

(1914) 02 AHC CK 0001
In the Allahabad High Court

Rajwanta Kunwar

APPELLANT

Vs

Shiam Narain Singh and Others

RESPONDENT

Date of Decision : 20-02-1914

Acts Referred:

Citation : (1914) ILR (All) 220

Hon'ble Judges : Henry Richards, C.J.; Pramada Charan Banerji, J

Bench : Division Bench

Judgement

Henry Richards, C.J. and Pramada Charan Banerji, J.—This appeal arises out of a suit on foot of a mortgage, dated the 6th of July, 1904. The principal money secured by the mortgage was the sum of Rs. 250. The present claim is for Rs. 1,068-13-8. The court below granted a decree for sale and awarded the plaintiff interest" at the rate of 6 per cent, per annum from the date of the institution of the suit to the date fixed for payment and awarded no interest after that date. The plaintiff ban appealed on the question of the interest allowed. The other side does not appear. The rate of interest was high, and if we thought that the court below had any discretion in the matter, we doubt that we would have interfered with its exercise of it. It Is contended, however, on behalf of the appellant, that the court below had no discretion in the matter. Order XXXIV, Rule 4, provides that in a suit for sale if the plaintiff succeeds the court shall pass a decree to the effect mentioned in Clauses (a), (b) and (c) of Rule 2. The material part of Rule 2 is that the court should pass a decree (a) ordering that an account be taken of what will be due to the plaintiff for principal and interest on the mortgage on the day nest thereafter mentioned; and (b) declaring the amount so due at the date of such decree. The date referred to in the rule is the date which the court fixes for the payment of the money by the defendant to the plaintiff. It seems to us that the clear meaning of the rule is that the court must ascertain the amount due on the mortgage up to the date mentioned. That amount must be according to the contract between the parties (unless the court for some legal reason sees fit to interfere with the contract as to the rate of interest). The only section of the CPC which gives any discretion in the matter of interest to the court is Section

34. This section applies to decrees for the payment of money, and in our opinion does not in any way permit the court to reduce the interest below the contractual rate when it is taking the accounts and making the decree provided for by order XXXIV. The result is that we allow the appeal to this extent that we vary the decree of the court below by awarding interest at the contract rate from the time of the institution of the suit to the time fixed for payment of the mortgage money. We extend the time to six months from this date. We allow no interest after that time, the matter being entirely in the discretion of the court. We make no order as to costs.