

(1971) 04 MAD CK 0034

In the Madras High Court

Case No : Second App. No. 1258 of 1967

Ragaiya Bagavathar and Another

APPELLANT

Vs

Kesava Bagavathar

RESPONDENT

Date of Decision : 05-04-1971

Acts Referred:

Registration Act, 1866 — Section 17, 17(1), 49

Citation : AIR 1972 Mad 324 : (1971) 84 LW 702 : (1971) 2 MLJ 387

Hon'ble Judges : Ismail, J

Bench : Single Bench

Judgement

1. Though the value involved in this second appeal is a very small one, yet it raises an interesting question of law. Defendants 1 and 2 in O.S. 441

of 1965 on the file of the Court of the District Munsif, Arni, who failed before the trial Court as well as the first appellate Court are the appellants

before this Court. The admitted facts are as follows:

2. The first appellant herein was having some dealings in javuli with the respondent herein. In the course of such dealings, a sum of Rs. 700 was

due by the first appellant to the respondent herein. In view of the fact that the amount was standing unsecured, the respondent wanted to have the

same secured, under a mortgage, but the subject-matter of the mortgage belonged to both the appellants. Consequently, on 1-11-1955, the parties

entered into an arrangement consisting of execution of a mortgage deed by the appellants herein in favour of the respondent herein, as evidenced

by Ex. A-1 and execution of a counter-part varthamanam letter by the respondent herein in favour of the appellants, herein, as evidenced by Ex.

B-1. On that date, the respondent, in addition to the sum of Rs. 700 already due by the first appellant to him, paid a sum of Rs. 300 to both the

appellants and got the mortgage deed Ex. A-1 executed by the appellants for a sum of Rs. 1000 payable with interest at 6 per cent per annum.

Under Ex. B-1, the respondent informed the appellants that though the mortgage deed mentioned that interest at 6 per cent per annum was

payable on the principal amount of Rs. 1000 since the major portion of the principal amount formed part of the balance due on dealings between

the parties, he would not claim any interest and the mortgage would stand discharged if the principal sum of Rs. 1000 was paid by the appellants to

the respondent herein. The mortgage deed, Ex. A-1, though dated 1-11-1955, was registered only on 25-11-1955. Subsequently the appellants

herein transferred their interest in the mortgaged property in favour of defendants 3 to 5, imposing an obligation on them to discharge the mortgage.

Thereafter, the present suit was instituted by the respondent herein, for recovery of a sum of Rs. 1597-50 from the appellants as well as

defendants 3 to 5, the said amount consisting of the principal amount of Rs. 1000 and interest of Rs. 597-50 from 1-11-1955 onwards. On 4-1-

1966, the respondent made an endorsement that a sum of Rs. 1000 was paid to him out of Court by defendants 3 to 5. The appellants herein in

their written statement admitted the execution of the mortgage deed, Ex. A-1, but contended that in view of the understanding between the parties,

as evidenced by Ex. B-1, no interest was payable and even before the institution of the suit, as soon as notice was received from the respondent

herein, the appellants had intimated defendants 3 to 5 to pay the principal amount of Rs. 1000 immediately to the respondent herein. Since the

principal amount of Rs. 1000 was received by the plaintiff (respondent herein) the only question that had to be considered by the learned District

Munsif was whether the respondent was entitled of any interest as provided for in Ex. A-1. He came to the conclusion that since Ex. B-1 was not

registered, it could not prevail against the registered document Ex. A-1 and therefore the respondent was entitled to interest, with the result on 27-

7-1966, he decreed the suit for Rs. 597-50. With regard to costs, he came to the conclusion that having regard to the fact that the principal

amount had been paid, it was a fit case in which the respondent-plaintiff could be awarded half costs and accordingly awarded half costs. As

against this judgment and decree of the learned District Munsif, the appellants herein preferred an appeal to the learned District Judge of North

Arcot at Vellore. The learned District Judge on 13-7-1967, dismissed the appeal, A. S. 341 of 1966 agreeing with the conclusion of the learned

District Munsif. There was cross-objection by the respondent herein contending that he was entitled to full costs. The said cross-objection was

also dismissed by the learned District Judge. Hence the present second appeal by defendant 1 and 2 in the suit and the cross-objections by the plaintiff in the suit.

