

(1925) 08 MAD CK 0077
In the Madras High Court

Umamaheswara Mudaly and Others

APPELLANT

Vs

Muniswami Mudali and Others

RESPONDENT

Date of Decision : 25-08-1925

Acts Referred:

Citation : AIR 1926 Mad 642 : (1926) 50 MLJ 428

Hon'ble Judges : Victor Murray Coutts Trotter, C.J

Bench : Division Bench

Judgement

Victor Murray Coutts Trotter, C.J.—The Chief Justice: In this case the learned Judge in making his final decree in a suit for dissolution of partnership has made two errors in taking the accounts. In the first place he has allowed interest on moneys drawn by a partner from the partnership funds be it capital or interest, it does not matter--a thing which it is not the practice to allow unless it is so provided in the deed. There is clear authority in the case of *Meymott v. Meymott* (1862) 31 BEAV 445 The other thing he has allowed is interest on certain advances up to the date not of the dissolution which had been effected by the preliminary decree but right up to the date of final decree. For that again there is clear English authority, *Barfield v. Lough Borough* (1872) LR 8 CH APP Cas 1 that such allowances cannot be made. The decree will be amended by disallowing those two items, interest at 9 per cent being allowed up to the date of the preliminary decree. After that date the usual rate of 6 per cent interest will be allowed.

2. With regard to the costs of this appeal, the conduct of the defendants has been extremely foolish and it is probably owing to their foolishness in not coming to Court and not being ready when they ought to have gone on with this case and asking for an adjournment they are responsible in part for the learned Judge going wrong; because, if the two cases cited above had been pointed out to him, undoubtedly he would have directed himself right with regard to this. I do not expect the Subordinate Judge any more than I expect myself to know the exact principles on which such matters are dealt with in a dissolution of partnership

and it was clearly the defendants" business to direct the mind of the Court to the authorities which Mould have shown him the right practice. In these circumstances the appeal will be allowed without costs and the decree will be amended in the way I have indicated.