

(1944) 08 MAD CK 0025
In the Madras High Court

Cherukuri Ramakrishniah

APPELLANT

Vs

Sri Krushi Vidyalaya Sangam, Oleru

RESPONDENT

Date of Decision : 15-08-1944

Acts Referred:

Citation : AIR 1945 Mad 46 : (1944) 57 LW 551

Hon'ble Judges : Wadsworth, J

Bench : Single Bench

Judgement

1. This petition has been filed by a mortgagor against an order dismissing his application u/s 83, T.P. Act, to direct the mortgagee to receive a certain sum of money deposited by him in full satisfaction of the mortgage debt and to return the mortgage bond. It is admitted by the petitioner that he did not deposit the amount due on the face of the mortgage Bond. He contended that the interest was penal and should not have been more than a certain lower rate and that according to the lower rate only the sum of money deposited by him was due. According to the provisions of Section 83, notice went to the mortgagee, who declared his unwillingness to accept the money deposited by the petitioner in full discharge of the mortgage debt and stated that the amount due to him was what was due on the face of the document. As the mortgagee had refused to receive the sum tendered, there was nothing more that the lower Court could do. There is no provision in Section 83 for an enquiry as to the sum due by the mortgagor to the mortgagee. The mortgagor makes the tender and the mortgagee has to say whether he accepts the sum in full discharge of the mortgage or not. The lower Court considered that it was entitled to go into the question whether the interest was penal or not and relied upon Narayanaswami v. Ramaswami AIR 1939 Mad. 503 Although the question is there stated whether the Court can consider whether the amount tendered is the sum due on the mortgage bond or not, there is no discussion by the learned Judge; because the matter came before him in second appeal, where the question had to be decided whether the sum tendered was correct or not. The learned Judge did not anywhere in his judgment say that such an enquiry was within the scope of Section 83, T.P. Act.

It seems clear to me that such an enquiry is beyond the scope of Section 83; because the Court has not to give any finding at all on any question. This question will have to be decided in later proceedings, just as it was in the matter before Venkataramana Rao J. in *Narayanaswami v. Ramaswami* AIR 1939 Mad. 503.

2. The learned advocate for the petitioner contends that the lower Court should not have dismissed his application, but should have noted that he had registered the deposit of the petitioner. As however the petitioner asked for various reliefs which could not be granted to him, I do not think that he has any cause for complaint because the lower Court dismissed his application. If he wishes the deposit to remain in Court, it will of course remain in Court deposit; for the lower Court has no power to compel the petitioner to take back his money if he does not wish to do so. The petition is dismissed with costs.