3. As I have pointed out already, as far as the second appeal is concerned, the sole question for consideration is, whether the respondent is entitled

to interest at the rate of six per cent per annum on the principal amount of Rs. 1000 as provided for in the mortgage deed Ex. A-1. Both the

Courts below relied on the decision of the Supreme Court in Kashinath Bhaskar Datar Vs. Bhaskar Vishweshwar Karve, , for coming to the

conclusion that any agreement between the mortgagor and the mortgagee with regard to change of rate of interest as originally provided for in the

mortgage deed would attract S. 17(1)(b) of the Indian Registration Act and therefore would require registration. Before the learned District Judge

two points were urged on behalf of the appellants herein. One was that the Supreme Court judgment dealt with an agreement subsequent to the

mortgage deed under which interest already accrued was given up, and therefore, that decision had no application to the present case where Ex.

B-1 was contemporaneous with Ex. A-1. The second point was that the giving up of interest under Ex. B-1 was with reference to future interest

that was yet to accrue and therefore that will not fall within the scope of S. 17(1) (b) of the Registration Act. The learned District Judge rejected

both these contentions. With regard to the first contention, the learned District Judge pointed out that the very language of Ex. B-1 showed that it

was executed after Ex. A-1 was executed and therefore it was a subsequent agreement. With regard to the second contention, the learned District

Judge relied on the use of the expression, ""whether in present or in future"" in S. 17(1)(b) of the Registration Act and came to the conclusion that

such an expression would comprehend the giving up of future interest as well. I do not have the slightest hesitation in coming to the conclusion that

the learned District Judge was wrong on both these conclusions. As I have pointed out already, Exs. A-1 and B-1 came into existence

simultaneously as forming part of one and the same transaction. The circumstances under which they came into existence, I have already given in detail. A sum of Rs. 700 was due by the first appellant alone to the respondent herein, by virtue of the business dealings they had previously and that was an unsecured loan. The respondent wanted to have the same secured by obtaining a mortgage from both the appellants to whom alone the property belonged. It is only for the purpose of inducing both the appellants to execute a mortgage in respect of their property in favour of the respondent herein, the respondent executed Ex. B-1 on the same date. Ex. B-1 itself describes as ""Adamana Pattirattin Edinedai Vartamana letter."" (Original in Tamil transliterated--Ed.) In his evidence also the respondent has admitted that Ex. B-1 was a counter-part executed by him.

Therefore, it is indisputable that Exs. A-1 and B-1 formed part of the same transaction and were brought into existence at the same time. From the

very nature of the case, one document had to be written up first before the other could be written up. Therefore, from the sequence alone, it cannot

be contended that the mortgage document Ex. A-1 having been written up first and the varthamanam letter Ex. B-1, having been written up later,

at the same time and on the same date, Ex-B-1 can be considered to be a subsequent agreement to vary the rate of interest provided for in Ex. A-

1. Equally with regard to the second contention, the learned District Judge failed to note the well-settled interpretation put up on the words ""in

present or in future"" in S. 17(1)(b) of the Registration Act. This is what is stated in Mullah's Commentary on the Indian Registration Act VIIth Edn.

at page 36:

The words "in present or in future" were first inserted in Act 30 of 1866. The words "in future" have reference to estates in remainder or in

reversion, or to estates otherwise deferred in enjoyment"".

In view of this, it is impossible to agree with the learned District Judge that the words ""in future"" have reference to interest on principal amount that

may accrue in future. Consequently, both the reasons given by the learned District Judge for rejecting the case of the appellants herein are not

sound.

4. Nonetheless, the principal question remains, namely, whether Ex. B-1 requires registration and whether for want of registration it is inadmissible

in evidence or not. For the purpose of deciding this question, it is necessary to refer to the actual provision contained in the Indian Registration Act

as well as the leading decision of the Supreme Court on this point.

5. Section 17(1) of the Registration Act, so far as is relevant, is as follows:

17 (1). The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been

executed on or after the date on which, Act XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871 or the Indian

Registration Act, 1877 or this Act came or comes into force, namely.....(b) other non-testamentary instruments which purport or operate to

create, declare, assign, limit or extinguish whether in present or in future, any right, title or interest whether vested or contingent, of the value of one

hundred rupees and upwards, to or in Immovable property." Section 49 of the same Act states that no document required by S. 17 or by any

provision of the Transfer of Property Act, 1882, to be registered shall affect any immovable property comprised therein, or confer any power to

adopt, or be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered.

