

A **MASLA MANI**

v.

ANRUD SINGH

B [SUPREME COURT, 1964 (Hammett Ag. C.J.) 10th October 1963,
17th January 1964.]

Civil Jurisdiction

C *Moneylending—loan fulfilling conditions of s.30 of the Moneylenders Ordinance—Ordinance not applicable—loan secured by mortgage of leasehold—crop lien as collateral security not subject to Ordinance—Moneylenders Ordinance (Cap. 207) ss.16, 30(a).*

D Where a loan secured by a registered mortgage of leasehold land and otherwise fulfilling the conditions of section 30 of the Moneylenders Ordinance is therefore one to which the Ordinance does not apply, the effect of section 30(a) of the Ordinance is that a crop lien, given in the present case by a person other than the original mortgagor, as collateral security for that loan, is also not subject to the Ordinance.

Action for declaration that two crop liens and contracts were void by reason of the Moneylenders Ordinance.

E A. D. Patel for the plaintiff.

T. J. McNally for the defendant.

The facts sufficiently appear from the judgment.

HAMMETT Ag.C.J. [17th January 1964]—

F The Plaintiff's claim is for a Declaration that two contracts entered into by him with the Defendant for the payment of money and two Crop Liens given as security are void under the Moneylenders Ordinance, and for an order that money received by the Defendant under these Crop Liens be refunded to him.

The facts are not in dispute, and I hold them to be as follows :—

G On 25th June, 1957, the Defendant, who was a registered Moneylender at all material times, lent £2,052-9-1 at 10 per cent interest to one Naga f/n Raghavan. Naga gave the Defendant a Bill of Sale, a Crop Lien and a Mortgage, No. 66007, over some 45 acres of native leasehold land, named Navasiraki, owned by him as security for repayment of the loan.

H On 25th June, 1958, Naga entered into a Deed of Family Arrangement with four of his relatives of whom Masla Mani f/n Murgessan, the Plaintiff in this action, was one. The effect of this was that Naga divided his 45 acres of land named Navasiraki into five more or less

equal portions, of which he kept one portion himself and allowed each of these four relatives to use one portion. As a part and parcel of this arrangement these four relatives each agreed to assume responsibility for and promised to repay a proportionate part of the balance of the debt due from Naga to the Defendant, which then amounted to £1,364-14-3, and which was secured by the Mortgage over the whole area of land. A

Although space was provided at the foot of this Deed of Family Arrangement for the Defendant to execute it, he did not in fact do so. It is however clear that he did know of it. I say this because on 12th June, 1959, he entered into a memorandum of contract with Masla Mani in which it was recited that Masla Mani was presently indebted to him to the extent of £364-13-2 and was giving him a Crop Lien over a part of Navasiraki, namely 9 acres thereof which was stated to be: B

“Collateral security with Mortgage and Bill of Sale dated 25th June, 1957, and given by Naga f/n Raghavan.” C

This is one of the contracts and Crop Liens in respect of which the Plaintiff in this action seeks a declaration that they are null and void as having been made contrary to the provisions of the Money-lenders Ordinance.

On 10th May, 1961, the Plaintiff entered into a further contract with the Defendant in which he gave him a further Crop Lien which was again stated to be: D

“Collateral security with the Mortgage and Bill of Sale dated 25th June, 1957, and given by Naga f/n Raghavan.”

The Defendant relies on the provisions of Section 30 of the Money-lenders Ordinance of which the material part reads: E

“ 30. This Ordinance shall not apply to any loan which fulfils all the following conditions, and no such loan shall be taken into consideration in determining whether or not a person is a moneylender—

- (a) the loan is secured by a registered mortgage of freehold or leasehold land with or without collateral security;” F

Subsections (b) to (e) of Section 30 contain the remainder of the conditions that must be fulfilled if the contract is not to be subject to the provisions of the Moneylenders Ordinance.

It is conceded by the Plaintiff that all these conditions were fulfilled in respect of the original contract for money lent between Naga and the Defendant, dated 25th June, 1957. I am quite satisfied that this is so. That contract was not therefore subject to the provisions of the Moneylenders Ordinance. G

The provisions of Section 30(a) make it clear that if a loan by a moneylender is secured by a registered Mortgage of land with collateral security, the Moneylenders Ordinance shall not apply to that loan. It must of necessity follow that the Ordinance shall also, not apply either to that Mortgage or collateral security to that Mortgage. H

A Since the two Crop Liens which the Plaintiff seeks to have set aside in this action were collateral securities to a registered Mortgage which was the security for a loan to which the Moneylenders Ordinance does not apply, it follows that these two Crop Liens are also not subject to the Ordinance. They are therefore neither void nor unenforceable for that reason.

B This disposes of the only effective part of the Plaintiff's claim. The remainder of the claim concerns the somewhat academic point of whether the memoranda of contract, purporting to be made under the Moneylenders Ordinance, by which the Plaintiff agreed to give these two crop liens, offended the provisions of Section 16 of the Moneylenders Ordinance.

C I doubt if Section 16 applies to these memoranda of Contract at all. These were not contracts for the loan of money but were contracts whereby the Plaintiff agreed to give Crop Liens as collateral securities for loans to which the Moneylenders Ordinance did not apply. In my opinion such contracts were neither void nor unenforceable.

The Plaintiff is not entitled to any of the reliefs sought in this action.

D There will therefore be Judgment for the Defendant with Costs to be taxed.

Judgment for the defendant.