
(1918) 08 MAD CK 0024
In the Madras High Court

A. Thiagaraja Aiyar	Vs	APPELLANT
G. Ramaswami Aiyar and Others		RESPONDENT

Date of Decision : 14-08-1918

Acts Referred:

Transfer of Property Act, 1882 — Section 83

Citation : (1918) 35 MLJ 605

Judgement

1. In Bayya Sao Narasingha Mahapatro ILR (1811) Mad 209 it was held that a deposit u/s 83 of the Transfer of Property Act was invalid if made in one court after the institution of a suit by the mortgagee" in another court, and the judges who decided that case were of opinion that the same principle would apply in the case of such a deposit in the court where the suit had been instituted and that the deposit should be made under Order 24 of the Code of Civil Procedure. We respectfully agree with the reasoning in that case and can see no reason for making any exception in favour of allowing a mortgagor to deposit the money before he receives notice of the suit but after its institution.

2. When once a suit has been instituted the amount due on the mortgage cannot be ascertained until the decree is passed providing for interest, costs, etc., for, we think that costs must also be included in the amount remaining due on the mortgage within the meaning of Section 83 of the Transfer of Property Act and we are supported in this view by the decision of this Court in Kamalamma v. Komandur Narasimha Charlu ILR (1907) Mad. 464 which interpreted similar words in the repealed Section 90, to include costs, This is an additional argument in favour of holding that a deposit u/s 83 of the Transfer of Property Act is invalid if made after institution of a suit by the mortgagee. Even if such a deposit could be

made the amount deposited did not include costs and consequently there was no deposit of the amount due on the mortgage, which would be effectual to stop the running of interest.

3. The effect of the deposit on the running of interest has been the only point argued in this second appeal which must be dismissed with costs.