

GIDDAYYA  
v.  
JAGANNATHA  
RAU.

the Village Courts Act, 1889, is confined to the revision of village courts' proceedings on the grounds there specified, on none of which did his judgment in this case proceed. His judgment in this case is on the appreciation of evidence as if it were an appeal.

We must allow this petition and reverse the order of the District Munsif and restore the decree of the Village Munsif with costs in this and in the District Munsif's Court.

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APPELLATE CIVIL.

*Before Mr. Justice Subramania Ayyar and Mr. Justice Davies.*

SUBBARAYA RAVUTHAMINDA NAINAR

(DEFENDANT NO. 1), APPELLANT,

v.

PONNUSAMI NADAR AND OTHERS (PLAINTIFFS),

RESPONDENTS.\*

*Transfer of Property Act—Act IV of 1882, s. 3C—Mortgage decree—Interest—Contract rate—Subsequent interest—Civil Procedure Code—Act XIV of 1882, s. 209.*

When a decree for sale is passed in a mortgage suit, interest at the contract rate should be decreed for the period allowed for payment by the mortgagor, and subsequent interest should be decreed at six per cent. only.

APPEAL against the decree of V. Srinivasa Charlu, Subordinate Judge of Kumbakonam, in Original Suit No. 33 of 1893.

This was a suit to recover Rs. 24,000, principal and Rs. 41,319, interest, due on a mortgage bond, dated the 17th of January 1881, and executed by defendant No. 1 on behalf of defendant No. 2 in favour of one Tavasumuttu Nadar, brother of plaintiff No. 1 and father of plaintiffs Nos. 2 to 4. The provisions in the mortgage bond regarding interest stipulated that the interest accruing at the rate of ten annas per cent. per mensem be paid on the 17th of January of each year; that, in default, interest be charged at twelve annas per cent. from date of default; that the principal amount be paid on the expiry of seven years; and that, in default, the same be paid with interest at one anna per cent. from date of default.

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\* Appeal No. 14 of 1896.

The defendants pleaded that the mortgage has been discharged. This plea was found to be false in a suit between the same parties which resulted in the appeal referred to in the first sentence of the judgment below.

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The Subordinate Judge found that the amount due for interest up to the date of the suit was Rs. 38,095, and he passed a decree as follows :—

“ That the defendants do pay plaintiffs in six months from “ to-day Rs. 62,095, and proportionate costs and interest on “ Rs. 24,000 from the plaint date, that is, 20th of July 1893, at “ twelve per cent. per annum, and that, in default of payment of “ the sums aforesaid, on or before the date specified, the said “ hypothecated property or a sufficient portion thereof be sold, &c.”

The defendant preferred this appeal.

*V. Krishnasami Ayyar and Natesa Ayyar* for appellant.

The Acting Advocate-General (*Hon. V. Bhashyam Ayyangar*) and *Pattabhirama Ayyar* for respondents.

JUDGMENT.—As to the plea of discharge it is dismissed under our judgment in *Subbaraya Ravuthaminda Nainar v. Ponnusami Nadar*(1). As to the rate of interest allowed by the Subordinate Judge his decree must be modified by directing that the twelve per cent. per annum, the contract rate, be allowed only for the six months within which payment was ordered by the decree (see our judgment in *Subbaraya Ravuthaminda Nainar v. Ponnusami Nadar*(2) and *Surya Narain Singh v. Jogendra Narain Roy Chowdhury*(3)). Subsequent to that period, the plaintiff is entitled, in our opinion, to interest at six per cent. per annum, and it will be so decreed (*Poresh Nath Mojumdar v. Ramjodu Mojumdar*(4), and *Achalabala Bose v. Surendra Nath Dey*(5)) the ruling in *Amolak Ram v. Lachmi Narain*(6) notwithstanding.

The parties will bear their own costs.

(1) Appeal No. 48 of 1896 (unreported).

(2) Appeal No. 13 of 1896 (unreported).

(3) I.L.R., 20 Cal., 360.

(4) I.L.R., 16 Cal., 246.

(5) I.L.R., 24 Cal., 766.

(6) I.L.R., 19 All., 174.