments.

*Kanagasabai* (with him *Balasingham*), for the appellant.—The first defendant was aware that there were two persons claiming the money due on the bond. She should have brought to the notice of

the Court, when she was sued by Sivakamipillai, that the present plaintiff had also claimed the money due on the bond. If she allowed judgment to go against her without bringing these facts to the notice of the Court, she could not be said to have done all in her power to resist the payment. Sections 466 and 467 of *Pothier* relied on by the District Judge do not apply. The principle enunciated there must be read in the light of the illustrations given by *Pothier*.

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*Tisseverasinghe*, for the respondents (first to eight).—The first defendant paid the money under legal compulsion (*Mohamado v. Ibrahim*<sup>1</sup>). He had just grounds for considering that Sivakamipillai was the real creditor after the mortgagee's death. He cited *Pothier*, sections 466, 467; 2 *Nathan* 795.

*Tambyah*, for the ninth respondent.

*Balasingham*, in reply.

*Cur. adv. vult.*

May 27, 1910. HUTCHINSON C.J.—

The plaintiff sues on a mortgage bond made by Chinnapillai (first defendant) and Ponnachi dated December 28, 1901, in favour of Saravanamuttu for Rs. 250 and interest. Saravanamuttu died in November, 1903, and the plaintiff sues as his administratrix. Ponnachi died in April, 1903, intestate; the second to the eighth defendants are her heirs; they are minors, appearing by their guardian *ad litem* the first defendant.

After Saravanamuttu's death an action was brought on the bond in July, 1904, by Sivakamipillai against Chinnapillai, both personally and as administratrix of the estate of Ponnachi. In that action Sivakamipillai alleged that the mortgagee, Saravanamuttu, had died intestate, leaving property worth less than Rs. 1,000, and leaving her his sole heiress; that the mortgagor, Ponnachi, had died intestate, and that the first defendants Chinnapillai had obtained letters of administration to Ponnachi's estate; and she filed an affidavit in proof of these allegations. Chinnapillai filed no answer, and a decree was made on August 18, 1901, for payment of the amount due on the bond by her to Sivakamipillai, and on August 25, 1904, she paid it in pursuance of the decree.

On July 6, 1906, the present plaintiff, Muttupillai, applied to the District Court for letters of administration to the estate of the deceased mortgagee, Saravanamuttu, alleging that she (being his only daughter by his first wife) and Natchipillai (his widow) and Saravanamuttu (his grandson, the only son of his daughter, the said Sivakamipillai, by his second wife, the said Natchipillai) were his sole heirs, and that he left property worth Rs. 1,850. It seems that Sivakamipillai was then dead, although there is no evidence of it.

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The respondents to that application were Natchipillai and the father of the alleged grandson (who was a minor); they disputed the applicant's right; there was a trial, and the Court decided that Natchipillai was not the lawful wife of the deceased mortgagee, that Sivakamipillai had therefore no interest in his estate, and that the applicant was his sole heiress; and letters of administration were granted to her accordingly. She then brought this action against the surviving mortgagor (the first defendant) and the minor children of the deceased mortgagor Ponnachi, claiming from them the money due on the bond; the first defendant is not sued as the administratrix of Ponnachi, apparently because she has (so the plaint alleges) conveyed all Ponnachi's property to the minors, although I do not see how a transfer to minors, who cannot even give a receipt, could discharge the first defendant from her liability.

The defendants in their answer pleaded the payment to Sivakamipillai in pursuance of the decree, and that, as she produced in that action the original bond and the title deeds of the mortgaged lands and proved her claim by an affidavit, the first defendant paid her the debt in good faith and got from her a receipt and the title deeds, and that the payment was a good discharge for the debt. They also alleged that the plaintiff, having allowed Sivakamipillai to remain in possession of the bond and title deeds, and having so led the defendants to pay the debt to her, was estopped from now suing them for it.

Afterwards the Court ordered the plaintiff to take steps to join as a party the heiress of Sivakamipillai, and the ninth defendant was accordingly joined. No one, however, made any claim against her, and the action as against her was dismissed and the plaintiff was ordered to pay her costs.

This action is brought on a copy of the bond. There is no evidence as to what has become of the original; it is presumably in the possession of the first defendant.

