
(1955) 08 PAT CK 0006
In the Patna High Court
Case No : A.F.A.D. No. 1336 of 1949

Balchand Mahto and Others	Vs	APPELLANT
Munshi Lal Raut and Others		RESPONDENT

Date of Decision : 02-08-1955

Acts Referred:

Usurious Loans Act, 1918 — Section 2(2), 3

Citation : AIR 1955 Patna 494 : (1955) 3 BLJR 486

Hon'ble Judges : Ramaswami, J; Raj Kishore Prasad, J; Rai, J

Bench : Full Bench

Advocate : Krishna Prakash Sinha, for the Appellant; Prem Lal, Parmeshwar Prasad Sinha and Jagdish Pandey, for the Respondent

Final Decision : Dismissed

Judgement

Rai, J.—This appeal by defendants 1 to 3 is directed against the judgment and decree of the 1st Additional Subordinate Judge, Darbhanga, affirming those of the 1st Additional Munsif, Samastipur.

2. Some of the facts leading to the institution of the present suit may shortly be stated as follows. On 10-2-1921 Ram Charan Mahto executed a sudbharna bond in respect of 2 bighas 10 kathas of raiyati lands in favour of Dularchand Mahton and Balchand Mahton for a sum of Es. 175. On 18-5-1936, the present plaintiffs 1 to 6 purchased the equity of redemption, from the descendants of the original mortgagor who have been impleaded as defendants second party to the action.

On 20-5-1941, the present plaintiffs 1 to 6 deposited Rs. 175/- to the credit of the mortgagees in accordance with the provisions of Section 83, T. P. Act, on the allegation that the previous tender by them had been refused by the mortgagees. On 13-4-1945, plaintiffs 1 to 6 sold to plaintiffs 7 to 9, 8 kathas out of the lands given in sudbharna. On 27-9-1945, they filed the present redemption suit against the sudbharnadars. In this suit they impleaded the descendants of the original mortgagor also as defendants second party.

3. Defendant 1 filed a written, statement contesting the claim of the plaintiffs. Another formal written statement was filed on behalf of the minor defendants. According to defendant 1, the bond dated 10-2-1921, was in fact a sale deed and not a sudbharna bond, According to him, as there was no custom of transfer ability in the locality at that time, the sale deed was executed in the form of a and bharna bond simply to escape ejectment by the landlord. He further pleaded that in any event the mortgagees were entitled to compensation for trees planted by them a well sunk by them, and a house put up by them on the land given in Sudbharna.

He further pleaded that in accordance with the terms of the bond in suit, the mortgagees were entitled to tack with the principal amount the entire arrears of rent for the mortgaged land paid by them with interest at the rate of Rs. 2-5-6 per cent per mensem.

4. The trial Court held that the bond in suit was really a sudbharna bond and not a sale deed and that the mortgagee defendants were not entitled to any compensation. It was, however, held by the trial Court that the mortgagees were entitled to tack the entire amount of rent paid by them with interest at 9 per cent per annum. Accordingly to the learned Munsif, the interest at the rate of Rs. 2-5-6 per cent per mensem was really unconscionable and could be reduced to 9 per cent per annum in accordance with the provisions of the Usurious Loans Act.

The learned Munsif thus held that the mortgagee-defendants were entitled to a further sum of Rs. 404-11-3 over and above the sum of Rs. 175/-for which the "bharna" bond had been executed. On these findings the suit was decreed. The plaintiffs were granted six months" time from the date of the judgment to make the deposit. The defendants first party were also allowed 15 days" time to remove the structures, etc., which they had put up on the "bharna" lands.

5. The principal defendants 1 to 3 thereafter went in appeal before the District Judge of Dar-bhanga. The appeal was ultimately heard by Mr. A.N. Sahay, 1st. Additional Subordinate Judge, Darbhanga, who affirmed all the findings of the trial Court and dismissed the appeal with costs. Defendants 1 to 3 thereafter came up in second appeal before this Court.

