

deduction of the sum of Rs. 313-12-0 from the mortgage amount and the same with regard to the leases connected therewith.

The plaintiffs are not entitled to the custody of the documents in preference to the first defendant and those claiming through him and who also possess an interest under those documents.

The question of the tenth defendant's liability for rent cannot be gone into in this suit.

The first defendant will pay the plaintiffs' costs throughout. The other parties will bear their own.

MAHABALA  
BHATTA  
v.  
KUNHANNA  
BHATTA.

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## APPELLATE CIVIL.

*Before Mr. Justice Subramania Ayyar and Mr. Justice Benson.*

ARAVAMUDU AYYANGAR (PLAINTIFF AND PETITIONER),  
APPELLANT,

v.

SAMIYAPPA NADAN (DEFENDANT No. 5 AND COUNTER-  
PETITIONER), RESPONDENT.\*

1897.  
December  
7, 9.  
1898.  
April 4.

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*Limitation—Order to pay money—Money paid after due date.*

When an order has been made for the payment of money in a suit on a certain date and the Court was closed on that date, a payment made on the following day would be a good payment for the purposes of the order.

APPEAL against the order of B. Macleod, Acting District Judge of Tinnevely, in Appeal Suit No. 78 of 1895, reversing the decree of S. Mahadeva Sastri, Acting District Munsif of Satur, on Miscellaneous Petition No. 17 of 1895.

The petitioner was the plaintiff in Original Suit No. 669 of 1893. The facts of the case were stated by the District Judge as follows:—

“According to the terms of the decree in Original Suit No. 669 of 1893, the second instalment became payable on 6th January 1895. That day was a holiday and the Court re-opened after the Christmas holidays only on 8th January 1895. The judgment-debtor put in a memorandum asking for a chellan to enable him to deposit the money in the Taluk treasury on 8th January 1895.

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\* Appeal against Appellate Order No. 89 of 1897.

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No chellan appears to have been granted to him on that day. Again on the 9th, the pleader for the decree-holder put in a receipt for the sum which the judgment-debtor was to have paid in Court and was ready to receive the money. The judgment-debtor did not put in his appearance that day, and the Court rejected the memorandum for chellan put in by the judgment-debtor and passed an order on the receipt put in by the decree-holder recording it, as no money was paid that day on the 10th January; the judgment-debtor again offered to deposit the money in the Taluk treasury and applied for a chellan through his pleader Subramania Pillai. He also applied by a petition on the same day asking the Court to have the money deposited on that day as having been paid on the 8th January 1895.

“The petition put in on 10th January 1895 was returned on 11th January 1895 for quoting the section of the Civil Procedure Code under which it was presented. The petition was presented again on the same day with the remark that as there was no special provision, the section had not been quoted. That same day the Court ordered that ‘the money has been deposited in time, no further order is necessary’ without giving any notice to the decree-holder and behind his back. The decree-holder applied on 12th January 1895 to have the aforesaid order set aside and to have the deposit, made on 10th January 1895, declared as made beyond time. Notice was given of this application for review and the judgment-debtor put in his counter-petition. The counter-petitioner states that he was all along ready to deposit the money in Court since 8th January 1895, and that as no chellan was given him, he was not able to deposit the money on 8th January 1895, that though he was all along waiting in Court, for the chellan on 9th January 1895, he was called just when he had left to the river and his petition was rejected. His payment of money on 10th January 1895 must, therefore, be deemed to have been made in time and that there are no grounds to review the order.

“The fact of payment of money only on the 10th January 1895 is admitted. It is further admitted that the Court made the order on 11th January 1895 without notice to the decree-holder. No explanation why the counter-petitioner did not insist for a chellan on 8th January 1895, or why he did not pay the money to the pleader for decree-holder who seems to have been all along ready to receive the money before the Court as appears by his

receipt. I don't believe the Court has power to extend the time fixed by the decree. The decree makes the payment on 6th January 1895 peremptory. As the Court was closed for the Christmas holidays on 6th January 1895 then and opened only on 8th January 1895, the only course open to judgment-debtor was to have anyhow paid the money on 8th January 1895 if the Court was open. It is not said that the Court was not open on 8th January 1895. It is said that he was asked to come on 9th January 1895 for depositing the money. No deposit was made on the 8th January or on the day following. The payment on 10th January cannot, under circumstances, be taken to have been made on the re-opening day, *i.e.*, 8th January 1895."

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The District Munsif set aside the order of the 11th January 1895, but the District Judge on appeal reversed his decision holding that the defendant who appealed was not responsible for the delay and that the order referred to should be maintained.

The plaintiff preferred this appeal.

*Desikachariar* for appellant.

*V. Krishnasami Ayyar* for respondent.

JUDGMENT.—The last day for payment into Court would admittedly have been the 6th January 1895 but for the fact that on that day the Court was closed. The first question is whether the fact that the Court was then closed entitled the fifth defendant (respondent) to pay the money on the first day thereafter that the Court was open, *i.e.*, on the 8th January. We think he was so entitled. The case *Dabee Rawoot v. Heeramun Muhatoon*(1) cited by the respondent is a direct authority in favour of this view. The principle on which the rule depends is thus stated in *Shooshee Bhusan Rudro v. Gobind Chunder Roy*(2):—"Although the parties themselves cannot extend the time for doing an act in Court, yet if the delay is caused not by any act of their own, but by some act of the Court itself—such as the fact of the Court being closed—they are entitled to do the act on the first opening day."

We must, therefore, hold that if the money was produced in Court on the 8th January, but was not actually deposited, not from any default of the fifth defendant, but owing to an act of the Court or of its officers the requirements of the decree were satisfied and the plaintiff would not be entitled to claim the sum

(1) 8 W.R., (C.R.), 223.

(2) I.L.R., 18 Calc., 231.

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relinquished. If, on the other hand, it were not so produced, or if its non-payment into the treasury was due to any default of the fifth defendant, the requirements of the decree were not satisfied and the plaintiff is entitled to the sum relinquished.

The District Judge has not given a definite finding on the issue above stated. We must ask him to submit a finding thereon within a month from the date of the receipt of this order. Fresh evidence on both sides may, if necessary, be taken.

Seven days will be allowed for filing objections after the finding has been posted up in this Court.

[In compliance with the above order the District Judge submitted his finding which was to the effect that the defendant did not produce Rs. 750 in Court on the 8th of January 1895, and that there had been no default on the part of the officials in entering into a credit to him. The appeal having come on for hearing on the 4th of April 1898 his findings were accepted and the order of the District Court was reversed and that of the District Munsif restored.]

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## APPELLATE CIVIL.

*Before Mr. Justice Shephard and Mr. Justice Subramania Ayyar.*

MANIKKAM (PETITIONER), APPELLANT,

v.

TATAYYA AND OTHERS (COUNTER-PETITIONERS), RESPONDENTS.\*

*Civil Procedure Code—Act XIV of 1882, s. 232—Transfer of decree—Benami transfer.*

If a decree is transferred to one as benamidar for the actual purchaser, the latter is entitled to execute the decree and his right course is to apply under Civil Procedure Code, section 232.

APPEAL against the order of G. T. Mackenzie, District Judge of Godavari, in Appeal Suit No. 331 of 1895, affirming the decision of S. Pereira, District Munsif of Ellore, in Execution Petition No. 369 of 1895, in the matter of Original Suit No. 242 of 1892.

This was an application by Manda Manikkam for the execution of the decree in Original Suit No. 242 of 1892 on the file of the

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\* \* Appeal against Appellate Order No. 26 of 1897.

1897.  
 November  
 29.  
 1898.  
 January 13.  
 July 15.