

Before Mr. Justice Ryves and Mr. Justice Gokul Prasad.

1921
November, 18.

HUKAM SINGH (DEPENDANT) v. BABU LAL AND ANOTHER (PLAINTIFFS).^{*}
Act No. IV of 1882 (Transfer of Property Act), sections 83 and 84—Full deposit made by mortgagor but refused by mortgagee and subsequently withdrawn by mortgagor—Interest.

When once the full amount due on a mortgage has been paid into court under the provisions of section 83 of the Transfer of Property Act the running of interest stops, and this is not affected by the withdrawal of the deposit by the mortgagor after refusal of the mortgagee to accept it. *Velayuda Naicker v. Hyder Hussan Khan Sahib* (1) followed.

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

Babu *Piari Lal Banerji* and *Munshi Panna Lal*, for the appellants.

Dr. *S. M. Sulaiman*, for the respondents.

RYVES and GOKUL PRASAD, JJ. :—The only point raised in this Second Appeal is whether the mortgagee is entitled to interest at the stipulated rate up to the date of suit, or whether, a deposit having been made in court in accordance with section 83 of the Transfer of Property Act, interest ceased from that date. The mortgage in suit was executed on the 21st day of August, 1906, for a sum of Rs. 500 and it was agreed that compound interest should be paid at Re. 1-8-0 per cent. per mensem with yearly rests. On the 31st day of October, 1909, a sum of money was deposited in court by the mortgagor under section 83 of the Transfer of Property Act. Notice was served on the mortgagee and he appeared in court and refused to accept the amount deposited. Some six months afterwards the mortgagor withdrew the amount which he had deposited in court. This suit was brought on the 12th day of August, 1918, claiming payment for the principal and interest at the stipulated rate up to the date of suit. The main defence was that the whole amount of the mortgage had been deposited in court under section 83 of the Transfer of Property Act and that from that date interest ceased to run on the mortgage. The Subordinate Judge found,

^{*} Second Appeal No. 1041 of 1919, from a decree of Jagat Narain, District Judge of Aligarh, dated the 8th of May, 1919, modifying a decree of Muhammad Ali Ausat, Subordinate Judge of Aligarh, dated the 27th of February, 1919.

as a matter of fact, that the amount deposited represented the whole amount due on the mortgage up to that date. He, however, thought that the withdrawal of the money subsequently by the mortgagor did not prevent interest from running. He, however, held, for reasons which we need not consider, that the proper interest which should be allowed subsequently to that date was 12 annas per cent per mensem. Both the parties appealed to the District Judge and he came to the conclusion that the deposit made by the mortgagor represented the whole amount then due under the mortgage. But he held that inasmuch as the money had been subsequently withdrawn, interest did not cease to run and he relied on *Krishnasami Chettiar v. Thippa Ramasami Chettiar* (1) and also *Thevaraya Reddy v. Venkatachalam Pandithan* (2). He, therefore, allowed the appeal of the plaintiff mortgagee and dismissed the appeal of the defendant mortgagor. Hence two appeals have been filed in this Court on behalf of the mortgagor.

It seems to be settled law in England that in order to prevent interest running, the tender or deposit must have been made so as to be always available to the mortgagee and, following that rule, the Calcutta High Court has held that subsequent withdrawal of money from court will not prevent the running of interest. The rule in England seems to be based on principles of equity. In India we have to interpret section 83 of the Transfer of Property Act. The late Sir Rashbehari Ghose in his "Law of Mortgage in India", 4th Edition, Volume 1, page 236, seems to be of opinion that the English rule was of doubtful application in India. Section 84, so far as is necessary for this case, runs as follows:—"When the mortgagor has deposited in the court under section 83 the amount remaining due on the mortgage, interest on the principal money shall cease from the date of the tender or as soon as the mortgagor has done all that has to be done to enable the mortgagee to take such amount out of court." It has been found in this case that the mortgagor deposited in court on the 31st day of October, 1903, the full amount then due on the mortgage. It has further been found that the mortgagor had the proper notice issued to the mortgagee under section 83 of the Act and that the

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(1) (1910) I. L. R., 85 Mad., 44.

(2) (1916) I. L. R., 40 Mad., 804.

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mortgagee appeared in court and definitely refused to accept the money. It seems to us that the mortgagor had done all that he was required to do under section 84 of the Act. In the Madras High Court in *Velayuda Naicker v. Hyder Hussan Khan Sahib* (1), this view was accepted. In *Krishnasami Chettiar v. Thippa Ramasami Chettiar* (2), it was held that on the withdrawal by the mortgagor on the mortgagee's refusal to accept the amount deposited in court, interest does not cease to run. Both these cases were considered in the later case in *Thevaraya Reddy v. Venkatachalam Pandithan* (3), the facts of which, however, are distinguishable from those of the present case. In the course of their judgments one learned Judge was of opinion that the case in I. L. R. 35 Madras, had been properly decided. On the other hand, Mr. Justice PHILLIPS thought that the earlier ruling in I. L. R., 33 Madras, was correct. For the reasons given by Mr. Justice PHILLIPS on page 808 we think that the decision of the learned District Judge in this case was wrong. We, therefore, decree the appeal with costs and modify the decree of the court below by directing that the amount payable by the mortgagor is only Rs. 787, and the usual decree giving six months for payment will be prepared.

Appeal allowed.

Before Sir Grimwood Mears, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

KAMAL NATH AND OTHERS (DEPENDANTS) v. BITHAL DAS AND OTHERS (PLAINTIFFS)*.

Civil Procedure Code (1908), section 110—Appeal to His Majesty in Council—“Affirms the decision,” meaning of—Decree of lower court modified only in favour of the would-be appellant, but in other respects affirmed.

Held that an appeal to His Majesty in Council would not lie against a decree which, in so far as it modified the decree of the court below, was in favour of the would-be appellant, but, in so far as it was against the would-be appellant, agreed with the decree of the court below. *Bhagwan Singh v. The Allahabad Bank, Ltd.*, (4) distinguished.

THIS was an application for leave to appeal to His Majesty in Council. The facts of the case, so far as they are necessary for the purposes of this report, appear from the order of the Court.

* Application No. 81 of 1921, for leave to appeal to His Majesty in Council.

(1) (1909) I. L. R., 33 Mad., 100.

(3) (1916) I. L. R., 40 Mad., 804.

(2) (1910) I. L. R., 35 Mad., 44.

(4) (1920) 19 A. L. J., 3.

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