(1917) 10 MAD CK 0018

In the Madras High Court

T.P. Govindan Nair APPELLANT

Vs

K. Cheruvamma alias Kalliani Amma and Others RESPONDENT

Date of Decision : 05-10-1917

Acts Referred:

Transfer of Property Act, 1882 — Section 84

Citation : AIR 1918 Mad 490 : 43 Ind. Cas. 126 : (1918) 7 LW 81 : (1918) 35 MLJ 313

Judgement

1. The appellant had a melcharath executed to him in 1914 and on the basis of that melcharath he was entitled to redeem a mortgage in favour of

the defendants. It appears that he paid the amount due, viz., Rs. 1,000 into court and notice was sent to respondents that the money was available

to them in satisfaction of their mortgage. The defendants refused to accept the money and the money remained in deposit in court. Then the plaintiff

had to institute a suit to recover possession of the property. The defendants defended the suit which was dismissed by the first court, but in appeal

the decree of the District Munsif was set aside.

2. The question we have got to decide in the appeal is whether interest on the amount in lieu of which the respondents were entitled to enjoy the

usufruct of the property, ceased to run from the date the money was deposited and notice sent to the mortgagees. In a recent Full Bench decision

of this Court in Thevaraya Reddi v. Venkatachala Pandithan 31 M.L.J. 548, it has been held that a deposit in order to be effective within the

meaning of Section 84 of the Transfer of Property Act, must continue to be in court in order that the requirements of the section that the mortgagor

in depositing the money should do all that is necessary to enable the mortgagee to withdraw the money may be satisfied. In that case, the Full

Bench had to consider the decision of a division bench of this Court in Krishnaswami Chettiar v. Tippa Ramaswami Chettiar ILR (1911) M. 44.

Though the ruling in the latter case was upheld so far as it laid down the general proposition that the deposit in order to be effective within the

meaning of the law, must continue to be in court for such time as is necessary to enable the mortgagee to withdraw the money, on the question

however, whether on the facts of the case in Krishnaswami Chettiar v. Tippa Ramaswami Chettiar ILR (1911) M. 44, there was a valid tender

within the meaning of Section 84, Transfer of Property Act, my learned brother expressed the opinion that there would be a valid tender within the

meaning of the law. I also made a suggestion to the same effect. However that may be, we have to see upon the facts of this particular case, apart

from any question of deposit, whether there was not a valid tender which the respondents refused. Notice was given to the respondents, and the

mere fact that notice was given by court and that deposit had been made could not make it any the less a valid tender. It might be something more

than a tender; but it was a tender none the less. There was no question here of any difficulty as to the title of the mortgagees, and the tender was

therefore made to the right persons. That being so, we think the terms of Section 84 were satisfied.

3. We reverse the judgment of the Subordinate Judge on this point. The decree will have to be modified by awarding mesne profits from April

1914 till the responde its surrender possession of the property.

4. Both parties also agreed that mesne profits should be calculated at 130 paras of paddy a year which is the rate admitted by the respondents. Six

months'' time will be allowed for redemption of the property. The parties will pay and receive proportionate costs.

