
(1938) 12 MAD CK 0015
In the Madras High Court

Narayanaswami Nayak and Another

APPELLANT

Vs

Ramaswami Nayak and Others

RESPONDENT

Date of Decision : 12-12-1938

Acts Referred:

Transfer of Property Act, 1882 — Section 83

Citation : AIR 1939 Mad 503 : (1939) 49 LW 218 : (1939) 1 MLJ 324

Hon'ble Judges : Venkataramana Rao, J

Bench : Division Bench

Judgement

Venkataramana Rao, J.—This second appeal raises a question as to the validity of a deposit u/s 83 of the Transfer of Property Act before it

was amended by Act XX of 1929 and Act V of 1930. On 13th April, 1919, the first defendant executed a mortgage in favour of one

Sankaranarayanaswami Nayak the plaintiff's predecessor-in-title for a sum of Rs. 1,350. The mortgage deed provided thus:

To this sum of Rs. 1,350, I shall add interest at the rate of Re. 0-14-0 per cent, per mensem and pay the amount of principal and interest due thus

on 11th April, 1920 and duly redeem this bond. In default, to the amount of principal and interest accruing due till then, interest shall for the

remaining periods be added at the rate of Re. 1-6-0 per cent, per mensem, and re the total of principal and interest, the interest accruing so due

once in twelve months shall be added on to the principal, and you shall, whenever required, recover the amounts thus accruing due, along with

interest at the said rate of Re. 1-6-0...

2. Subsequent to the date of the mortgage the first defendant sold in the same year the said property which comprised eight items to his wife the

fifth defendant. On the 12th July, 1920, the fifth defendant sold five items of property to one Sanniasa Pillai for Rs. 3,000. Part of the consideration was to go in discharge of the mortgage. On 15th September, 1921, the fifth defendant mortgaged the remaining three items to the sixth defendant whose sons are defendants 7, 8 and 9. On 27th November, 1923, Sanniasa Pillai deposited a sum of Rs. 2,144-12-4 in O.P. No. 51 of 1923, a petition u/s 83 of the Transfer of Property Act, as the amount due and payable under the mortgage up to the date of deposit. Necessary notice was given to the mortgagee but though he did not file any counter alleging what the amount due to him was, he declined to receive the money. The amount remained in deposit for a period of one year and thereafter was withdrawn by Sanniasa Pillai from Court. The mortgagee died in 1926 and the plaintiff succeeded to his property as his heir. On the 9th November, 1927, the plaintiff received Rs. 2,200 from Sanniasa Pillai and released the items sold to him. The plaintiff has instituted the present suit to recover a sum of Rs. 800 being the balance alleged to be still due and payable to him under the mortgage. The contesting defendants are defendants 6 to 9. Their main defence was that the mortgage itself must be deemed to have been discharged by the deposit into Court and by the subsequent receipt of the amount from Sanniasa Pillai. It is conceded that if the deposit in the said O.P. No. 51 of 1923 is held to be valid further interest would cease to run from the date of deposit and the plaintiff would not be entitled to any relief. The learned District Munsif found that the correct amount that should have been deposited was less by six pies, that is, the amount that should have been deposited was Rs. 2,144-12-10 instead of Rs. 2,144-12-4. Following the ruling in Subbai Goundan Vs. Palani Goundan and Another, , he held that as the amount deposited fell short of the amount actually due, there was no valid deposit within the meaning of the section. He therefore gave a decree to the plaintiff as prayed for. The learned Subordinate Judge, while reversing this decision, took the view that the amount deposited was the correct amount. His ground for coming to that conclusion is this : Sanniasa Pillai made an application O.P. No. 51 of 1923 with the lodgment schedule on 23rd November, 1923 and applied for a chalan on the same day for the payment of money to be deposited into the treasury but the Court took four days to issue the necessary chalan and the amount was deposited on the very day on which the chalan

was issued; the delay was therefore due to the Court and no litigant should suffer by the default of the Court; in the circumstances the application

for chalan was equivalent to deposit and the amount deposited was the correct amount due on the date of the O.P. There was also another plea

raised before the learned Judge, namely, that as Sanniasa Pillai withdrew the amount from Court, interest would not cease to run, but this plea was

overruled by the learned Judge. Hence the plaintiff has preferred this second appeal.

