

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

KORA NAYAR (PLAINTIFF), APPELLANT,

v.

RAMAPPA (DEFENDANT), RESPONDENT.*

1893.
December 7.

*Transfer of Property Act—Act IV of 1882, s. 83—Deposit in Court by mortgagor—
Full and unconditional tender.*

The fact that a certain sum of money tendered under section 83 of the Transfer of Property Act, and accepted by the mortgagee as the full amount due, is afterwards denied by him to be the full amount, and that the tender is accompanied by a claim to a registered receipt (to which the mortgagee agrees) and to the return of the title-deeds does not render the tender conditional and therefore invalid. *Nannu v. Manchu*(1) distinguished.

SECOND APPEAL against the decree of W. C. Holmes, District Judge of South Canara, in appeal suit No. 137 of 1892, reversing the decree of J. Lobo, District Munsif of Kassargod, in original suit No. 329 of 1891.

The facts of the case appear sufficiently for the purpose of this report from the foregoing and from the judgment of the High Court.

The District Judge, setting aside the decree of the District Munsif in favour of the plaintiff, passed a decree for the defendant.

The plaintiff preferred this appeal.

Narayana Rau for appellant.

Madhava Rau for respondent.

JUDGMENT.—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. Reading 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

* Second Appeal No. 437 of 1893.

(1) I.L.R., 14 Mad., 49.

KORU NAYAN
v.
RAMAPPA. day that the present suit was brought, in which he has accepted this very amount in full discharge of the mortgage.

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.

As to the case in *Nanu v. Manchu*(1) 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.

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

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

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

BHAGIRATHI (PLAINTIFF), APPELLANT,

v.

ANANTHA CHARIA AND OTHERS (DEFENDANTS), RESPONDENTS.*

Hindu law—Maintenance—Suit to recover arrears of maintenance due under a personal decree, and to establish a charge for future maintenance on the family property.

A Hindu widow obtained a personal decree against her father-in-law for maintenance. Her late husband's five brothers were made parties to the suit, but no personal decree was made against them, nor did the widow ask that her maintenance be made a charge on the family property. On the death of her father-in-law, the family property devolved on his sons and grandsons, who sold certain of the property. There were arrears of maintenance due, and the widow instituted the present suit, in which she asked for a decree establishing her right to receive maintenance for her life and for the arrears of maintenance on the responsibility of the property:

Held (1) that the maintenance not having been declared a charge upon the portion of the property which had been alienated, this property was free of any charge for her maintenance;

(1) I.L.R., 14 Mad., 49.

* Second Appeal No. 304 of 1893.