

## APPELLATE CIVIL.

1902  
December 3.

*Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Burkill.*  
DAL SINGH AND OTHERS (DEFENDANTS) v. PITAM SINGH (PLAINTIFF).  
*Act No. IV of 1882 (Transfer of Property Act), section 83—Redemption of mortgage—Deposit in Court by the mortgagor of the sum alleged by him to be due on the mortgage—Conditions of such deposit.*

A mortgagor paid into Court, under the provisions of section 83 of the Transfer of Property Act, the sum which in his estimation was sufficient to redeem his mortgage. The mortgagees refused to accept this sum in discharge of the mortgage, and the mortgagor filed a suit for redemption, without, however, withdrawing from Court the money which he had deposited. In this suit the mortgagor obtained a decree for redemption on payment of the sum deposited, plus a small item for costs, and an appeal by the defendants from this decree was dismissed. The defendants then appealed to the High Court, but, pending their appeal, were allowed by the Court in which it was deposited to withdraw the money paid in by the plaintiff under section 83.

*Held*, that the defendants had after such withdrawal of the money deposited by the plaintiff no right to proceed with their appeal. The money deposited by the mortgagor plaintiff continued to be held by the Court on the terms upon which it was originally deposited, and the defendants were only entitled thereto upon fulfilling the conditions laid down in section 83 of the Transfer of Property Act, that is to say, if they stated their willingness to accept the money deposited in full discharge of their mortgage and deposited the mortgage deed (if in their possession or power) in Court.

The facts of this case sufficiently appear from the judgment of the Court.

Pandit *Sundar Lal* and Pandit *Mudan Mohan Malaviya*, for the appellants.

Munshi *Govind Prasad* and Munshi *Gokul Prasad*, for the respondent.

STANLEY, C. J., and BURKITT, J.—The suit out of which this appeal has arisen was brought by the plaintiff for redemption of a mortgage, dated the 3rd of September, 1868, executed by Gur Bakhsh Singh and Fateh Singh in favour of Dal Singh. On the 14th of June, 1897, that is more than a year anterior to the filing of the plaint, the plaintiff had deposited in the Court of the Subordinate Judge of Mainpuri, under the provisions of section 83 of the Transfer of Property Act, the sum of

\* Second Appeal No. 1339 of 1900, from a decree of Pandit Ramantur Pande, District Judge of Mainpuri, dated the 29th August, 1900, confirming the decree of Pandit Rujnath Saheb, Subordinate Judge of Mainpuri, dated the 25th November, 1898.

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Rs. 3,700, which sum the plaintiff alleged was sufficient to satisfy the claim of the mortgagees. The mortgagees did not draw this sum out of Court, and hence the suit for redemption was instituted. On the 25th of November, 1898, the Court of first instance decreed the plaintiff's claim and declared that on the 25th of May, 1899, the sum of Rs. 3,709-4-0 would be due to the defendants mortgagees namely Rs. 3,700 for the mortgage money under the deed of the 3rd of September, 1868, and Rs. 9-4-0 for the costs of the suit, and passed the usual decree for redemption on payment of this amount. From this decree we gather that the sum which was deposited by the plaintiff under the provisions of the section of the Transfer of Property Act to which we have referred, was sufficient to satisfy the claim of the defendants on foot of their mortgage. From this decree the defendants preferred an appeal which was dismissed. An appeal to this Court was then preferred on several grounds, and amongst others, that a much larger sum was due to the appellants on foot of their mortgage than the sum which had been declared by the decree to be due. Pending this appeal the appellants drew out of Court the sum which had been deposited by the plaintiff, and delivered up their mortgage security and also possession of the mortgaged property.

It is now contended on the part of the respondent that the defendants having drawn out of Court the money so deposited must be taken to have accepted it in full discharge of the amount due to them, and that they cannot consequently prosecute the appeal. There is no answer, in our opinion, to this contention. Except under the provisions of section 83 of the Transfer of Property Act, the appellants had no right whatever to obtain payment of the money which had been deposited under that section. The money was deposited in Court "to the account of mortgagees," only, however, to be paid to them on their expressing their "willingness to accept the money so deposited in full discharge" of the amount due to them. Upon no other terms would the Court have been justified in passing an order for payment of it to them, unless at least such order had been passed with the consent of the plaintiff, and there is no suggestion here that any such

