

Krishnasami Chettiar Vs. Thippa Ramasami Chettiar and ors.

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SooperKanoon Citation : sooperkanoon.com/809548

Court : Chennai

Decided On : Nov-04-1910

Reported in : (1912)ILR35Mad44

Judge : Benson and ;Krishnaswami Ayyar, JJ.

Appellant : Krishnasami Chettiar

Respondent : Thippa Ramasami Chettiar and ors.

Judgement :

1. The only question argued in this case relates to mesne profits and costs. The suit is one for redemption of a mortgage. Before the suit the plaintiff paid the mortgage money into Court under Section 83 of the Transfer of Property Act. Notice was issued to the mortgagee and he refused to take the money. Upon the pleadings we must assume, with the District Judge, that the plaintiff thereupon withdrew the deposit. The question is whether interest ceases from the date of deposit. We must answer the question in the negative. Under Section 84 of the Act interest ceases when the mortgagor 'has done all that has to be done by him to enable the mortgagee to take such amount out of Court.' Neither Section 83 nor Section 84 state expressly what are all the things that the mortgagor has to do. It is enough if he pays the proper amount into Court and causes a notice to issue to be served upon the mortgagee? There is nothing more that he has got to do under Section 83. Can he then withdraw the money even before the mortgagee appears to claim it? Most certainly not, if he wants interest not to run. Why should he be at

liberty to do so because the mortgagee appears and refuses to take it? There may be nothing to prevent it if he makes no claim for the cessation of interest. Suppose the mortgagee changes his mind and applies to the Court for payment. We can see nothing in Section 83 to preclude his doing so. If the money does not remain in deposit but has been in the interval withdrawn, he cannot of course be paid. But why should the mortgagor who has taken back the money and possibly made use of it or derived some other benefit from it, be entitled to the cessation of interest from the date of the original deposit? Section 84 appears to us to presuppose the continuance of the deposit to justify the claim to the cessation of interest. In the case of tender, continued readiness to pay has been held necessary for the cessation of interest. See *Geyles v. Hall* (1740) 2 P.W. 377, *Kinnaird v. Trollope* (1889) 42 Ch. D. 610, *Bank of New South Wales v. O'Connor* (1889) 14 A.C. 273 also *Fisher on Mortgages*, Section 1951, and *Jones on Mortgages*, Vol. 1, Section 899. It is true *Velayuda Naiaker v. Hyder Hussan Khan Sahib* I.L.R. (1910) Mad. 100 raises the question as to how far this rule has been departed from in India, but it is there observed 'it is not alleged in this case that there was a subsequent demand by the mortgagee for the amount and that the mortgagor failed to pay.' However this may be, the matter appears to stand upon a clearer footing as regards deposit. We cannot understand the word 'has deposited in Court' to include 'has deposited in Court and subsequently withdrawn.' It is quite conceivable that tender may be complete even though after it is once rejected there is no subsequent readiness to pay, but we cannot speak of a person having deposited in Court, if he has withdrawn his deposit. As regards costs also the Judge is right. There is no reason to depart from the rule laid down by Lord Selborne in *Cotterell v. Stratton* (1872) 8 Ch. 295. 'The right of a mortgagee in a suit for redemption or foreclosure to his general costs of suit, unless he has forfeited them by some improper defence or other misconduct is well established.' In *Kinnaird v. Trollope* (1889) 42 Ch. D. 610 Stirling, J, after quoting Lord Selborne adds at page 619 'it is well settled that the mere fact of a mortgagee claiming more than he is entitled to is not sufficient to deprive him of his costs.' The second appeal, therefore, fails and is dismissed with the costs of the first respondent. The appellant will also pay the third respondent's costs on the value of the property claimed by him.