At the trial the plaintiff deposed that she came to know of the bond after her father's death; that she spoke about it to the first defendant seven or eight months after her father's death (which would be about the time when Sivakamipillai's action was brought), and that the first defendant told her "that two persons were demanding money, and that she would pay the right person after letters were taken out."

The District Court dismissed the action, and I think rightly. In the former action Sivakamipillai alleged that the mortgagee had died intestate, that his estate was worth less than Rs. 1,000, that she was his sole heir, and that the bond debt was still due; she proved all those allegations; and the Court thereupon made its decree. No collusion is alleged between her and the defendant. The defendant was compelled by the decree to pay her, and in my opinion the payment was a sufficient discharge, and the present plaintiff cannot

call on her to pay over again, although an action might perhaps have been maintained, if brought within due time, against Sivakamipillai to recover the amount which he received.

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No Roman-Dutch authority exactly in point has been quoted to us; but Pothier on *Obligations*, sections 466, 467 (referred to in the District Court) and 2 *Nathan* 795, support the view that payment under such circumstances is a good discharge. Sivakamipillai was apparently in possession of the mortgagee's inheritance; she had the bonds and the title deeds; she had to prove her title to maintain her action, and in particular to prove that the mortgagee's estate was worth less than Rs. 1,000—a point on which the Court was bound to satisfy itself, whether the defendant raised it or not.

The plaintiff has made the added defendant a respondent to the appeal in order to complain of the order as to costs, but I see no grounds for interfering with that order.

I would dismiss the appeal with costs.

VAN LANGENBERG A.J.—

The first defendant and her daughter Ponnachi executed a mortgage on December 28, 1901, in favour of one Saravanamuttu. Ponnachi died in 1903. I gather that the first defendant administered her estate and conveyed all Ponnachi's property to her heirs, the second to eighth defendants.

Saravanamuttu died in November, 1903. It appears that he first married Theywanipillai, and he had a child by her (the plaintiff). This marriage was not registered. He in the lifetime of Theywanipillai contracted another marriage (registered) with Natchipillai, and had a daughter by her name Sivakamipillai. Sivakamipillai, claiming to be the sole heiress to her father's estate, instituted on July 18, 1904, an action No. 3,781, D. C., Jaffna, against the first defendant personally and as administratrix of Ponnachi's estate on May 18, 1904, and obtained judgment for the full amount due on the bond now sued on in this case. In case No. 3,781 Sivakamipillai filed an affidavit, in which she stated that she was the sole heiress, and that her father's estate was under Rs. 1,000 in value, so that there was no necessity for administration. She, further, in the said case produced and filed the original bond. The first defendant discharged that judgment by payment to Sivakamipillai on August 25, 1904.

On July 6, 1906, plaintiff, claiming to be entitled as heir to half of Saravanamuttu's estate, applied for letters of administration to her father's estate. Sivakamipillai was then dead, but her mother Natchipillai and her son Saravanamuttu (the ninth defendant in this case) were made respondents. The grant of letters was opposed, and in the course of the proceedings it was held that Sivakamipillai was illegitimate and that plaintiff was sole heiress.

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The plaintiff as administratrix of her father's estate and sole heiress brings this action against the first to eighth defendants to recover the amount due on the bond.

The defence is that the defendants having been compelled by process of Law to pay the amount due on the bond to Sivakamipillai, the debt has been discharged, and it is therefore not competent for the plaintiff to maintain this action. The principle is laid down by Bonser C.J. in *Mohamado v. Ibrahim*<sup>1</sup> that the law will never compel a person to pay a sum of money a second time which he has paid already under the sanction of a Court of competent jurisdiction, provided that the person has done all that was incumbent on him to resist the payment, and the case of *Turnbull v. Robertson*<sup>2</sup> was referred to.

Applying this principle to this case, there was proof before the Court that Sivakamipillai was the sole heiress, and that her father's estate was under the value of Rs. 1,000.

It is not shown here that the first defendant was in a position to contest either fact. Further, the original bond was produced, and it is not surprising if the first defendant thought the rightful heir was suing. Compelled as he was through no fault of his own to pay the debt, I hold that it is not competent for plaintiff to claim the amount again, and I therefore think that the judgment should be affirmed.

I will not interfere with the order for costs made in favour of the ninth defendant. I agree to the order proposed by my Lord.

*Appeal dismissed.*