6. It has been well settled that in construing these provisions of the Act, the following rules must be observed.

The strictest construction should be placed on the prohibitory and penal sections of the Registration Act which impose serious disqualifications for

non-observance of registration. S. 17 of the Act, being a disabling section, must be construed strictly. Unless a document is clearly brought within

the purview of S. 17, its non-registration is no bar to its being admitted in evidence. If there is any doubt on the subject, the benefit of the doubt

must be given to the person who wants the Court to receive the document in evidence; and so in spite of the rule of strict construction there is a

point at which it is unnecessary to multiply technicalities. The criterion for purposes of registration is what is expressed on the face of the document,

not what incidents may be annexed by custom to a grant of the kind". (Mulla's Commentary on the Indian Registration Act, 7th Edn. page 28).

7. Bearing these principles in mind, what we have to see with reference to Section 17(1)(b) of the Registration Act is: (1) that there must be a non-

testamentary instrument; (2) that instrument must purport or operate to create,

declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, to or in Immovable property and (3) that the right, title & interest must be of the value of Rs. 100 and upwards. A reading of the section itself makes it absolutely clear that the value that is contemplated for purposes of registration is not the value of the Immovable property, but the value of right, title and interest which is created, assigned, limited, or extinguished in or to the said Immovable property. Consequently, what we have to see with reference to Ex. B-1 is, first whether it comes within the scope of S. 17(1)(b) of the Registration Act at all, with reference to its character and secondly whether the interest limited or extinguished is of the value of Rs. 100 and upwards. As far as the character of the document is concerned, the decision of the Supreme Court is clear on this point. Approving the judgment of the Rangoon High Court in U. Po. Thin v. Official Assignee, AIR 1938 Rang 285, the Supreme Court in Kashinath Bhaskar Datar Vs. Bhaskar Vishweshwar Karve, , stated as follows:

One part of the "interest" which is mortgagee has in mortgaged property is the right to receive interest at a certain rate when the document provides for interest. If that rate is varied, whether to his advantage or otherwise, then, in our judgment, his "interest" in the property is affected. If the subsequent agreement substitutes a higher rate, then to the extent of the different it "creates" a fresh "interest" which was not there before. If the rate is lowered, then his original "interest" is limited.

Therefore, a variation of the rate of interest provided for in the original mortgage deed by a subsequent document will bring the document within the scope of S. 17(1)(b) of the Registration Act, as far as its character is concerned.

8. Consequently, it can be said that Ex. B-1 in so far as it provides for non-payment of interest, contrary to what is provided for in Ex. A-1, "limits the "interest" in the Immovable property created by Ex. A-1. Nonetheless the question still remains as to what exactly is the value of interest "limited" by Ex. B-1, Admittedly Ex. B-1 was executed on the same date as Ex. A-1 and therefore at the time when Ex. B-1 was executed no interest has actually accrued and therefore the giving up of interest cannot be said to "limit" the "interest" in Immovable property. Mr. T. V.

Balakrishnan, learned counsel for the appellants, in this context, drew my attention to several decisions of this court holding that in considering

whether a mortgage document should be registered or not, with reference to Section 17(1)(b) of the Registration Act, it is the principal amount

secured that has to be taken into account and not the interest that will accrue in future. AS a matter of fact as far as this particular point is

concerned, it is not even necessary to rely upon Section 17(1)(b) of the Registration Act, because the same is provided for in the Transfer of

Property Act itself in Section 59 thereof, where it is stated-

Where the principal money secured is one hundred rupees or upwards a mortgage other than a mortgage by deposit of title deeds can be effected

only by a registered instrument signed by the mortgagor and attested by at least two witnesses.

This result follows from the provisions of Section 4 of the Transfer of Property Act itself which states that Section 54, paragraphs 2 and 3, 59, 107

and 123 shall be read as supplemental to the Indian Registration Act, 1908. Therefore a combined reading of Section 59 of the Transfer of

Property Act and Section 17(1)(b) of the Indian Registration Act, so far as mortgages are concerned, makes it absolutely clear that the value of

Rs. 100 contemplated therein must have reference only to the principal amount secured under the mortgage and not to the interest that may accrue.

It is this principle that was enunciated and illustrated by the decisions relied on by Mr. Balakrishnan.

