

Kora Nayar Vs. Ramappa

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Court : Chennai

Decided On : Dec-07-1893

Reported in : (1894)ILR17Mad267

Judge : Muttusami Ayyar and ;Best, JJ.

Appellant : Kora Nayar

Respondent : Ramappa

Judgement :

1. The Judge's finding that the full amount was not tendered cannot be accepted. It is clear from the plaintiff's petition that the amount of Rs. 674-3-9 was tendered in full discharge of what was due under the mortgage. Defendant agreed to accept the amount and to pass a receipt. He did not then say that the tender was deficient by annas 4-4, as is now pleaded. Beading the two petitions together, the reasonable inference is that defendant agreed to accept the tender in full satisfaction as provided in Section 83 of the Transfer of Property Act. That such was the case is clear from the receipt registered by him on the day that the present suit was brought, in which he has accepted this very amount in full discharge of the mortgage.

2. It is next argued that the tender was conditional. No doubt Section 83 is silent as to a receipt. But defendant not only waived the objection to this demand, but, acceding to it, produced a draft receipt for approval. Nor do we think that the

request for return of the title-deeds was a condition vitiating the tender, as the section requires that the title-deeds should be deposited before the mortgagee takes out the money.

3. As to the case in *Nairn v. Manchu* I.L.R. 14 Mad. 49 the mortgagor in that case appears to have insisted on the return of documents other than those which the mortgagee was bound to deposit under Section 83.

4. We therefore set aside the decree of the Lower Appellate Court and restore that of the District Munsif.

5. Respondent must pay appellant's costs in this Court and in the Lower Appellate Court.

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