

(1894) 08 MAD CK 0005
In the Madras High Court

Rama Reddy

APPELLANT

Vs

Abbaji Reddy and Others

RESPONDENT

Date of Decision : 28-08-1894

Acts Referred:

Transfer of Property Act, 1882 — Section 88

Citation : (1894) 4 MLJ 265

Judgement

1. The District Judge has dismissed the appeal u/s 551 C P. C. on the ground that post diem interest cannot be given. The tenor of Exhibit I are

not very clear, and It is possible that they may mean only that 12 per cent. interest is chargeable instead of 9 per cent. from date of bond to the

date fixed for the repayment of the principal, and that in case of default the mortgagee should at once proceed to recover the principal and interest

at the enhanced rate.

2. But though we are not able to hold that the interpretation put upon the bond I by the courts below is incorrect, we may point out that under the

Interest Act XXXII of 1839 the court has power to give interest upon mortgage-money, as it is money payable at a certain time and under a

written instrument. Interest post diem may therefore be awarded at such, rate as is reasonable, if not always at the rate mentioned in the contract.

3. The joint effect of the Interest Act and of Section 88 of the Transfer of Property Act is in favour of the award of interest post diem as interest till

date of payment at a reasonable rate, and as a charge upon the mortgaged Property (see Bikramjit Tewari v. Durga Dial Tewari I. L. R 21 C. 274

4. As the District Judge has disposed of the appeal upon this point only and without hearing the Respondents, we must reverse the decree and

remand the appeal for disposal. The costs in this appeal will abide and follow the result.