9. In *Nana Bin Lakshman v. Anant Babaji*, ILR (1877) 2 Bom 353, it was held that the value of the right, title or interest created by a mortgage is

estimate by the amount of the principal money thereby secured. Regarding the rationale behind this conclusion, that Court pointed out:

There is nought in those Acts to suggest that there should be one mode of ascertaining the value in the case of deeds of sale, and another for

testing the value in the case of a deed of mortgage, or of rent charge, or of annuity, or creating or conveying any other minor interest in, or charge

or incumbrance upon, Immovable property. We do not know any good reason for making such a distinction, and can perceive many for refraining

from its introduction. If the necessity for registration of a mortgage is to be ascertained, not by the consideration given by the mortgagee for it, but

by the actual value of the transaction to the mortgagee, the test would, at the time of making the contract and when the parties would most need to know whether the mortgage must be registered, be wholly impracticable if the interest, or profits in lieu of interest, receivable by the mortgagee is to form one of the elements of value. The rate of interest might, of course, and usually would be then fixed, but the amount of it could only be known when the mortgage was redeemed or foreclosed. The time of redemption for foreclosure would depend on the pleasure or convenience of the parties or of one of them. Why should the first three or six months' interest, merely because it is specially noticed in the mortgage, be taken into account more than any subsequent interest, receivable by the mortgagee? If the mortgagee be not entitled to interest under the mortgage, and the stipulation be that, in lieu thereof, he is to enter occupation of the land and to cultivate it, how, at the date of the contract, could the actual value of the mortgage to the mortgagee be ascertained? These are amongst the grounds upon which rests the practice, which has uniformly prevailed here, of estimating the value of a mortgage as well under Act XVI of 1864, Act XX of 1866, and Act VIII of 1871 by the amount of the principal money lent, and without any regard to the duration of the relation of mortgagor and mortgagee or to the rate of continuance of the interest payable. Had we put a different construction on Section 13 of Act XVI of 1864, Section 17 of Act XX of 1866 or Section 17 of Act VII of 1871 we should, we think, have converted those enactments into so many traps for the unwary, which could not have been the intention of the Indian Legislature.

A Full Bench of the Allahabad High Court in *Habibullah v. Nakched Rai*, ILR (1883) All 447, took the same view, namely, that the principal amount secured by a mortgage of Immovable property is alone to be considered for the purpose of deciding whether the registration of the instrument of mortgage is optional or compulsory under the Registration Act.

10. As far as our court is concerned, in *Kunhi Amma v. Ahmed Haji*, ILR (1900) Mad 105, a Bench of this Court has taken the view that for the purpose of finding the value, it is the lowest amount payable under the document that should be taken into account for the purpose of registration.

11. Though these decisions do not directly decide the question before me,

certainly, they lend considerable assistance in arriving at a conclusion one way or the other.

12. On the other hand, the learned counsel for the respondent relied upon the following sentence occurring in the judgment of the Supreme Court

in Sunil Kumar Roy Vs. Bhowra Kankanee Collieries Ltd. and Others, .

It is well settled by now that a document which varies the essential terms of the existing registered lease such as the amount of rent, must be

registered: see Durga Prasad Singh v. Rajendra Narain Bagchi, ILR (1910) Cal 293, which was approved by the Full Bench in Lalit Mohan

Ghosh v. Gopali Chauk Coal Co. Ltd., (1912) 39 Cal 284.

I am of the view that this observation of the Supreme Court has no application to the present question under consideration, for the simple reason

that Section 17(1)(d) of the Registration Act dealing with the registration of leases provides for a lease being compulsorily registered only if it

happens to be one of Immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent. From the very nature

of the case, any alternation of a material term like the rate of rent may bring into existence a new lease itself so as to require registration u/s 17(1)

(d) of the Registration Act, But in the present case, I am concerned with a simpler proposition as to how the value of a document like Ex. B-1 for

the purpose of finding out whether the value of the interest "limited" thereunder is of Rs. 100 or upwards so as to require registration u/s 17(1)(b)

of the Registration Act.

13. I have already pointed out that in view of the contemporaneous character of Exs. A-1, and B-1, no interest actually accrued at the time when

Ex. B-1 was executed and therefore no value can be assessed of the "interest" in the Immovable property purported to have been limited at that

stage. There are three decisions directly dealing with cases of change of interest or giving up of interest and holding that such documents require

registration only if the value of interest released is of Rs. 100 or upwards.

