(1942) 10 PAT CK 0007

In the Patna High Court

Bishunlal Singh and Others — APPELLANT

Vs

Jagarnath Singh and Others — RESPONDENT

Date of Decision : 28-10-1942

Acts Referred:

Money Lenders Act — Section 10, 7

Citation : AIR 1943 Patna 185

Hon'ble Judges : Meredith, J;Chatterji, J

Bench : Full Bench

Judgement

Meredith, J.—This is an appeal by defendants second party (14 15 and 16) in a suit for sale upon a mortgage, which was executed on 17th January 1925, by the defendants first party for a consideration of Rs. 1400. The suit was brought on 25th January 1938, claiming a total sum of Rs. 8500 and it was decreed in full on 24th February 1939.

2. The appellants were puisne mortgagees who had subsequently purchased the equity of redemption in execution of a decree upon their own mortgage.

3. No point has been raised upon the merits, but the following four contentions have been made. First, that Section 7, Money-Lenders Act (7 of 1939), must be applied, and consequently the amount decreed for the period up to the date of suit including principal and interest cannot be more than Rs. 2800. One payment of Rs. 51 by way of interest having been made on 8th January 1937, the total amount, it is said, which can be decreed is consequently Rupees 2749.

4. Secondly, it is contended that the entire suit had abated upon the death of one Ram Lochan Singh, plaintiff 7, who died in September 1938. A petition was filed that his heirs were already on the record, and so no substitution was made. In fact, his three sons were on the record, and were plaintiffs, 2, 8 and 9, but in the cross-examination of plaintiff 3 (P.W. 3) the witness made a statement ''Dineswar Singh''s son is Dewan Singh.'' Now, Dineswar Singh is plaintiff 2, and Dawan Singh is not a party in the case. On this basis it is argued that the suit abated by

reason of the failure to substitute Dawan Singh in place of Ram Lochan Singh.

5. Thirdly, it is contended that the decree passed is for sale of property which was not included in the bond. The bond referred to an eight annas share in a village with its dependencies, and reference was made to one khewat only. In the plaint and the decree, however, in addition to this khewat some shamlat khewats are also included.

6. Fourthly, it is contended that the appellants should be given the opportunity to raise, during execution proceedings, the question whether payment should be allowed by instalments, and it is argued that the decision of the Court below definitely refusing to allow payment by instalments should be set aside. This decision was based partly on the fact that the Court held that the Money-Lenders Act was not applicable, and partly because the Court thought that the present appellants, who would have to pay, were quite able to pay without provision for instalments.

7. The most important of these contentions is the first, and I shall deal with it after disposing of the other objections. First, with regard to the question of abatement, it is in my opinion, enough to say that the contention is based on a single answer extracted in cross-examination. The matter was not pursued and cleared up. No further question was asked as to what had become of that Dawan Singh, and whether he was alive at all at the time of the suit. There was in fact no evidence put forward to show that this Dawan Singh was in existence. The reference might well have been to a deceased son, and the use of the word ''is'' has, in my opinion, no particular significance. Such an expression is frequently used with reference to a deceased relative.

8. Then with regard to the contention that property has been ordered to be sold which was not included in the bond, the position is that no exception was taken to the description of the property in the plaint. It is not asserted that the decree is not strictly in accordance with the description in the plaint. This being so, it must be held that the description in the plaint was accepted as correct. There may be several possible explanations of the discrepancy with regard to khewat numbers. The plaintiffs were given no opportunity to clear the matter up, or to explain the discrepancy. The fact remains that both in the bond and in the suit the property is described as an eight anna interest in the entire village and its dependencies. It is impossible upon this basis, in my judgment, to hold that there is anything wrong with the decree.

9. Then with regard to the question of installments, this question may be determined in the suit u/s 10, Money-Lenders Act. It is not necessary to postpone consideration of the question until the stage of the execution proceedings. The question was raised and was considered by the Court below upon the merits, and in my opinion, there is no good reason for holding that the view taken by the Court below upon the merits was not right. It appears from the judgment that the appellants are persons in good circumstances, well able to

pay the amount of the decree if necessary. There is, however, no question of paying the sum which has been decreed, as I shall make clear when I come to deal with the first point. There is, in my judgment, no reason at all for allowing payment by instalments to the appellants.

