

1888.  
 R. S. WAI-  
 GANKAR  
 v.  
 B. B. WADE-  
 KAR.

debtor, against whom the decree sought to be executed was passed, but, by misapplying the decision of the Şadr Adálat, refused to give the owner's representatives any remedy, and the District Judge has apparently fallen into the same mistake. There was no appeal by the respondent to the District Judge as to the ownership, and so we can dispose of the case without a remand: and, therefore, reverse the decrees of the Principal Şadr Amín and the District Judge, and give a decree in the plaintiff's favour as prayed for, removing the attachment, with all costs.

*Decrees reversed.*

—◆—  
*Special Appeal No. 259 of 1868.*

Nov. 11.

NATHUBHÁ'I PA'NA'CHAND.....*Appellant.*  
 MULCHAND HIRA'CHAND *et al.* .....*Respondents.*

*Hindú Law—Interest exceeding Amount of Principal—Mortgage—  
 Mortgagee in Possession.*

The rule of Hindú Law that interest beyond the amount of the principal sum cannot be recovered at any one time applies as well to mortgage transactions as to other loans.

But where the mortgagee enters into possession of the mortgaged property, and in taking the accounts between the mortgagor and mortgagee credit is given to the latter for the rents and profits received by him as against the principal and interest due, the above rule cannot equitably be applied.

**T**HIS was a Special Appeal from the decision of F. D. Melvill, in Appeal Suit No. 4 of 1860.

The plaintiff, Nathubhá'i, filed a suit in 1856, against the defendants, Mulchand and others, to recover possession of certain mortgaged property, on the ground that the property had passed to him under the terms of the bond, as default had been made in payment of the mortgage debt at the stipulated time.

After several remands, the suit was finally sent down by the High Court to the lower court, to determine what was due to the plaintiff as mortgagee. Three shops had originally been mortgaged to the plaintiff, and he was put in possession of one of them.

The following is an extract from the judgment of the Acting Judge, F. D. Melvill, on the question of interest due on the mortgage bond:—

1868.  
NATHUBHAI  
PA'NA'CHAND  
v.  
MULCHAND  
HIRA'CHAND  
et al.

“The appellant (mortgagee) urges that he is entitled to receive compound interest, and that the sum is about ten thousand rupees; whereas the respondent (mortgagor) urges that by Hindú Law the rule as to *dámdupat* has force, and that a sum only equal to the principal is recoverable.

“I am of opinion that in a suit of this nature, where the mortgagor is allowed the right to redeem his property, notwithstanding the agreement in the deed that in default the ownership was to pass, it would not be equitable to apply the rule of Hindú Law. The appellant has been in possession of one of the shops, and led to consider it as his property, and he has not looked to have his mortgage paid off, or that he had a claim for interest. I decide, therefore, that the appellant is to receive from the respondent simple interest from the date of the bond up to this date.”

The Judge found the amount due to be—

Principal .....	Rs.	798	0	0
Interest.....	,,	2,121	2	4
		2,919	2	4
Deduct on account of House-rent ..	,,	81	9	7
		2,837	8	9

The appeal was heard before COUCH, C.J., and NEWTON, J.

*Dhirajlál Mathurádás*, for the appellant (the mortgagee) :—

The interest is calculated at twelve per cent. per annum, according to the terms of the mortgage bond, but simple interest only is awarded. Under the peculiar circumstances of this case, we are entitled to compound interest.

It has been decided by this Court that the rule of Hindú Law, limiting the amount of interest recoverable to the amount of the principal, does not apply to cases of mortgage: Special Appeal No. 279 of 1868 (decided on the 10th of

1868. August 1868) by Warden and Sargent, JJ., S. A. No. 384 of  
 NATHUBHAI PA'NA'CHAND 1868 : *Naráyan Bábaji v. Gangáram Krishnáji* (a)

v.  
 MULCHAND HIRA'CHAND  
 et al.

*Nánabhái Haridés*, for the respondent (the mortgagor) :—  
 Interest beyond the amount of the principal cannot be awarded, as has been ruled by this Court, Special Appeal No. 663 of 1864, decided on the 25th of January 1865 by Couch and Warden, JJ., and No. 825 of 1864, decided on the 8th of June 1865 by Forbes and Warden, JJ.

COUCH, C.J. :—In Special Appeal No. 663 of 1864 the suit was upon a mortgage bond, to recover the amount due by sale of the property, &c.; and there we held, upon the authority of the decision of the late Chief Justice, Sir Matthew Sausse, that interest beyond the amount of the principal could not be awarded (b). In the other case (No. 825 of 1864) the suit was to redeem, but the account taken was only of principal and interest, and not also of rents and profits; and, therefore, the interest was properly limited to the amount of the principal according to the Hindú Law. Where there is no account on both sides, and no charge for rents and profits, I do not see why the rule of Hindú Law should not be observed. In Special Appeal No. 279 of 1868 the suit was for redemption, and principal and interest were charged on one side, and rents and profits on the other. It would in such a case be inequitable that the interest should cease when it amounts to the same sum as the principal, if the rents and profits continue to be charged.

The other case, No. 384 of 1868 (*ubi supra*) contemplates that the rule of Hindú Law does not apply to mortgages. It was held there that the lower court was in error in applying the Hindú Law of *dámdupat* to mortgages; but I do not concur in this part of the decision. However, in that case the account taken was of principal and interest on one side, and rents and profits on the other, so that in substance the

(a) *Suprà*, A. C. J., p. 157.

(b) See *Dhondu Jagannáth v. Náráyan Rámchandra*, 1 Bom. H. C. Rep. 47.

decision did not go further than that in No. 279 of 1868. The account taken in the present case is also the same, that is, principal and interest on the one side, and rents and profits on the other; and as the mortgagee is to be charged with rents and profits it would not be just to stop his interest, and consequently the rule of Hindú Law cannot be applied.

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The appellant, the mortgagee, has, it appears, only been charged with the rent of the shop from October 1865; but it is stated in the plaint that he took possession of the shop when the mortgagor did not pay according to the contract. He should have been charged with rent for the shop from the time he took possession of it. We, therefore, remand the case for the court below to retake the account, according to the view above expressed.

The appellant has failed entirely, and the respondent has failed in the point he took: therefore, each party should pay his own costs of this special appeal.

NEWTON, J., concurred.



*Special Appeal No. 376 of 1868.*

MORO BA'LKRISHNA MULE ..... *Appellant.*  
SHEK SA'HEB valad BADRUDDIN KA'MBLE... *Respondent.*

Nov. 17.

*Suit to raise Attachment—Estoppel—Res judicata—Judgment inter partes and in rem—Privity.*

The plaintiff sued to raise an attachment placed upon a certain house, but failed in the lower court, and the decision of the lower court was confirmed upon appeal. The house was then sold. The plaintiff sued the purchaser to recover possession of it.

*Held* that he was not estopped from suing by the decision in the former suit refusing to raise the attachment, and that such decision could not be given in evidence in the latter suit.

**T**HIS was a Special Appeal from the decision of A. Bosanquet, Acting Judge of the District of Tháná, in Appeal Suit No. 178 of 1867, reversing the decree of the Munsif of Kalyán.