14. The first is AIR 1931 288 (Oudh) That was also a case where by a subsequent agreement interest was reduced. The learned Judges after

elaborately dealing with the case law on the point stated, ""By the agreement in question the mortgage debt is largely reduced. The six monthly

interest is reduced by Rs. 105 at least. Thus the mortgages agree to relinquish a portion of the mortgage debt exceeding, Rs. 100 by this deed. The

agreement in question has the effect of "limiting or extinguishing their right or interest of the value of one hundred rupees and upwards to or in

Immovable property". We agree with the learned Subordinate Judge in holding that the agreement in question falls u/s 17 sub-section (1), clause

(b) of the Registration Act".

15. The next is the decision of the Bench of this Court in *G. Lakshman Setty v. D. Chenchuramayya*, 34 MLJ 79 : AIR 1918 Mad 331. So far as

it relevant, the facts as appear from the said judgment itself are as follows:

The only question that we have to deal with in this second appeal is whether Ex. V which is in these words--"Now if you will pay Rs. 3000

towards the debt due by you on the two documents we shall receive the money and return the documents" is admissible in evidence having regard

to the provisions of Section 17 of the Registration Act.

On the date of Ex. V. more than Rs. 3000 was due, and the balance which the plaintiff agreed to relinquish under Ex. V, amounted much more

than Rs. 100. We do not think, though the question under consideration has been argued very elaborately before us, that the matter admits of any

real doubt.

16. The last decision is that of the Calcutta High Court in *Gurdeo Singh v. Chandrika Singh and Chandrik Singh v. Rashbehary Singh*, ILR (1909)

Cal 193. The question that came up for decision before that Court can be culled out from the judgment itself and it is as follows:

The fourth ground, upon which the decision of the Subordinate Judge is challenged on behalf of defendants 5 to 7 is that the plaintiffs are not

entitled to claim interest at the rate specific in the mortgage of 1886, inasmuch as on the 18th June 1889, they entered into a compromise with their

mortgagors, by which they undertook to reduce their claim for future interest at six per cent, per annum. In answer to this contention, it is argued

on behalf of the plaintiffs-respondents that the compromise in question is inoperative in law, as it was not registered u/s 17 of the Registration Act.

17. The judgment thereafter refers to the filing of a petition for compromise and the order passed thereon not dealing with the properties which

were not the subject-matter of the suit and proceeds to say:--

A petition of compromise, in so far as it relates to properties in suit, does not require registration u/s 17 of the Registration Act, and the decree, in so far as it gives effect to the settlement touching such properties, operates as res judicata. If it gives effect, however, to the settlement touching properties, extraneous to the litigation, the decree is, to that extent, clearly without jurisdiction and is inoperative. In relation to these extraneous properties, the parties must fall back upon the petition itself, which cannot, without registration, effectively declare or create title to Immovable property exceeding Rs. 100 in value.

18. All these decisions clearly show that when a subsequent agreement seeks to reduce the rate of interest that agreement has to be compulsorily

registered u/s 17(1)(b) of the Registration Act, only if the amount of interest reduced or given up or released is of Rs. 100 or more. Otherwise, it

does not require registration. The learned counsel for the respondent was not able to bring to my notice any decision of any Court showing that Ex.

B-1 requires registration, notwithstanding the fact that on the date when it was executed no interest had accrued and therefore no "interest" in

Immovable property was given up and consequently, the value of any such "interest" being of Rs. 100 or upwards does not and cannot arise. He

repeatedly contended that because the original mortgage is of the value of Rs. 1000 Ex. B-1 also has to be registered. I have already indicated that

the value that has to be taken for the purpose of Section 17(1)(b) of the Registration Act is not the value of the Immovable property, but only the

value of the "interest" that is limited or given up and as far as the present case is concerned, what was limited or given up was only the future

interest. This position, namely, that in relation to the valuation for the purpose of Section 17(1)(b) of the Registration Act, it is the value of the

"interest" in the Immovable property that is given up that has to be taken into account, will become clear, if one looks at the valuation for the

purpose of registering an assignment of a mortgage. Thus a deed of transfer for a consideration of less than Rs. 100 of a mortgage for upwards of

Rs. 100 does not require registration under this Act. In such a case, though the principal amount secured under the original mortgage is Rs. 100

and more, the consideration for the assignment of that mortgage being less than Rs. 100 the assignment as such does not require registration. This

clearly illustrates the principle underlying Section 17(1)(b) of the Registration Act, namely, the value that is contemplated for the purpose of that sub-section is the value of the "interest", right or title limited or created and not the value of the property with reference to which the interest, right or title is created or limited. Consequently, I am clearly of the opinion that Ex. B-1 does not require registration and, therefore, it is admissible in evidence.

