
(1935) 08 MAD CK 0048
In the Madras High Court

N. Pl. Ct. Muthiah Chettiar

APPELLANT

Vs

Ramamurthi and Others

RESPONDENT

Date of Decision : 08-08-1935

Acts Referred:

Transfer of Property Act, 1882 — Section 83

Citation : 159 Ind. Cas. 867

Hon'ble Judges : Varadachariar, J;Stodart, J

Bench : Division Bench

Judgement

1. This is an appeal by a mortgagee who sued to enforce two mortgages of February 1929. The contesting respondents are purchasers of the mortgaged property. On March 4, 1927, they deposited in Court u/s 83 of the Transfer of Property Act a sum of Rs. 10,001 and odd representing the amount due on the mortgage bonds if interest should be calculated at 12 per cent, per annum simple interest, from date of default in payment of interest as per terms of the bonds. But the mortgagee claimed that he was entitled as per terms of the bond to compound interest at 12 per cent. per annum from the date of default. This difference between the parties made the proceeding u/s 83 of the Transfer of Property Act infructuous, as the mortgagee was not prepared to take the deposit amount in full discharge of his claim, Hence the present suit.

2. The learned Subordinate Judge has held that the provision for payment of compound interests at 12 per cent, per annum from date of default is penal as the original contract was only for payment of simple interest at 9 per cent. per annum. In this view he has also held that the amount deposited in March 1927 was the amount properly payable to the mortgagee on that date and has accordingly disallowed any further interest to the mortgagee. He has also disallowed the mortgagee's costs of his action and directed him to pay defendants Nos. 6 to 8 their costs.

3. In this appeal, three points were pressed before us: (1) that taking the provision for payment of compound interest at enhanced rate to be penal, a like

amount should nevertheless be allowed in the circumstances as reasonable compensation; (2) it was next contended that even on the view of the learned Subordinate Judge the plaintiff is only entitled to simple interest at 12 per cent. per annum; the principle of Section 84 of the Transfer of Property Act ought not to be applied to a case like this to deprive the mortgagee of subsequent interest at that rate. Lastly, (3) it was argued that the lower Court was not justified in disallowing the plaintiff's costs of his action and directing him to pay costs to defendants Nos. 6 to 8. We are unable, to accede to any of these contentions.

4. Section 83 of the Transfer of Property, Act provides for the deposit in Court of the amount remaining due on the mortgage. The fact that for one reason or another there may be uncertainty or difference between the parties as to what the amount so due is, cannot be held to preclude the operation of Sections 83 and 84. The difference between the parties may arise either on a question of fact as, for instance a dispute as to part payment or on a question of law like the effect of a penal provision in the document, We, therefore, see no justification for excluding a case like the present from the operation of Sections 83 and 84. It is no doubt true that the amount that may ultimately be fixed as reasonable compensation u/s 74 of the Contract Act will depend upon the discretion of the Court and either party to the proceedings u/s 83 may run a certain amount of risk if it should turn out that the Court in which a suit is subsequently brought takes one view or another as to the correctness of the amount deposited or the amount legally payable under the document. This is an element of risk which many suitors run in various proceedings and does not seem to us sufficient justification for denying to the party who is ultimately found to have been right in the attitude that he took up in the deposit proceeding the benefit of Section 84 of the Transfer of Property Act. It has been held by this Court in *Ayyakutti Mankondan v. Periyasami Kavendan* 39 M. 579 : 30 Ind. Cas. 497 : 2 L.W. 585 : 18 M.L.J. 161 in circumstances very similar to the present, the mortgagee will lose all claim to interest after the date of the deposit. We are prepared to follow that decision and hold that if the amount deposited is now found to be a proper amount, the plaintiff will not be entitled to any interest after the date of the deposit.

5. As to the amount itself, we are unable to find any justification for differing from the view taken by the lower Court. It is no doubt true that in some cases Courts have allowed compound interest as 12 per cent, or even compound interest at 18 per cent, as reasonable compensation, but it is not the rate alone that matters but its relation to the rate originally fixed in the document itself, to the nature of the security offered and to the other circumstances attending the transaction. In the present case, the learned Subordinate Judge has taken all these factors into account and we are unable to say that his discretion has not been properly exercised. Quite recently a Full Bench of this Court held that in cases raising questions u/s 74 of the Contract Act, it will not ordinarily be proper for the Appellate Court to interfere with the compensation awarded by the lower Court unless the discretion given by the law to that Court has been improperly

exercised: see Thallur Narasimhulu Setty Vs. Kotha Seshayya,

6. The above reasons equally justify the decision of the lower Court on the question of costs. Here again, it is a well established rule that an Appellate Court will not interfere with the lower Court's discretion in the matter of costs, unless there is any question of principle involved. Far from that being the costs here, the lower Court's award of costs would seem necessarily to follow from the view that the suit would have been unnecessary if the plaintiff had been prepared to accept the deposit amount in full discharge of his claim.

7. The appeal fails and is dismissed with costs.