

(1917) 04 PAT CK 0010

In the Patna High Court

Babu Gita Prosad Singh and Others

APPELLANT

Vs

Ragho Singh and Another

RESPONDENT

Date of Decision : 26-04-1917

Acts Referred:

Citation : 40 Ind. Cas. 809

Hon'ble Judges : Sharfuddin, J;Roe, J

Bench : Division Bench

Judgement

Roe, J.—These appeals are appeals by the plaintiff and defendant respectively in a suit brought upon the footing of a mortgage-bond dated the 27th of July 1893, the due date of payment being the 1st of Bhadra 1301 which corresponds to 15th September 1894. Limitation is claimed to be saved by payments made of Rs. 2,452 on the 6th August 1898 and of Rs. 800 on the 29th of May 1909. The learned Subordinate Judge has accepted the proofs given of these payments and has decreed the plaintiff's suit, but in decreeing the suit has refused to give interest" at the bond rate beyond the date of repayment and has confined the interest to six years" interest at 6 per cent. per annum, upon the ground that the bond is silent as to the interest to be paid after the date of repayment.

2. On behalf of the defendant it is contended, firstly, that the learned Subordinate Judge was in error in accepting the payment of Rs. 800. The payment of Rs. 2,452 is not denied. And secondly, it is argued that if the payment of Rs. 800 was made, it was made" by one Bacha Singh who was not the lawful; guardian of the defendant, who was a minor at the time of the payment.

3. On the first point we agree with the learned Subordinate Judge that the evidence of this payment is overwhelming. There is no reason whatsoever for stigmatising the witness Deoki Nandan Singh as a perjurer. He is a respectable gentleman paying Rs. 157 Income Tax and there can be no reason why he should lend himself first of all to the support of a deliberate forgery of the endorsement, and secondly to actual participation in the forgery of the letter Exhibit 7, which is

an intimation to him that Rs. SCO out of the bond money has been paid. This letter is dated the 29th of May 1909, the day after the payment. We see no reason whatsoever for disagreeing with the learned Judge's finding of fact.

4. With regard to the position of Bacha Singh there is very little on the record. It is admitted that he was the nearest male cognate of the minor and that there were no male agnates living. It is shown that in another suit he was nominated by the Court to act as guardian of the minor and it is admitted that in all the mutation proceedings which were necessitated by the death of the minor's father Bacha Singh acted for him and it is proved that in the Record of Rights prepared upon a Cadastral Survey, Bacha Singh was entered in the khewat as the guardian of the minor. He was undoubtedly the de facto guardian and there is nothing tangible on the record to show that he was not the lawful guardian. The payment made by him clearly avoided the immediate bringing of a suit against the minor and there is no reason to suppose that the payment was not made for the minor's benefit. We hold that the appellant was rightly made liable under the bond.

5. With regard to the contention that interest should have been given at the stipulated rate from the date of the bond up to the date of realisation, the decision of the Judicial Committee reported as Mathura Das v. Raja Narindar Bahadur 19 A 39 : 23 I.A. 138 : 1 C.W.N. 52 : 6 M.L.J. 214 : 7 S P.C.J. 88 : 9 Ind. Dec. 25 has been quoted as authority for the proposition that the bond before us intended that interest should run after the date of repayment. We have searched the document in vain for any such indication. Not one word anywhere is said with regard to payment of interest after the due date and the case seems to us to be indistinguishable from the case of Chajmal Das v. Birj Bhukan Lal 17 A. 511 : 22 I.A. 199 : 6 S. P.C.J. 624 : 8 Ind. Dec. 652 (P.C.) decided by the Judicial Committee in the defendant's favour. We hold that there being no stipulation for payment after due date, interest can be given only up to the date of payment and following the line of decisions beginning from the case of Golam A bas v. Mahomed Joffer 19 C. 23n : 9 Ind. Dec. 461. we must hold that the six years' Rule of limitation applies and that interest can be given only as damages for recurring breaches of the contract to re pay for the period of six years prior to the date of suit.

6. Mr. Pugh advances an ingenious argument that if under the Interest Act a Court is entitled to decree interest by way of damages the creditor, whenever a payment is to be made, is entitled to regard the sum which the Court would have decreed, as interest, and to take any part of the sum re-paid as such interest. We do not think that the Interest Act can be stretched to this point. Where a document is silent with regard to interest and where there is no special mention of interest at a particular rate or of a particular sum handed over to the creditor, we must take it that the intention of the parties was, in making re-payment, to pay only the interest actually due under the written instrument.

7. In this case the only interest due under the written instrument on the first

date of payment, the 6th of August 1898, was Rs. 395-8-0 and there is nothing in the endorsement recording this re-payment to suggest that there was any intention to pay a larger sum of interest than this.

8. With regard to the second payment of Rs. 800 the position is more difficult, for there is a distinct statement made by the guardian when making the re-payment that the repayment was intended to be made as a payment of interest. Under the written instrument no interest was due between the 6th August 1898 and 25th September 1909; if, therefore, no interest was due, no interest could be paid, and if no interest could be paid the present suit would be barred by limitation. That it was the intention of the parties to pay this sum of Rs 800 as interest is clear, otherwise the creditor's right to sue would have lapsed and the receipt of Rs. 800 would not be of such value to the creditor as to warrant his acceptance of it as part payment of principal. We must take it, therefore, that this Rs. 800 was intended to wipe out all interest equitably due from the 6th August 1898 up to 29th of May 1909. Interest under the Interest Act will accrue from the 25th of September 1909 up to the date of realisation, the payment of Rs. 800 on the 29th of May 1909 being within, six years of the institution of the suit. Interest should also run during the prosecution of the suit up to the date of realisation

9. The account, therefore, must be amended and a decree must be made for Rs. 1,831-12-0 due on the 29th of May 1909 plus interest at 6 per cent, from that date up, to the date of realisation. Failing payment of that sum within three months of this Court's decree the mortgaged property will be put up for sale. The plaintiff is entitled to costs Rs. 1,831-12-0 plus interest to the date of suit in the lower Court. In appeal each side will bear its own costs.