

RAMA REDDI
v.
APPAL
REDDI.

JUDGMENT.—The District Judge has dismissed the appeal under section 551, Civil Procedure Code, on the ground that *post diem* interest cannot be given. The terms of exhibit I are not very clear, and it is possible that they may mean only that 12 per cent. interest is chargeable instead of 9 per cent. from the date of the bond to the date fixed for the repayment of the principal, and that in case of default the mortgagee should at once proceed to recover the principal and interest at the enhanced rate.

But, though we are not able to hold that the interpretation put upon the bond, exhibit I, by the Courts below is incorrect, we may point out that under the Interest Act XXXII of 1839, the Court has power to give interest upon mortgage money, as it is money payable at a certain time and under a written instrument. Interest *post diem* may, therefore, be awarded at such rate as is reasonable, if not always at the rate mentioned in the contract. The joint effect of the Interest Act and of section 88 of the Transfer of Property Act is in favour of the award of interest *post diem* as interest till date of payment, at a reasonable rate and as a charge upon the mortgaged property—*Bikramjit Tewari v. Durga Dyal Tewari*(1).

As the District Judge has disposed of the appeal upon this point only, and without hearing the respondents, we must reverse the decree and remand the appeal for disposal. The costs in this appeal will abide and follow the result.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

BRAHMANNA (DEFENDANT), APPELLANT,

v.

RAMAKRISHNAMA AND OTHERS (PLAINTIFF'S HEIRS),
RESPONDENTS.*

Defamation—Imputation on a wife—Suit by husband.

In a suit for damages for defamation, it appeared that the words complained of were spoken by the defendant to the plaintiff in the presence of a third party and

(1) I.L.R., 21 Calc., 274.

* Second Appeal No. 107 of 1894.

were to the effect that the plaintiff's wife had committed adultery with a pariah and that her children had been born to the pariah :

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Held, that the suit was not maintainable by the plaintiff.

SECOND APPEAL against the decree of G. T. Mackenzie, District Judge of Kistna, in appeal suit No. 1335 of 1892, affirming the decree of Ramasami Sastri, District Munsif of Gudivada, in original suit No. 37 of 1892.

Suit for damages for defamation. The plaintiff averred and proved that the defendant had said to him, in the presence of a constable, "your wife has committed adultery with Mala Murti" and your three children are Murti's issue," or words to that effect which constituted the defamation complained of.

The District Munsif passed a decree for Rs. 200 which was affirmed on appeal by the District Judge.

The defendant preferred this second appeal.

Venkatarama Sarma for appellent.

Naraina Rau for respondents.

MUTTUSAMI AYYAR, J.—I do not think that this is a case in which we should depart from the rule that it is the person who is slandered that ought to sue. The plaintiff's wife is *sui juris* and she may sue for the slander. No other person is permitted to sue, because however closely he may be related to the person slandered and whatever pain of mind he may suffer from the slander of his relation, the injury caused to him is mediate or remote and not immediate or proximate. If the rule were otherwise, the defamer might be liable for as many actions as there are near relations of the persons defamed. It is said that the defamer's object was to vilify the plaintiff. But the slanderous words spoken do not impute any personal misconduct to him. They do not state that the plaintiff knew of his wife's want of chastity, and with that knowledge lived with her. The language used is consistent with plaintiff's belief in his wife's chastity. The object was no doubt to cause intense pain of mind to the plaintiff, and to insult him in the heat of altercation, but it was part of that object to do it only by slandering his wife and children.

Suppose the wife brought an action against defendant, would it be a good defence to say that though she was the person slandered, it was intended only to insult her husband? If not, the rule that a slanderer should not be liable to as many actions as there are relations would be violated. I would follow the

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principle laid down in *Subbaiyar v. Kristnaiyar*(1), *Luckumsey Rowji v. Hurbun Nursey*(2), and *Daya v. Param Sukh*(3). Setting aside the decrees of the Lower Courts, I dismiss the suit; but, under the circumstances, there will be no order as to costs throughout.

BEST, J.—Though most unwilling to disturb the decrees of the Courts below in this case, I am constrained to come to the conclusion that the authorities cited leave us no option and that the plaintiff's suit must fail. I concur, therefore, in the decree proposed by my learned colleague.

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Parker.*

1894.
September
17, 27.

KRISHNA AYYAN AND OTHERS (DEFENDANTS NOS. 1, 3 to 7, 11
AND 12), APPELLANTS,

v.

VYTHIANATHA AYYAN (PLAINTIFF), RESPONDENT.*

*Hindu law—Stridhanam—Gift, construction of—Provincial Small Cause Courts Act—
Act IX of 1887, sched. II, art. 18—Suit relating to a trust.*

A Hindu executed in favour of his daughter an instrument in the following terms:—"I have hereby given to you to be enjoyed as stridhanam after my death " 2,320 fanams out of 6,000 fanams which remain as kanom on the land T. . . " The proportionate rent on 2,320 fanams is 365 paras. This quantity of " paddy . . . shall be enjoyed by you and your sons and grandsons " hereditarily by receiving the same from my sons." After certain clauses restricting the mode of enjoyment and the power of alienation the instrument proceeded, "in the event of the said kanom being paid, that money shall be " received by my sons and shall be invested on some other property, which may be " approved of by you and your sons and by my sons, and from that property you " may receive income yearly and enjoy the same." In a suit by a grandson of the donee to recover his share of the income:

Held, (1) that the suit "related to a trust" within the meaning of Provincial Small Cause Courts Act, schedule II, article 18;

(2) that the instrument was not invalid under Hindu law and that the plaintiff was entitled to a decree.

(1) I.L.R., 1 Mad., 383.
(3) I.L.R., 11 All., 104.

(2) I.L.R., 5 Bom., 580.
* Second Appeal No. 577 of 1894.