6. This appeal came up for hearing on 18-1-1955 before a Division Bench of this Court before which only the rate of interest allowance to the appellants was pressed. According to learned Counsel for the appellants, the plaintiffs who were the transferees of the equity of redemption were not entitled to claim any relief under the Usurious Loans Act.

On behalf of the plaintiffs, however, it was contended that the plaintiffs had been rightly granted relief under the provisions of the Usurious Loans Act when the Courts below were satisfied that the rate of interest mentioned in the sudbharna bond was unconscionable. As the learned Judges who constituted the Bench did not agree with the view expressed by a Division Bench of this Court in the case of -- Gajadhar Marwari and Others Vs. Baidyanath Mandal and Others, , the

appeal was ordered to be placed before his Lordship the Chief Justice for constituting a larger Bench to decide it with reference to the following point:

"Whether a transferee if the equity of redemption can, in a suit for redemption, claim relief under the Usurious Loans Act (10 of 1918) as amended by the Usurious Loans Amendment Act of 1926".

Thus, the second appeal has again come up for "hearing before the present Bench.

7. Learned Counsel for the appellants contended that the interest claimed by his clients is really not interest on a loan advanced to the mortgagors within the meaning of Section 2, Sub-section (2), Usurious Loans Act, 1918, which runs thus :

" "Loan" means a loan whether of money or in kind and included any transaction which is, in the opinion of the Court, in substance a loan"

In my opinion, the contention of learned Counsel for the appellants has no merit. Under the sudbharna bond in question the rent was payable by the mortgagor, but it was provided therein that in case the mortgagor failed to pay the rent, it was payable by the mortgagees who were held entitled to tack to the principal amount the amount of rent paid by them with interest at the rate of Rs. 2-5-6 per cent per mensem. In my view, this arrangement in substance amounts to a "loan" within the meaning of Section 2, Sub-section (2), Usurious Loans Act.

The mortgagees were allowed to tack the amount of the arrears of rent paid by them plus interest at the stipulated rate only on the assumption that the amount thus paid was a fresh loan carrying interest charged on the property which the mortgagees had right to tack to the principal amount at the time of redemption.

8. In support of his contention that the provisions of Usurious Loans Act do not apply to the present case, learned Counsel for the appellants relied on the decision of a Division Bench of this Court in the case of -- Gajadhar Marwari and Others Vs. Baidyanath Mandal and Others, . While considering the applicability of Section 3, Usurious Loans Act, 1918, the judgment of J. proceeds thus:--

"As will be noticed, two conditions are essential for the application of this section, namely, (a) that the interest is excessive, and (b) that the transaction was substantially unfair, and the explanation to that section provides that the interest may of itself be sufficient evidence that the transaction was substantially unfair. The interest may be excessive but it must be such that a Court may consider that the transaction was substantially unfair, that is to say that the rate of interest may be so monstrous as to show that the transaction was harsh and unconscionable by itself.

As I have already said, there is no evidence to show that the lender was in a position to exercise such, influence as to dominate the will of the borrower. Mere excess of interest, by itself, can give no right to reopen any transaction, but it

may be such as to render the transaction unconscionable".

In my view the above-quoted portion of the observation made by his Lordship is of no assistance to the present appellants. In that case their Lordships were deciding a first appeal in which the evidence led in the case was before them. In the present second appeal, however, both the Courts below have concurrently held that the interest at the rate of Rs. 2-5-6 per cent per mensem which is equivalent to 28 1/2 per cent per annum was penal and unconscionable and attracted the provisions of the Usurious Loans Act.

Though the memorandum of appeal mentions under ground No. 3 that the finding of the Court of appeal below in this connection was based on no evidence, but no certificate as required under Chapter VII Rules 8 and 9 of the Patna High Court Rules has been subscribed to the memorandum of appeal and, as such, this ground is not open to be raised before us by learned Counsel for the appellants.

