
Qazi Syed Muhammad Afzal Vs Salahuddin Ahmad and Others

None

Court: Patna High Court

Date of Decision: July 23, 1937

Citation: AIR 1937 Patna 617 : 172 Ind. Cas. 166

Hon'ble Judges: Courtney-Terrell, C.J; Manohar Lall, J

Bench: Division Bench

Judgement

Manohar Lall, J.

This is an appeal by the defendant against a decree passed against him in an action brought by the plaintiffs who are

successors-in-interest of certain mortgagees for recovery of Rs. 5,112, a sum arrived at by including five sums of Rs. 600 each payable in 1332,

1333, 1334, 1335, 1336 and 1337 Fasli, that is to say, a sum of Rs. 3,000 and the balance is interest and compound interest at the rate of 1 per

cent. per mensem from the date of each accrual.

2. The defence was that the bond in suit which was in the nature of a mortgage bond and lease back could not be made the foundation of this

action inasmuch as the plaintiff has not asked for recovery of possession, and also objection was taken to the interest and compound interest

charged by the plaintiff in his plaint. We have looked into the document and it is clear that the plaintiff is entitled to a sum of Rs. 600 each year as

the profits of the land which would have been his, had he been allowed to remain in possession as a rehandar; it follows that there is no substance

in the first contention.

3. It was faintly argued that a succession certificate was necessary before the action was maintainable; but the claim made is not in the nature of a

demand for a debt but is in the nature of rent due to the previous mortgagee whose successors the present plaintiffs are. On the question of

interest, however, we find that there is no stipulation whatsoever in the bond for payment of any interest but inasmuch as a certain date is fixed for

the payment of a certain sum, it attracts the operation of the provisions of Act XXXII of 1839; and in our discretion we order that the defendant

should pay interest at the rate of 6 per cent. from the date of each accrual of the Rs. 600 for each year. An account of the amount due will be

drawn up in. this manner and the sum so found due will carry interest at 6 per cent. from the date of suit to the date of payment. Subject to this

variation, the appeal stands dismissed. The appellant will pay half the costs of his appeal to the, respondents.

Courtney-Terrell, C.J.

4. I agree.