

RAJAM  
CHETTI  
v.  
SESHAYYA.

For the reasons stated above I hold that the declaration made by the High Court in 1885 that granting leave to sue a defendant out of the jurisdiction under clauses (a) and (c) of section 18 of the Presidency Small Cause Courts Act, 1882, is one of the acts which may be done by the Registrar of the Small Cause Court under section 33 of the Act is *ultra vires*, and the leave given by the Registrar in the case under reference is not a valid leave within the meaning of the said Act.

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## APPELLATE CIVIL.

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

RAMA REDDI (PLAINTIFF No. 1), APPELLANT,

v.

APPAJI REDDI AND OTHERS (DEFENDANTS), RESPONDENTS.\*

1894.  
August  
10, 28.

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*Interest Act—Act XXXII of 1839—Transfer of Property Act—Act IV of 1882,  
s. 88—Mortgage—Interest ‘post diem.’*

The plaintiff sued in December 1891 upon a registered mortgage dated 1875, in which it was provided that interest should be paid at the rate therein mentioned, and that the principal should be repaid on 10th April 1880, but in which there was no provision for payment of interest *post diem* :

*Held*, that interest *post diem* should be awarded under the Interest Act, 1839, at a reasonable rate :

*Semble* : the amount so awarded would constitute a charge on the mortgage premises.

SECOND APPEAL against the decree of W. F. Grahame, District Judge of South Arcot, in appeal suit No. 36 of 1893, affirming the decree of P. S. Gurumurti, District Munsif of Cuddalore, in original suit No. 1 of 1892.

Suit instituted on 18th December 1891 to recover principal and interest due on a mortgage, dated 19th June 1875. The principal sum was repayable under the terms of the instrument on 10th April 1880. With reference to the plaintiff's claim for interest, and also to a plea of limitation raised by the defendant, the Dis-

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\* Second Appeal No. 1546 of 1893.

trict Munsif said :—“ As regards interest, plaintiffs have claimed  
 “ Rs. 1,583 under this head from 19th June 1875 to the date of  
 “ suit. Under the bond (exhibit I) the interest is payable at  $\frac{3}{4}$  per  
 “ cent. per mensem on the 30th Ani (12th July) of each year,  
 “ while the principal is made payable on 30th Panguni, Paramathi  
 “ (10th April 1880), and in default, the obligor agreed to pay  
 “ interest at one per cent. per mensem from the date of the bond.  
 “ No payment was made under exhibit I, and though Lakshmana  
 “ Reddi died in November 1877, third plaintiff, as a major, could  
 “ have sued for the interest at once, and both the principal and  
 “ interest could have been claimed when the principal fell due.  
 “ The suit having been filed on 18th December 1891, the interest  
 “ due under exhibit I prior to twelve years before this date is  
 “ barred by limitation; and plaintiff cannot claim interest after  
 “ 10th April 1880, the date fixed for payment of the principal of  
 “ exhibit I, as there is no provision there for such payment and  
 “ more than six years have elapsed between the said date and  
 “ the date of suit. Even if compensation be intended to be paid  
 “ in lieu of interest as ruled in *Mansab Ali v. Gulab Chand*(1),  
 “ *Bhagwant Singh v. Daryao Singh*(2), *Gudri Koer v. Bhubaneswari*  
 “ *Coomar Singh*(3), the higher rate, *i.e.*, one per cent. in lieu of  $\frac{3}{4}$   
 “ per cent. per mensem, claimed from the date of the bond, cannot  
 “ be viewed as penal and disallowed, in view of the ruling of the  
 “ Madras High Court in *Basavayya v. Subbarasu*(4). I therefore  
 “ allow Rs. 30 only towards interest.”

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The District Munsif accordingly passed a decree for the principal due on the mortgage, together with Rs. 30 only by way of interest.

The District Judge affirmed this decree, dismissing the appeal preferred against it under Civil Procedure Code, section 551, agreeing in the view that the mortgage sued upon, on its right construction, contained no provision for payment of interest *post diem*.

The plaintiff preferred this second appeal.

*Subramanya Ayyar* and *Ranga Ramanujachariar* for appellant.

*Bhashyam Ayyangar* and *Krishnasami Ayyar* for respondents

Nos. 6, 7 and 8.

(1) I.L.R., 10 All., 85.  
 (3) I.L.R., 19 Cal., 19.

(2) I.L.R., 11 All., 416.  
 (4) I.L.R., 11 Mad., 294.

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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.

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## 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

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

\* Second Appeal No. 107 of 1894.