

Under section 582-A, Civil Procedure Code, we allow the appellant to pay the deficient stamp duty within one week from this date; failing which, the appeal will stand dismissed with costs.

This appeal coming on for final hearing and the appellant's Vakil not having complied with the above order, the Court delivered the following judgment:—

JUDGMENT.—The deficient stamp duty not having been paid, the appeal is dismissed with costs. The costs will be calculated on the appellant's valuation of the appeal.

KASTURI  
CHETTI  
v.  
DEPUTY  
COLLECTOR,  
BELLARY.

---

## APPELLATE CIVIL.

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

KOTI PUJARI (PLAINTIFF), PETITIONER,

v.

MANJAYA AND OTHERS (DEFENDANTS NOS. 1 AND 3 TO 17),  
RESPONDENTS.\*

1897.  
December 15.

*Suit's valuation—Pecuniary limits of jurisdiction—Suit filed in superior Court.*

In a suit on a mortgage, in which the amount claimed was in excess of the pecuniary limits of the jurisdiction of a District Munsif, and which was filed in the Court of a Subordinate Judge, it appeared that there had been an adjudication by a District Munsif in a previous suit affecting the rights of the parties now in issue, and that the present claim was largely composed of interest. The Subordinate Judge having framed issues relating to the claim for interest and having tried them as preliminary issues, decided that the suit was within the pecuniary limits of the jurisdiction of a District Munsif, and that the claim had been unwarrantably exaggerated with a view to filing the suit in a superior Court, and so avoiding the plea of *res judicata*, and he thereupon returned the plaint to be presented in the proper Court:

*Held*, that the procedure adopted was wrong and that the whole suit should have been tried.

PETITION under Civil Procedure Code, section 622, praying the High Court to revise the proceedings of H. G. Joseph, District Judge of South Canara, in Civil Miscellaneous Appeal No. 30 of 1896, dismissing an appeal against order of U. Achutan Nayar, Acting Subordinate Judge of South Canara, in Original Suit No. 3 of 1896.

---

\* Civil Revision Petition No. 165 of 1897.

KOTI PUJARI  
v.  
MANJAYA.

Suit on a mortgage to recover Rs. 999 principal, and Rs. 1,800 interest, with further interest and costs. The defendants pleaded that the mortgagor was not competent to mortgage validly the premises which belonged to the family, and that it had been held in a previous suit tried by a District Munsif that Rs. 599 forming part of the mortgage money was not chargeable on the property, that the interest was calculated under a penal and unenforceable stipulation, and that the claim included *post diem* interest. The instrument sued on contained, *inter alia*, the following clauses:—

“ We have received Rs. 999 as per above particulars ; we shall pay every year from this day on the 30th Bahula of the month of Magha Rs. 70, being interest on the amount at 7 per cent.

“ The principal amount we shall pay you, together with arrears of interest, if any, in one lump sum, on the 30th April of any year after the 30th April 1881 and within the 30th April 1886, and take back from you this mortgage bond, together with mortgage bond taken back from Dujee Prabhu and handed over to you, and the prior documents referred to therein and the decree in English evidencing the title to this land.

“ If interest is not paid on the due date, and should fall in arrears, we will pay at the rate of 12 per cent. interest on the principal sum from the date of default.”

The Subordinate Judge framed and tried as preliminary issues the following:—

1. “ Whether the plaintiff is entitled to interest after the date fixed for repayment in the absence of a covenant to that effect ?
2. “ If plaintiff is entitled to interest at all, to what rate is he entitled ? ”

In the result he held that the suit was within the jurisdiction of the Court of a District Munsif and he returned the plaint for presentation in the proper Court. He said:—“ In the present case the bond fell due on the 30th April 1886, and the claim for *post diem* interest is barred by limitation more than six years having elapsed before the presentation of the plaint on the 30th January 1896. The defendants argue that the plaintiff knowing well that the claim for *post diem* interest is not sustainable has included it in this suit and put it so high as to oust the jurisdiction of the Munsif and to give jurisdiction to this Court. Though, in case of default, 12 per cent. interest is made payable from the date of default, yet the original rate fixed in the bond being

“7 per cent., it is contended that the plaintiff, who is entitled  
 “only to a reasonable rate, cannot claim as *post diem* interest, a  
 “rate higher than that fixed in the bond, and that the claim for  
 “12 per cent. interest is an unwarrantable addition to give juris-  
 “diction to this Court. *Lakshman Bhatkar v. Babaji Bhatkar*(1).  
 “I think this ruling is in point.

