(1905) 11 MAD CK 0007

In the Madras High Court

M.A.R.A.R. Saminathan Chettiar and Others APPELLANT

Vs

T.R. Swamiappa Naicker and Others RESPONDENT

Date of Decision : 30-11-1905

Acts Referred:

Citation : (1906) ILR (Mad) 170 : (1906) 16 MLJ 133

Judgement

1. Their Lordships after dealing with the other questions in the case thus dealt with the question the rate of interest to be allowed in the decree -

ED.

2. The result is that the amount due to the second defendant, the first mortgagee by the first defendant was Rs. 1,37,115 on the 24th August 1897.

He is entitled to recover this sum with interest at 12 per cent, per annum with annual rests from the said date. The amount due to the plaintiff, the

subsequent mortgagee, by the 1st defendant was Rs. 20,452 on the 1st February 1897. He is entitled to recover this sum with interest at 12 per

cent, per annum with annual rests from the said date. The contract rate of interest at 12 per cent, will run up to the date of payment if payment is

made before the date fixed in our decree for redemption by the 1st defendant, viz., the 1st of June 1906 and otherwise up to that date. Subsequent

to that date the principal amounts mentioned above will carry interest at 6 per cent, till date of actual payment. The question of what rate of interest

should be allowed after the fixed date for redemption by the decree has been argued at length before us and the cases on the point including the

Privy Council decisions in Rameswar Koer v. Mahomed Mehdi Hussein Khan ILR (1898) 26 C. 39 and Maharaja of Bhartpur v. Rani Hanno Dei

ILR (1900) 23 A. 181 have been brought to our notice. We are satisfied that there is no authority making it compulsory on the court to allow the

contract date after that date. The principle applicable is in our opinion correctly stated by Mr. Justice Shepherd in Commercial Bank of India v.

Ateendrulayya ILR (1900) 23 M. 637. The judgment in S.A. No. 125 of 1899 on this court''s file reported in Krishna Aiyangar v. Srinivasa

Aiyangar (1900) 11 M.L.J. 7 is not consistent with that principle, and Mr. Justice Subrahmania Aiyar, a member of this Bench, who took part in it

does not adhere to the opinion therein expressed and considers that the earlier decision of this Bench in Subbaraya Ravuthaminda Nainar v.

Ponnusami Nadar (1897)M ILR 21 M. 364, founded on previous decisions should be followed. In the event of nonpayment by the 1st defendant

on the date fixed for payment, the 1st mortgagee, the 2nd defendant, consents to the sale of the property free from his mortgage.

