

BENSON, C.J., construction and there is no more difficulty in entering in the annexure "one undivided half share in such and such lands and houses," and in calculating its value for duty, than there is in making a similar entry and calculation in, say a proclamation of sale.

MILLER  
AND  
SANKARAN-  
NAIR, J.J.  
—  
IN THE  
MATTER OF  
DESD  
MANAYALA  
CHETTY.

I agree therefore in the order which the learned Chief Justice proposes to make.

SANKARAN-NAIR, J.—I agree with the conclusion that the deceased did not hold the property as a trustee and that the appellants can obtain Letters of Administration only on paying the proper fee on the share of the deceased which he got by survivorship.

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## APPELLATE CIVIL.

*Before Sir R. S. Benson, Officiating Chief Justice,  
and Mr. Justice Sankaran-Nair.*

1909.  
July 13.

VELAYUDA NAICKER AND OTHERS (DEFENDANTS), APPELLANTS,

v.

HYDER HUSSAN KHAN SAHIB AND ANOTHER (PLAINTIFFS),  
RESPONDENTS.\*

*Transfer of Property Act IV of 1882, s. 84—Tender, what amounts to.*

Under section 84 of the Transfer of Property Act, interest ceases to run on the principal amount from the date of tender; it is not necessary that the mortgagor should, after such tender, always keep the money ready for payment.

APPEAL presented against the decree of C. V. Kumaraswami Sastri, City Civil Judge of Madras, in Original Suit No. 73 of 1907.

The plaintiffs effected a usufructuary mortgage of plaintiff house in favour of the defendants on the 15th May 1903 for Rs. 300 carrying interest at 21 per cent. per annum. On the 27th September 1904, the plaintiffs again borrowed of the defendants Rs. 200 on a pro-note which carried interest at 30 per cent. per annum and created a further charge on the said house for the said amount. On the 21st September 1905, the second plaintiff tendered the sum of Rs. 520-3-0 which was then due to the defendants

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\* City Civil Court Appeal No. 26 of 1907.

BENSON, C.J.,  
AND  
SANKARAN-  
NAIR, J.  
—  
VELATTU  
NAIGER  
2.  
HYDER  
HUSSAN  
KHAN  
SABIB.

under the two transactions, which the first defendant refused to receive and the plaintiffs alleging that they were not liable to pay interest after the date of tender, sued for redemption of the mortgage on payment of the amount due by them to the defendants.

The lower Court passed a decree for redemption disallowing interest from date of tender.

Defendants appealed to High Court.

*R. Kuppuswami Ayyar* for appellants.

Messrs. *Venkatasubba Rau* and *Radhakrishnayya* for respondents.

**JUDGMENT.**—The Judge has found, and his finding is not disputed before us, that there was a genuine and unconditional offer by the agent of the mortgagor to pay the mortgagee the amount due to him. The agent had the money with him. The mortgagee refused to receive the amount that was so tendered. Under section 84 of the Indian Transfer of Property Act interest on the principal money shall cease to run from the date of the tender, and the Judge has disallowed interest from such date.

It is contended before us that it is proved in this case that the money tendered to the mortgagee was received from a person who had agreed to purchase the property from the mortgagor after redemption and as he received back his money after the mortgagee refused to accept the tender, it cannot be said that the plaintiff, mortgagor, from that date always kept the money ready for payment and that therefore the interest must run on, and the cases of *Gyles v. Hall*(1), *Satyabadi Behara v. Harabati*(2) and *Jayat Tarini Dasi v. Naba Gopal Chaki*(3) are relied upon.

We are bound by the terms of section 84 of the Transfer of Property Act and, as already pointed out, under that section "interest shall cease from the date of tender." The word *tender* does not in itself imply that he must have been always ready to pay the money. 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.

We therefore think the Judge is right in disallowing interest and we dismiss the appeal with costs.

(1) (1726) 2 P. Wms., 378. (2) (1907) I.L.B., 84 Calc., 223 at p. 229.  
(3) (1907) I.L.B., 84 Calc., 305.