3. It was contended on his behalf by his learned Counsel that the amount of the insufficiency is an irrelevant consideration in construing Section 83

of the Transfer of Property Act and once it is found that the amount deposited was not the entire amount that was due, interest would not cease to

run. The learned Counsel strongly relied on Subbai Goundan Vs. Palani Goundan and Another, , where the deficiency was 9 1/2 pies. I may at

once state that the correctness of this decision was doubted by Seshagiri Aiyar, J., in Subramania Aiyar v. Narayanaswami Vandayar (1917) 34

M.L.J. 439 where the learned Judge remarks thus:

If I were deciding that case I would have applied the maxim *de minimus non curat lex*.

4. I respectfully agree with his view. As pointed out by Broom in his legal maxims:

The Court is not bound to a strictness at once harsh and pedantic in the application of statutes. The law permits the qualification implied in the

ancient maxim *de minimus non curat lex*.

5. But sitting as a single Judge that decision is binding on me but it is not applicable to the facts of this case. Whether a deposit is valid or not would

depend upon the fact whether the amount deposited was the amount remaining due on the mortgage on the date of the deposit within the meaning

of Section 83 of the Transfer of Property Act. This would again depend on the terms of each deed of mortgage. The question therefore is what

was the amount remaining due on the suit mortgage on 27th November, 1923? It is conceded that the provision of enhanced interest at Re. 1-6-0

percent, per month is penal and the mortgagee would not be entitled to enforce that provision if he were to sue on the mortgage. He is entitled to

claim only a reasonable compensation in lieu of the said interest. What the

reasonable compensation is depends on the circumstances of each case.

As pointed out by Kumaraswami Sastri, J., in *Ayyakutti Markondan v. Periyasami Kavundan* ILR (1915) 39 Mad. 579 in such cases as this the

amount legally due would be what the Court finds it to be. In this case the amount deposited was calculated according to 14 annas per cent, per

month compound interest and according to that calculation the amount was paid. No doubt the amount paid was less by six pies; but it is always

open to the Court to accept the amount paid as reasonable compensation. Therefore the payment of the amount calculated at 14 annas per cent,

compound interest less six pies being a reasonable compensation which any Court would accept, the amount deposited was the amount remaining

due on the suit mortgage on the date of the deposit. The mortgagee always acts in peril in such cases in declining to receive the said amount. I

would therefore hold that what Sanniasa Pillai deposited was the whole amount which was due under the mortgage on the date of the deposit

within the meaning of the section. In this view it is unnecessary to consider the contention based on the delay of the Court in issuing the chalan.

6. The next point urged is that as the amount was withdrawn, the provisions of Section 83 of the Transfer of Property Act cannot be availed of and

interest would not cease to run. The learned Counsel relied on the amended provision of the Transfer of Property Act but this case is governed by

the Act before the amendment in 1929 and 1930 - vide the observations of Venkatasubba Rao, J., in *Suppan Chettiar Vs. Rangan Chetty and*

Others, . Before the amendment a Full Bench of the Madras High Court in *Ramabhadra Thevar and Others Vs. Arunachalam Pillai and Another*,

held that from the mere fact of withdrawal per se it cannot be said that interest would not cease to run. It was pointed out in that case that the

deposit operated as a tender and

the only question properly arising was whether the mortgagor notwithstanding his withdrawal remained ready and willing to pay throughout...The

burden is cast upon the creditor to show that he was either not willing or not able to pay because he had utilised the moneys for other purposes.

7. This burden has not been discharged by the plaintiff. The fact that Sanniasa Pillai paid Rs. 2,200 in 1927 when demanded shows that he was

always ready and willing to pay throughout.

8. In the result the second appeal fails and is dismissed but without costs.
9. Leave to appeal refused.