

BENSON AND  
ABDUR  
RAHIM, JJ.  
KOVVURI  
BASIVI  
REDDI  
v.  
TALLAPRA-  
GADA  
NAGAMMA.

several defendants are the same, but whether the relief is sought in the same matter (*Aiyathauri Ravuthan v. Santhu Meera Ravuthan* (1)).

Applying this test, we are of opinion that section 28 authorises the present suit.

We therefore set aside the decrees of the Courts below as regards defendants Nos. 2 to 5, and remand the suit as against them to the District Munsif for disposal according to law. Costs hitherto incurred will abide the result.

### APPELLATE CIVIL.

*Before Mr. Justice Subrahmania Ayyar and Mr. Justice Boddam.*

KUTTISSERI ILLATH RAMAN NAMBOODRI (PLAINTIFF),  
APPELLANT,

v.

ACHUTHA PISHURODI AND OTHERS (DEFENDANTS NOS. 1 to 4,  
6 AND 7) RESPONDENTS.\*

*Mortgage—Right of assignee of mortgagor to redeem first mortgage after a decree for redemption obtained by a puisne mortgagee had become inoperative.*

A mortgaged certain properties to B and afterwards mortgaged the same with other properties to C. C. obtained a decree for redemption against B, but the decree was allowed to become inoperative by not being executed. D obtained an assignment of the right of A in the mortgaged properties and also the rights of C therein.

A sued to redeem the mortgage in favour of B.

Held that although the suit by D as the assignee of C was not maintainable still it was competent to him as assignee of A to bring the suit after the decree obtained by C had become inoperative.

SECOND APPEAL against the decree of N. S. Brodie, District Judge of South Malabar, in Appeal Suit No. 726 of 1901, presented against the decree of V. Kelu Eradi, District Munsif, of Kutnad, in Original Suit No. 69 of 1910.

(1) (1908) I. L. R., 31 Mad., 252.

\* Second Appeal No. 1219 of 1902 (directed to be reported by Munro and Abdur Rahim, JJ., on 10th March 1911).

The facts are stated in the judgment of the lower Appellate Court as follows :—

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The plaintiff appeals. He brought a suit to redeem certain lands granted to first and second defendants' Karnavan Govinda Pisharodi on a kanam by the sixth defendant's Karnavan, Parangotasha Menon. This sixth defendant's tarwad granted mortgage to the fifth defendant's karnavan on the strength of which the fifth defendant's karnavan sued to recover the plaint lands from the possession of the first and second defendant's tarwad in Original Suit No. 199 of 1882 on the file of the lower Court. The sixth defendant was impleaded as the first defendant in that suit and he did not appear. It may be presumed, therefore, that he admitted the fifth defendant's title. The fifth defendant's karnavan as plaintiff pleaded that the lands belonged to the sixth defendant in jenm and the present first and second defendant's tarwad pleaded as in the present suit that they did not belong to him. The fifth defendant's karnavan succeeded in appeal—*vide* exhibit G, but he failed to redeem the mortgage within the time given him. Subsequently, the plaintiff purchased the fifth defendant's title under exhibit C (?) and also that of the sixth defendant under exhibit A. He now sues as the representative of the sixth defendant and on the strength of the sixth defendant's title to redeem the same lands.

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The Court of First Instance dismissed the suit and the decree was confirmed on appeal.

Plaintiff appealed.

*P. R. Sundara Ayyar* for appellant.

The respondent was not represented.

JUDGMENT.—No doubt the plaintiff's claim in so far as it was based on the assignment to him by the melkanomdar who had obtained the previous decree for redemption was concerned would have been unsustainable. But as the assignee of the jenm right he is clearly entitled to redeem. Though so long as the right to redeem under the previous decree obtained by the melkanomdar was in force and executable the right to redemption as between the melkanomdar and the jenmi would have been preferentially in the former yet that decree having become incapable of execution there is nothing to prevent the plaintiff

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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.

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### 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.

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\* Second Appeal No. 1314 of 1909.