Privy Council Appeal No. 40 of 1919.

Meka Venkatadri Appa Row Bahadur Zemindar Garu and others - *Appellants*

v.

Raja Parthasarathy Appa Row Bahadur Zemindar Garu - - *Respondent*

Raja Parthasarathy Appa Row Bahadur Zemindar Garu - - *Appellant*

v.

Meka Venkatadri Appa Row Bahadur Zemindar Garu and others - *Respondents*

(*Consolidated Appeals.*)

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 1ST MARCH, 1921.

Present at the Hearing:

LORD BUCKMASTER.
LORD DUNEDIN.
LORD SHAW.
SIR JOHN EDGE.
MR. AMEER ALI.

[*Delivered by* LORD BUCKMASTER.]

Their Lordships do not desire to hear Counsel for the appellants in reply, nor do they need further time to consider the advice that they will tender to His Majesty, for in their opinion this case is quite plain. It appears that in 1899 the respondent instituted a suit the defendants to which are represented by the present appellants; he claimed partition of two estates, known as the Nidadavole Estate and the Medur Estate, asserting that he was entitled to a one-third share in each. The District Judge, by whom the action was first heard, decreed in the plaintiff's favour with regard to the first estate, but against him with regard to the other. An appeal was taken from that decree to the High Court who varied it by declaring that the

plaintiff was entitled to one-third of the second estate as well as of the first. A receiver having been appointed of the rents of both estates on the 14th February, 1907, the plaintiff obtained an order enabling the receiver to pay over to him his interest on the Medur Estate under the judgment of the High Court as it then stood. Unfortunately for him the uncertainties of litigation resulted in a decree of His Majesty in Council on the 19th December, 1913, restoring the judgment of the District Judge and it consequently followed that the share of the property in the Medur Estate which he had received from the receiver was money which he was bound to restore. The representatives of the original defendants accordingly appealed to the District Court for restitution, asking for repayment out of the moneys in the receiver's hands, representing the plaintiff's share in the Nidadavole Estate and against him personally for the balance. The matter came before the District Judge, who decided that the defendants were entitled to the relief they claimed and made an order on the 31st August, 1915, directing that the interest at the rate of 9 per cent. with yearly rests was to be charged against the plaintiff, and that so much of the amount due as represented principal should carry simple interest from the date of the order at the rate of 9 per cent.

On the 19th October, 1916, the High Court varied their order by declaring that the amounts so received should only bear simple interest at 6 per cent., and on the 15th December, 1916, the matter being again before them they directed that the whole amount should carry interest from the date of the order, but that the moneys received should be treated as though they had been received in respect of the principal moneys and not of the interest. An order was accordingly drawn up embodying the decision of the 19th October, 1916; that order has been accepted by the appellant, but from the direction given on the 15th December as to appropriation this appeal has been brought. The reason given by the learned Judges for their judgment was that they regarded the payments already made as shown in an account filed by the defendants in the District Court on the 25th August, 1915, as payments that had in fact been appropriated by the defendants as against principal and that from such appropriation there was no opportunity for them to recede. The account referred to is set out in the record in these proceedings and it shows that as each sum of money was received it was charged with interest at the rate of 9 per cent. and carried forward until the end of the year, when the total amount so found was credited as against the total amount which was due. At no time did the sums so credited do more than cover the claim for interest, and it therefore seems impossible to understand why it was that the money received was regarded as definitely appropriated in respect of the principal. Nothing has been pointed out to their Lordships to lead them to the conclusion that the High Court was right in the assumption that they then made in that respect.

The question then remains as to how, apart from any specific appropriation, these sums ought to be dealt with. There is a debt due that carries interest. There are moneys that are received without a definite appropriation on the one side or on the other, and the rule which is well established in ordinary cases is that in those circumstances the money is first applied in payment of interest and then when that is satisfied in payment of the capital. That rule is referred to by Lord Justice Rigby in the case of *Parrs Banking Company* v. *Yates*, which is reported in 1898 2 Q.B.D., page 460, at page 466 in these words :—

> " The defendant's Counsel relied on the old rule that does, no doubt, apply to many cases, namely, that, where both principal and interest are due, the sums paid on account must be applied first to interest. That rule, where it is applicable, is only common justice. To apply the sums paid to principal where interest has accrued upon the debt, and is not paid, would be depriving the creditor of the benefit to which he is entitled under his contract."

Their Lordships can find nothing in this case to take the question outside the general principle referred to by the learned Lord Justice. They therefore think that the money received must be applied in the ordinary way, first in the reduction of the interest and when that is satisfied in the reduction of the principal. So far therefore as the appellants' appeal is concerned this means that the High Court have been mistaken in the view that they took and that the appeal should be allowed, but there is before their Lordships a cross appeal which first of all raises the contention that the interest ought not to be higher than the bank rate. Their Lordships are not prepared to accede to that contention. They think that the High Court were fully qualified to exercise the discretion which they did in the matter, and they will not lightly interfere with the exercise of such a power. Finally the respondent contends that the District Judge was right in dividing the amount to be repaid under the order of the 31st August, 1915, into the component parts of which it was originally made up, so much as to principal and so much as to interest, and to declare that the interest only runs on such part of the judgment debt as flowed from the principal sum. Their Lordships agree with the High Court in thinking that no such distinction can be made.

They will therefore humbly advise His Majesty that the appeal should be allowed with costs, that the cross appeal should be dismissed with costs, and that in taking the account the moneys received should be applied first towards the payment of the interest and when that is satisfied towards the payment of the capital sum.

In the Privy Council.

MEKA VENKATADRI APPA ROW BAHADUR ZEMINDAR GARU AND OTHERS

v.

RAJA PARTHASARATHY APPA ROW BAHADUR ZEMINDAR GARU.

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DELIVERED BY LORD BUCKMASTER.

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