

Madras High Court

Venkatrama Aiyar vs Rangasami Aiyangar And Ors. on 17 October, 1912

Equivalent citations: (1912) 23 MLJ 588

JUDGMENT

1. The question raised in the memo of objections is whether the plaintiff is entitled to mesne profits in the four-fifths share sought to be redeemed from the date of plaint up to the time of his being put in possession of one-half share subsequent to the decree of the District Munsif. It is argued that he is, because he tendered four-fifths of the mortgage amount to the 1st defendant and the latter refused to receive it. It is argued that the mortgage-money ceased to carry interest after the 1st defendant's refusal to accept payment and to deliver up four-fifths of the properties and that 1st defendant was bound to account for 4/5 of the mesne profits from that date under Section 76, Clause (i) of the Transfer of Property Act. The claim is and cannot be rested on the ground that the plaintiff has actually sustained any damages by any wrongful act on the part of the 1st defendant. The right claimed is a statutory one. Does it exist in a case of this sort? The 1st defendant in his written statement did not deny the tender. He alleged that the plaintiff was not entitled to demand apportionment of the mortgage amount with respect to the share of the property belonging to him and to ask for partition and redemption in the same suit. He denied the plaintiff's right to get mesne profits till possession of the land was obtained. It is clear that plaintiff could not be put into possession of what he claimed without a partition. The parties were not agreed whether the plaintiff was entitled to recover one-half or four-fifths of the land. The plaintiff did not offer to pay the amount tendered and agree to leave the question of the share which he was entitled to recover to be determined by court. He had no right to require the defendant to accept the amount on the footing that his claim to recover four-fifths of the land was well-founded. The provisions of the Transfer of Property Act do not in terms refer to a case when the mortgagor claims to split up the mortgage in consequence of the mortgagee having become the owner of a portion of the equity of redemption or to a case where there are disputes between the parties as to the extent of the subsisting interest of the mortgagor in the equity of redemption so as to compel the mortgagee to take upon himself the task of deciding such disputes rightly for himself at the risk of losing the interest on money due to him and becoming accountable for mesne profits. In *Secirles v. Sadgrave* (1855) 5 E. & B. 639, it was observed: "The sum tendered must include the full amount due upon the mortgage for principal, interest and costs and the tender of such amount is not made valid by the mortgagor having a set off for the balance." A statutory right of this character should not be extended where there are disputes between the parties of the kind that existed in this case so as to throw on the mortgage an undue amount of responsibility. The claim for mesne profits must therefore be disallowed and the memo of objections dismissed with costs.