SARVA-RAYUDU v. VENKATA-RAJU.

adducing the evidence that he did. Hence their decision cannot be questioned in Second Appeal.

For these reasons I agree that this appeal must be dismissed with costs.

TYABJI, J.

APPELLATE CIVIL.

Before Mr. Justice Ayling and Mr. Justice Sadasiva Ayyar.

1913. August 6.

GOVINDAN NAIR (PULIKOTE PUTHAN VEETTIL, KARNAVAN AND MANAGER) AND EIGHTEEN OTHERS (DEFENDANTS), APPELLANTS,

v.

CHERAL *alias* KRISHNA PANDUVAL PARNGOT-PURATH TARWAD, KARNAVAN AND MANAGER (PLAINTIFF AND DEFENDANTS), RESPONDENTS.*

Interest Act (XXXII of 1839)—Debt payable in kind—Interest allowable.

A debt which is specifically expressed as payable in certain fixed measures of grain and at a specified time is a debt *certain* within the meaning of Act XXXII of 1839 and interest is allowable on the same.

Juggomohun Ghose v. *Manickchand* (1859) 7 M.I.A., 263, referred to.

Narayan v. *Nagappa* (1910) 12 Bom. L.R., 831, dissented from.

SECOND APPEAL against the decree of K. IMBICHUNNI NAIR, the Subordinate Judge of South Malabar at Calicut, in Appeals Nos. 302 and 317 of 1911, preferred against the decree of T. V. NARAYANAN NAIR, the District Munsif of Manjeri, in Original Suit No. 584 of 1909.

The facts of the case appear sufficiently from the judgment.

C. V. Anantakrishna Ayyar for the appellants.

T. R. Ramachandra Ayyar for the first respondent.

AYLING AND SADASIVA AYYAR, JJ.

JUDGMENT.—In our opinion the Subordinate Judge's findings of fact as to the plaintiff's right to redeem cannot be said not to be based on evidence and must be accepted.

The appellant's vakil argues relying on *Narayan* v. *Nagappa*(1) that the award of interest on a debt payable in kind

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* Second Appeal No. 2109 of 1912.

(1) (1910) 12 Bom. L.R., 831.

is not authorised by Act XXXII of 1839. With great respect to the opinion of the learned Judges who were parties to the decision above quoted, we are unable to agree with their view.

We fail to see why a debt which is specifically expressed in measures of grain and payable at a specified time should not be regarded as a debt certain (assuming the latter adjective in section 1 of the Act to qualify the word "debt" as well as "sum," merely because the commutation rate at the time of payment or suit may have to be subsequently determined. We do not find anything, in the other case quoted by the appellant's vakil, *Juggomohun Ghose* v. *Manickchand*(1) to conflict with this view. In our opinion the award of interest on the porappad in the present case was justified.

The rate of interest is however very high (20 per cent.) and it runs for a period of forty years and more. Accepting the finding of the Subordinate Judge that this is the usual rate in Malabar, the Act authorises the award of interest at a rate "not exceeding the current rate" and we consider, that in the present case, the Court would have exercised its discretion wisely in reducing the rate to 6 per cent. The decree will be amended accordingly.

We see no reason why the interest awarded should not be set off against the sums due for kanom amount and improvements.

The appellants will pay half the respondent's costs in this Court. The time for redemption is extended to six months from this date.

The Subordinate Judge's decree with the modification above directed is confirmed.

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(1) (1859) 7 M.I.A., 263.