19. The question may be looked at from another point of view as well. As I have pointed out already, Ex. A-1 as well as Ex. B-1 were executed

contemporaneously on 1-11-1955. Ex. A-1 was registered only on 25-11-1955. No interest in an Immovable property in the form of a mortgage

could have been created before the document was actually registered, though by virtue of Section 47 of the Registration Act, once the registration

is effected, it takes effect from the date of the actual execution itself. In this case, when Exs. A-1 and B-1 were simultaneously or

contemporaneously executed on 1-11-1955, and Ex. A-1 was registered subsequently, it should be deemed as if the mortgage deed itself did not

provide for any payment of interest. Apart from this, I repeatedly asked the learned counsel for the respondent as to what value should be put

upon Ex. B-1 for the purpose of registration, because valuation is the sine qua non for determining whether the document requires registration or

not, and he had no answer. One significant thing to the notices in this case is that Ex. A-1 itself has not provided for any period of redemption.

Therefore, notwithstanding the execution of Ex. A-1, it would be open to the appellants herein to repay the amount the very same date, even

before Ex. A-1 was registered. So long as there is no period prescribed for redemption, it is possible to hold that the mortgage could be redeemed

or discharged at any time and therefore what will be the amount of interest that would become payable at the time of redemption could not be

anticipated or calculated in advance so as to hold that the contemporaneous agreement giving up interest has to be registered, because the quantum

of interest relinquished or given up may amount of Rs. 100 or upwards at the time of redemption. It should not be forgotten that the value of the

right, title or interest for the purpose of Section 17(1)(b) of the Registration Act is the value as on the date of the execution of the document and

not anything that may accrue or arise subsequently and no future element can enter into the calculation for the purpose of assessment of the value.

In the case in hand, that rate of interest provided in Ex. A-1 was 6 per cent, per annum. If so, the interest on the principal amount will amount to

Rs. 100 only after a period of 20 months. If the mortgage is discharged within a period of 20 months, then the interest payable in terms of Ex. A-1

will be less than Rs. 100 only. Similarly, if the mortgagee sought to enforce the mortgage within the said period of 20 months, the amount of interest

which he could claim under the terms of Ex. A-1 would be less than Rs. 100 and in such an event, it would be impossible to contend that Ex. B-1

should have been registered. Can it be that the simple accident of a suit on the mortgage being instituted after the expiry of 20 months or the

mortgage being discharged after the expiry of 20 months will make any difference to the liability of Ex. B-1 being compulsorily registered u/s 17(1)

(b) of the Registration Act on the date when it was executed? In other words, can it be said that the legislature contemplated that at the time of Ex.

B-1, specific period for redemption or discharge should (sic) of the mortgage should be assumed or notionally provided for and interest calculated

for that period and then it has to be seen whether the interest so calculated is of Rs. 100 or upwards? It is only in this context that the extract from

the judgment of the Bombay High Court in ILR (1877) 2 Bom 353, already given becomes very pertinent. If the value of the mortgage has to be

estimated without any regard to the duration of the relation of mortgagor and mortgagee, or to the rate of continuance of the interest payable, it

clearly follows that for the purpose of Ex. B-1 also, neither the duration of the relationship of the mortgagor and the mortgagee nor the continuance

of the interest payable for any particular duration can enter into assessment for arriving at the value of the right, title or interest in Immovable

property.

20. Therefore, looked at from any point of view, I am clearly of the opinion that the conclusion of the Courts below is not correct in law and

consequently, the second appeal has to be allowed and is accordingly allowed. The judgments and decrees of the Courts below in so far as they

provided for payment of interest by the appellants herein to the respondent are set aside.

21. Then, there remains the cross-objections filed by the respondent herein. I do not have the slightest hesitation in holding that it is a frivolous one

and the claim for costs is neither just nor legal. Having executed Ex. B-1 and having agreed to give up interest, it does not lie in the mouth of the

respondent to claim that he must be held entitled to the cost of this litigation which could have been easily avoided. Therefore, the cross-objection

also is dismissed.

22. As far as costs are concerned I am clearly of the opinion that this is a proper case in which the appellants should have their costs from the

respondent herein with regard to their appeals as well as the cross-objections of the respondent, both before this Court as well as before the first

appellate court. Ordered accordingly. No leave.

23. Appeal allowed; Cross objection dismissed.