

Present: De Sampayo J.

1918.

FERNANDO *et al.* v. HAMIDU.

15—C. R. Panadure, 13,930.

Assignment of mortgage bond for a small consideration without disclosing that part payment had been made—Action against assignor for the balance—Can assignee recover more than the amount paid by him from debtor?

The defendant, who held a mortgage bond for Rs. 300, assigned it to the plaintiffs, in consideration of Rs. 150 without disclosing that Rs. 144.18 had been previously paid by the mortgagor. The plaintiff was able to get judgment only for the balance, Rs. 155.87, and sued defendant for Rs. 144.18.

Held, that the plaintiffs were entitled to judgment.

Obiter.—The assignee of a bond can recover the full amount of an assigned instrument though it be more than he paid for the assignment, except, perhaps where the assignment is in the nature of a speculative or litigious transaction.

THE facts appear from the judgment.

E. W. Jayawardene, for defendant, appellant.

Weeraratna, for plaintiffs, respondents.

1919.

*Fernando
v. Hamidu*

May 21, 1919. DE SAMPAYO J.—

The defendant, who held a mortgage bond for Rs. 300, assigned it to the plaintiffs, in consideration of Rs. 150 paid to him by them. It appears to be common ground that nothing was disclosed in the assignment as to any part of the debt due on the mortgage bond having been previously received. The plaintiffs sued the mortgagor on the bond in another action, and were there met with the defence that out of Rs. 300 due on the bond a sum of Rs. 144.13 had been paid by the mortgagor to the defendant. The defendant was informed of this plea on the part of the debtor. The result of the action was that the plaintiffs got judgment only for the balance sum of Rs. 155.87. Accordingly the plaintiffs have brought this action to recover from the defendant the sum of Rs. 144.13, for which they failed to get judgment in the previous action against the mortgagor. Practically the claim is made upon the footing that the defendant had misrepresented matters to the plaintiffs and induced them to take the assignment. In the answer in the present case the defendant admitted that he had received from the mortgagor the sum of Rs. 144.13, but pleaded that he had informed the plaintiffs of that fact, and really meant to assign to the plaintiffs the balance of the mortgage amount. The principal question formulated as an issue at the trial was whether the defendant informed the plaintiffs that he had received the sum of Rs. 144.13. Evidence was given by both parties, but the Commissioner found that plaintiffs knew nothing of that payment until the plea of payment was put in by the mortgagor in the previous action, and he accordingly entered judgment for the plaintiffs for the sum of Rs. 144.13, but disallowed the claim for the further sum of Rs. 100, which the plaintiffs had claimed as costs incurred by them in the previous action. It seems to me that the judgment of the Commissioner is perfectly right. Mr. Jayawardene, for the defendant, however, urged that an assignee of a bond of this kind could not by our law recover more than the amount paid by him for the assignment. This question was discussed long years ago, but not then finally determined, but the view taken since has been that the full amount of an assigned instrument can be recovered, except, perhaps, in a case where the assignment is in a nature of a speculative or litigious transaction, but no such character is attributable to the present assignment. Moreover, the point has not been definitely raised either in the Court below or in the petition of appeal.

For these reasons I dismiss the appeal, with costs.

Appeal dismissed.