

SUBRAH-
MANIA
AYYAR AND
BODDAM, JJ.

RAMAN
NAMBOODRI
v.
ACHUTHA
PISHURUDI.

as the assignee of the jemm right exercising his right of redemption under the earlier mortgage to the defendants.

The decrees of the lower Courts are therefore set aside and there will be a decree for the plaintiff for possession and for Rs. 10-4, arrears of rent till date of suit and future profits at 5 psras of paddy and 4 annas 7 pies from Malabar year 1076 till possession of 3 years from this date whichever is earlier. The defendants Nos. 1 and 2 will pay the plaintiff's costs throughout.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Krishnaswami Ayyar.

KRISHNASAMI CHETTIAR (PLAINTIFF), APPELLANT,

v.

THIPPA RAMASAMI CHETTIAR AND OTHERS (DEFENDANTS),
RESPONDENTS.*

1910.
October 27.
November 4.

Transfer of Property Act, V of 1882, ss. 83, 84—Deposit under s. 83 and withdrawal by mortgagor, effect of—Interest on mortgage amount does not cease to run—Costs of mortgagee in redemption suit.

Where the mortgage amount deposited by the mortgagor under section 83 of the Transfer of Property Act has been withdrawn by the mortgagor on the mortgagee's refusal to accept it, interest in such amount does not cease to run under section 84. The continuance of the deposit is necessary to justify the claim to the cessation of interest.

The mortgagee is entitled to his costs in a redemption suit. It will be forfeited by some improper defence or misconduct but not by merely claiming a larger amount than is due.

SECOND APPEAL against the decree of F. D. P. Oldfield, District Judge of Tanjore, in Appeal Suit Nos. 617 and 664 of 1908, presented against the decree of N. Sundara Ayyar, District Munsif of Tiravadi, in Original Suit No. 239 of 1907.

The facts of this case are fully set out in the judgment.

G. S. Ramachandra Ayyar, for appellant in Second Appeal No. 1314 of 1909, and for first respondent in Second Appeal No. 1363 of 1909.

* Second Appeal No. 1314 of 1909.

P. R. Srinivasa Ayyangar for first respondent in Second Appeal No. 1314 of 1909 and for the appellant in Second Appeal No. 1363 of 1909.

S. Rajagopala Ayyangar for third respondent in Second Appeal No. 1314 of 1909.

BHNSON AND
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AYYAR, J.J.

KRISHNA-
SAMI
CHETTIAR
v.
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CHETTIAR.

JUDGMENT.—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*(1), *Kinnaird v. Trollope*(2), *Bank*

(1) (1740) 2 P. W., 377.

(2) (1889) 42 Ch. D., 610 at p. 618.

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of *New South Wales v. O'Connor*(1); also Fisher on Mortgages, section 1951, and Jones on Mortgages, Vol. 1, section 899. It is true *Velayuda Naicker v. Hyder Hussan Khan Sahib*(2) 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*(3). "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*(4) 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.

(1) (1889) 14 A. C., 273 at p. 284.

(2) (1910) I.L.R., 33 Mad., 100.

(3) (1872) 8 Ch., 295.

(4) (1889) 42 Ch. D. 610 at p. 618.