

(1945) 08 MAD CK 0019
In the Madras High Court

Boggavarappu Satyanarayanamurthy	APPELLANT
Vs	
Gontla Venkata Pichaiah and Others	RESPONDENT

Date of Decision : 21-08-1945

Acts Referred:

Citation : (1945) 58 LW 550 : (1945) 2 MLJ 383

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—The appellant sued the respondents in the Court of the Subordinate Judge of Bezwada for specific

performance of an agreement which they had entered into with him to execute in his favour a mortgage of Immovable properties to secure moneys

lent by him to them. The Subordinate Judge granted a decree for specific performance, but he reduced the agreed rate of interest, namely,

compound interest at 12 3/8 per cent, with half-yearly rests to 8 per cent, simple interest. He refused to give the plaintiff a mortgage decree in this

suit. The appellant has appealed both with regard to the reduction of interest and the refusal of the Subordinate Judge to grant him a mortgage

decree. The respondents have not appeared.

2. The reason given by the Subordinate Judge for reducing the rate of interest which he regarded as "" unconscionable and penal "" was that the

plaintiff was a very rich man and the defendants were poor, which according to him meant that he was in a position to dominate them. We do not

regard compound interest at 12 3/8 per cent, to be unconscionable even with half yearly rests, but Mr. Satya-narayana Rao on behalf of the

plaintiff has agreed to take simple interest at 12 3/8 per cent. The decree of the

lower Court will be amended accordingly.

3. There is no substance in the plaintiff's contention that he should have a mortgage decree in this suit. It is based on an observation of Sundara

Aiyar, J., sitting with Spencer, J., in *Narayana Kutti Goundan v. Pechiammal* (1911) 22 M.L.J. 364: ILR 36 Mad. 426 when he said:

It appears to me that the important distinction between the English and Indian law pointed out above was overlooked in these cases. No doubt a

person having an agreement may sue for the specific performance of the agreement to execute or assign a mortgage, and in suits for the execution

of a mortgage deed, the Courts have sometimes passed not only a decree for specific performance but for sale also following on the execution of

the conveyance.

The learned Judge did not mention any suits in which such a decree had been passed and from the subsequent remarks he was apparently referring

to American law. The observations are admittedly obiter and they are not binding on us. We may add that we do not consider it proper to pass a

mortgage decree in a suit for specific performance like the present one.

4. The decree of the trial Court will stand except as regards the rate of interest. As the respondents have not appeared we make no order as to costs.