consent was given. It has been argued on behalf of the appellants that inasmuch as in the plaint the plaintiff alleged that the appellants had in bad faith abstained from withdrawing the money so deposited, and the proceedings under section 83 had been struck off, the conditions contained in that section in regard to the receipt of the money no longer attached to it, and that the payment made to the appellants subsequently was a payment, not under the provisions of section 83 of the Transfer of Property Act, but under the decree of the Court passed in the suit, and therefore the acceptance of the money was not necessarily an acceptance in full discharge of the appellants' claim. Mr. *Malaviya* strenuously argued that as the object aimed at by section 83 (namely, a speedy and summary remedy for redemption) failed by reason of the refusal of the appellants to accept the deposit in full discharge of their mortgage, it followed that immediately on the institution of the suit for redemption the conditions prescribed by section 83 ceased to attach to the money, and that that money might after decree be drawn by the appellants in part satisfaction of their claim. At the same time the learned advocate rather inconsistently admitted that after the appellants' refusal to accept the deposit under the terms of section 83, the amount deposited, although it was paid in on account of the mortgagees, thenceforth remained in deposit on account of the mortgagor and might be withdrawn by him. We know of no authority for the proposition so advanced, and none has been cited to us, and we have no hesitation in holding that so long as money deposited under section 83 remains in Court, it is (so far as the mortgagees are concerned) bound by the conditions under which it was deposited. Reliance was placed in support of the appellants' contention upon some loose words which found their way into the decree. These words occur towards the end of it and are as follows:—  
 "If Rs. 3,700, the mortgage-money, is still deposited in the Court, the defendants can get it according to the specification of their respective mortgage-money." It is said that this amounted to an order of the Court for payment of the sum deposited, and that the payment was made to the appellants under this order and not under section 83. We cannot accede to this contention.

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In the first place, we may observe, the Court had no jurisdiction to pass such an order at least without the consent of the plaintiff. The money was not in Court to the credit of the suit, but was deposited in Court in an independent matter. Moreover, the words of the decree to which we have referred do not amount to a direction that the money shall be paid to the defendants. Such a direction would be inconsistent with the portion of the decree immediately preceding them, which directs that if payment of the amount found to be due to the defendants be not made, &c., the decree shall be considered void. This contemplates the case of the non-payment of the mortgage-debt. But further, the language of the decree is that if the mortgage-money is still deposited in the Court the defendants can get it, that is the defendants can apply to the Court under the provisions of section 83 of the Transfer of Property Act and obtain payment. It appears to us that a great injustice might be worked if we were to accede to the argument which has been advanced on behalf of the appellants. If we did so, we should be allowing the appellants to keep in their pockets money which, according to their own contention, belonged to the plaintiff, the proceedings under section 83 having proved abortive, and at the same time proceed with their appeal. We might have been disposed to entertain the appeal if the appellants had been really misled by the terms of the decree of the 25th of November, 1898, and had re-deposited, or undertaken to re-deposit, in Court, or repaid to the plaintiff, the sum which they had withdrawn and appropriated. This they have not done. Their case is, in our opinion, devoid of all merits. We may observe in connection with the contention which was advanced on behalf of the appellants that the money was withdrawn by the appellants in execution of the redemption decree—(1) that the appellants as defendants against whom the decree for redemption had been passed were not the parties who could apply for execution; and (2) that in the application which they did make to have the money paid to them, it is distinctly stated that the money was lying in deposit under section 83 of the Transfer of Property Act. From remarks made by their learned advocate we gather that the reasons why the appellants changed their

minds about accepting this deposit were, firstly, because they did not care to lose any more interest; and, secondly, because a portion of the deposit had been attached and taken out of Court by some of their creditors. How the learned Subordinate Judge conceived that he had any jurisdiction to allow such a deposit, not accepted by the mortgagees, to be attached and drawn out of Court by creditors of the mortgagees we are at a loss to understand.

For the foregoing reasons we hold that the appellants' claim has been wholly satisfied by the withdrawal from Court by them of the money deposited by the plaintiff to meet that claim, and we accordingly dismiss the appeal with costs.

*Appeal dismissed.*

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## REVISIONAL CIVIL.

1902  
December 5.

*Before Mr. Justice Know and Mr. Justice Blair.*

GAPPU LAL (PLAINTIFF) v. MATHURA DAS (DEFENDANT).\*

*Act No. XII of 1887 (Bengal, N.W. P. and Assam Civil Courts Act), sections 11 and 17—Civil Procedure Code, section 25—Transfer—Jurisdiction—Construction of Statutes.*

*Held*, that the words "in the event of the death, resignation or removal of a Subordinate Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held," occurring in section 11, clause (1) of Act No. XII of 1887, include the abolition by order of Government of a special Court temporarily constituted by Government to exercise jurisdiction in a particular district, and that therefore where such Court, being the Court of a Subordinate Judge, had ceased to exist, and the District Judge had taken upon his own file a suit which had been pending before the said Court, it was competent to the District Judge under section 11, clause (3), of the Act above-mentioned to retransfer such suit to the Court of the permanent Subordinate Judge in his district, from which Court the suit had already been transferred by him to the Court of the temporary Subordinate Judge. *Amir Begam v. Prahlad Das (1) and Sakhrum v. Gangaram (2) distinguished.*

A suit was instituted in the Court of the Subordinate Judge of Gorakhpur. After issues had been framed by the Subordinate Judge the suit was transferred to the Court of the Additional Subordinate Judge. While pending before the Additional

\* Civil Revision No. 29 of 1902.

(1) (1902) I. L. R., 24 All., 304. (2) (1889) I. L. R., 13 Bom., 654.