

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Moore.

MOTHIAR MIRA TARAGAN (PLAINTIFF), APPELLANT,

v.

AHMATTI AHMED PILLAI (DEFENDANT), RESPONDENT.*

1905
November 21.

Transfer of Property Act IV of 1882, s. 83—Money deposited under, becomes property of mortgagee only when conditions stated in section complied with.

Money deposited in Court by the mortgagor for payment to the mortgagee under section 83 of the Transfer of Property Act does not become the property of the latter until he has complied with the conditions prescribed by the section as conditions precedent to his drawing the money out of Court.

Dal Singh v. Pitam Singh (I.L.R., 25 All. 179), followed.

THE facts necessary for this report are set out in the judgment of Sankaran Nair, J., which is as follows :—

In this case a mortgagor deposited under section 83 of the Transfer of Property Act the amount remaining due on the mortgage.

Under that section such payment is to the account of the mortgagee, and under section 84, the mortgagor is not liable to pay interest from the date of the tender.

The amount in Court must, therefore, be treated as the mortgage money payable to the mortgagee, and as the defendant was a judgment-creditor of the mortgagee, he is entitled to be paid his judgment debt out of that amount on proper steps being taken by him.

It is argued before me that the amount deposited in Court does not belong to the mortgagee as he has not presented a proper petition or received the money. In my opinion this makes no difference as it is open to the mortgagee to make the proper application and receive the money under section 83 any time after the deposit, and the fact that interest ceases under section 84 makes the tender equivalent to payment so far as the mortgagor is concerned. It is also urged that the mortgagor's petition was dismissed by the order passed on the 28th July 1903.

* Appeal No. 34 of 1905, presented under section 15 of the Letters Patent against the judgment of Mr. Justice Sankaran Nair in Civil Revision Petition No. 478 of 1904, presented against the decrees of the Subordinate Judge of Tinnevely in Small Cause Suit No. 67 of 1904.

Assuming that the petition therein referred to is the petition presented by the mortgagor, the amount in Court still continues to be the mortgagee's property so long as it is there to the account of the mortgagee.

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The decree of the lower Court is, therefore, right and this petition is dismissed with costs.

Plaintiff preferred this appeal under the Letters Patent.

V. C. Seshashariar for appellant.

Mohamed Ibrahim Sahib for respondent.

JUDGMENT.—We think that the learned Judge is in error in holding that the money deposited in Court by the mortgagor for payment to the mortgagee under section 83 of the Transfer of Property Act was the property of the mortgagee and liable to be attached by a creditor of the latter, even though the mortgagee had not complied with the conditions prescribed by that section as conditions precedent to his drawing the money out of Court. Those conditions are that, he should put in a verified petition stating his willingness to accept the money, so deposited, in full discharge of the amount due under the mortgage, and should deposit the mortgage deed in Court.

The case of *Dal Singh v. Pitam Singh*(1) is exactly in point, and we agree with the observation of the learned Judge in that case that to hold otherwise might lead to great injustice, as it, in fact, has done in the present case.

We set aside the order of the learned Judge with costs. We also set aside the decree of the Subordinate Judge and give judgment for the plaintiff for the amount sued for with costs throughout.

(1) I.L.R., 25 All., 179.