9. The expression "excessive" is really a relative term and whether a particular rate of interest is excessive or not is to be determined with reference to current laws prevalent at the time of such a State have enacted laws as a relief to debtors to cut determination. It is well known that almost all the down contractual rate of interest. In the State of Bihar also we have got the Bihar Money-Lenders Act, 1939, where u/s 8 of the Act when a transaction is to be re-opened any interest in excess of 9 per cent simple per annum in case of a secured loan is to be knocked down.

In my view, judged in the present state of things the interest of Rs. 2-5-6 per cent per mensem is certainly excessive.

10. Learned Counsel for the appellants has relied upon the decision in the case of -- Gajadhar Marwari and Others Vs. Baidyanath Mandal and Others, , in support of his argument that the relief under the Usurious Loans Act cannot be availed of by the plaintiffs who are purchasers of the equity of redemption. The relevant portion of the judgment in that case runs thus:

"Furthermore, the re-opening of a transaction is for the purposes of relieving the debtor of all liability in respect of the excessive interest. The relief is to the debtor. In the present case the relief sought is by the plaintiffs, who are not the debtors: they are purchasers of the equity of redemption of the mortgagor and thus not themselves debtors"".

11. The case of -- Prayag Lal and Others Vs. Palakdeo Narain Singh and Others, while considering the relief contemplated by Section 8, Bihar Money-Lenders Act, held as follows:

"It is to be observed that the appellants are puisne mortgagees and are money-lenders themselves. The Act is intended to give relief to needy debtors as against the money-lenders. It is true that these money-lenders are judgment-debtors in this case but they are not amongst the people who were intended to be benefited

by this legislation".

In two other Division Bench decisions of this Court relied upon by Mr. Prem Lall, learned Counsel for the respondents, namely, in the cases of -- Lal Pari Vs. Janki Rai and Others, and -- Bishunlal Singh and Others Vs. Jagarnath Singh and Others, , a contrary view was taken on this point, and it was held in these two cases that a transferee from the original debtor can also avail of the provisions of the Bihar Money-Lenders Act.

12. Mr. Prem Lall has further referred in this connection to the decision in the case of -- AIR 1928 396 (Oudh) , where it was held that a transferee of the equity "of redemption is debtor within the meaning of Section 3, Usurious Loans Act, 1918.

13. With great respect to the learned Judges who decided the cases in -- Gajadhar Marwari and Others Vs. Baidyanath Mandal and Others, I find myself unable to agree with the view taken by them on this point, In absence of any definition of the expression "debtor" in the Usurious Loans Act one has to refer to the dictionary meaning of that word. According to Chambers 20th Century Dictionary, the word "debtor" means "one who owes a debt". The purchaser- of the equity of redemption surely owes a debt to the mortgagee and is a debtor.

I respectfully agree with the view taken in -- AIR 1928 396 (Oudh) , to the effect that under the Usurious Loans Act relief can be granted to the transferee of the original debtor also. That the Usurious Loans Act contemplated cases of transfer from the original debtor or creditor is apparent from Section 3 Sub-section (4) of the Act, which runs thus:

"Nothing in this section, shall affect the rights of any transferee for value who satisfies the Court that the transfer to him was bona fide, and that he had at the time of such transfer no notice of any fact which would have entitled the debtor as against the lender to relief under this section".

I also respectfully agree with the view taken by the learned Judges in -- Lal Pari Vs. Janki Rai and Others, and --- Bishunlal Singh and Others Vs. Jagarnath Singh and Others, , that the expression "debtor" includes transferee from a debtor. In my view on the finding arrived at by them, the Courts below were justified in reducing the rate of interest from 28 1/8 per cent, per annum to 9 per cent, per annum on the amounts of arrears of rent paid by the mortgagees on behalf of the mortgagors.

14. The result is that the appeal fails and is dismissed with costs.

Ramaswami, J.

15. I agree.

Raj Kishore Prasad, J.

16. I agree.