KOTI PUJARI  
 v.  
 MANJAYA.

“I am also of opinion that plaintiff's error is not a *bonâ fide* one.  
 “In Original Suit No. 333 of 1884, the Puttur Munsif decided  
 “that out of the consideration of Rs. 999, Rs. 599 was not charge-  
 “able on the family property. This decision was confirmed in  
 “Appeal Suits Nos. 24 and 25 of 1888. To avoid the plea of  
 “*res judicata*, the plaintiff delayed the institution of this suit for  
 “nearly 12 years from the date of that decision, and nearly 10  
 “years from the date in which the bond fell due.”

The plaintiff preferred an appeal to the District Judge who dismissed it agreeing with the Subordinate Judge.

The plaintiff preferred this petition.

Mr. C. Krishnan and Madhava Rau for petitioner.

Narayana Rau for respondents.

JUDGMENT.—We think that the Courts below were in error in holding that the claim either for *post diem* interest or for the portion of principal said to have been disallowed in a previous suit were unwarrantable additions to the claim made for the purpose of changing the *venue*, nor do we think that the Courts could properly entertain such a plea as a matter preliminary to determining the Court in which the suit ought to be brought. There is, in the present case, no question of over-valuation of the subject matter of the suit. The contest is as to whether the plaintiff can recover the whole or only a part of the sums claimed by him in the suit, viz., a portion of the principal and *post diem* interest. These are the very questions involved in the suit and are not preliminary questions connected with the proper valuation of the subject matter of the suit. Very grave inconvenience and confusion would result if pleas raised by the defence as to the right of the plaintiff to portions of the relief sought by him and which he would be entitled to on establishing the allegations of the plaint, were allowed to be treated as preliminary questions affecting the valuation of the suit, and which ought to be determined in order to ascertain the Court

**KOTI PUJARI** in which the suit should be brought. In the present case the claim  
**v.**  
**MANJAYA.** for *post diem* interest is one which the plaintiff is entitled to raise, having regard to the recent decisions on the subject, while the claim for the sum said by the defendant to be *res judicata* is one which the plaintiff can establish if he can show that there is no *res judicata*, and that the debt was incurred for purposes binding on the defendant. If the valuation of the suit is right, no question of *res judicata* by virtue of the decision in the District Munsif's Court can arise, since that Court could not have tried the present suit.

We have not overlooked *Lakshman Bhatkar v. Babaji Bhatkar*(1) on which much stress was laid by the respondents' pleader, but we think that the present case is distinguishable from it. Were it otherwise, we should hesitate to go so far as the learned Judges seemed disposed to go in applying the principle enunciated by him with reference to the duty of the Court in cases of alleged over-valuation.

We must therefore set aside the orders of the Courts below, and direct that the District Judge do receive the plaint and dispose of it according to law.

Costs throughout will abide and follow the result.

---

## APPELLATE CIVIL.

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

JAGAPATI MUDALIAR (DEFENDANT), PETITIONER,

v.

EKAMBARA MUDALIAR (PLAINTIFF), RESPONDENT.\*

*Pleader and client—Authority of pleader—Compromise entered into by pleader without the client's consent.*

It is not competent to a pleader to enter into a compromise on behalf of his client without his express authority to do so.

PETITION under Civil Procedure Code, section 622, praying the High Court to revise the proceedings of V. Saminada Ayyar, District Munsif of Trivellore, in Small Cause Suit No. 1088 of 1896.

(1) I.L.B., 8 Bom., 31.

\* Civil Revision Petition No. 99 of 1897.