10. I now come to the first contention. Prima facie, Section 7 would appear to be applicable to the case. That section runs as follows:

Notwithstanding anything to the contrary contained in any other law or in anything having the force of law or in any agreement, no Court shall, in any suit brought by a money lender before or after the commencement of this Act in respect of a loan advanced before or after the commencement of this Act or in any appeal or proceedings in revision arising out of such suit, pass a decree for an amount of interest for the period preceding the institution of the suit which, together with any amount already realised as interest through the Court or otherwise, is greater than the amount of loan advanced, or if the loan is based on a document, the amount of loan mentioned in, or evidenced by such document.

11. It will be observed that the provision is mandatory and directed to the Court, and it is made applicable to suits brought by a money lender in respect of loans advanced, whether such suit be brought before or after the commencement of the Act. The latter part of the section makes it clear that the prohibition applies not only to the Court of first instance, but also to Courts of appeal and revision.

12. Mr. B.C. De for the respondents however raises two points. First, he says, the Money -Lenders Act was intended only for the relief of debtors, and has no application in the case of such persons as puisne mortgagees or purchasers of the equity of redemption. For this proposition he relies upon an observation made by a Bench of this Court in the case of Prayag Lal v. Palakdeo Narain Singh AIR 1942 Pat. 419. In that case the learned Chief Justice made an observation to this effect:

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.

13. He goes on to add that in any event he was unable to say that the learned District Judge was wrong in refusing to exercise his discretion u/s 8, Money-Lenders Act, and re-open the transaction.

14. That case was a case u/s 8, which is a discretionary section, but there is another decision which relates directly to Section 7, and to which the learned Chief Justice was also a party, in which it was clearly held that purchasers of the equity of redemption are entitled to claim the benefit of Section 7, Money-Lenders Act. That case is Hanuman Singh v. Gay a Singh AIR 1941 Pat. 145.

Having regard to this decision, I think, it is quite clear that the learned Chief Justice in the latter case could never have intended to hold that the intention of the Legislature could be invoked to override the express provision of Section 7. As I have said, the question in the former case was of the exercise of discretion in favour of the judgment-debtor, and in deciding whether the case was a fit one for the exercise of such discretion the Court very properly took into consideration the general purposes of the Act and the fact that it was intended for the relief of needy debtors, and not to benefit other persons who might have purchased the debtor''s property. These considerations however could be entirely out of place when construing the terms of a mandatory section such as Section 7. Where it is a question of construing an express provision without ambiguity the question of the intention of the Legislature does not come in at all. As I have already said, it appears to be clear that Section 7 does apply. It makes no distinction between the debtor and any transferee from him. In fact it makes no reference to the debtor. The only conditions laid down for the application of the section are that the suit must be brought by a money lender in respect of a loan advanced. It can never be contended that the present suit was not brought by a money lender in respect of the loan advanced by him. There is, in my view, no substance in Mr. De''s first contention.

15. Secondly, however, Mr. De points out that when the suit was brought and the decree was made neither of the two Money. Lenders Acts was in force. As I have said, the suit was brought on 21st January 1938, and was decreed on 24th February 1939. The first Money-Lenders Act (Act 3 of 1938) was made applicable to Chota Nagpur only from 1st June 1939, and the second Act (Act 7 of 1989) was made applicable to Chota Nagpur from 20th July 1939. The decision of the learned Subordinate Judge was therefore quite correct at the time it was made. There was no question then of applying Section 7, Money-Lenders Act. Mr. De contends that once the appellate Court holds that the decree was correct at the time it was made, then it cannot interfere with it merely because there may have been legislative changes in the interval. He bases this contention chiefly upon the old.

16. Privy Council case of Doolubdas Pettamberdas v. Ramloll Thakoorseydass (1851) 5 M.I.A. 109 That case, of course, had no reference to the particular provisions of the Money-Lenders Act, and it is conceded that the general principle laid down may be modified by express provisions in the intervening lagislation. Now, as I have said, Section 11, Money-Lenders Act, contains a clear provision which bars not only the trial Court from passing a decree for interest exceeding the principal, but bars also the appellate Court. The Act now being in operation and Section 7 relating in express terms as it does to suits brought before the commencement of the Act, it appears clear that under the provisions of the section this Court cannot pass a decree upon appeal for the payment of interest exceeding the principal up to the date of the suit. It cannot pass a decree in contravention of the express terms of Section 7. Mr. De seeks to draw distinction between a decree of affirmance and a decree of reversal. He contends that if the

appellate Court simply dismisses the appeal there is no question of a new decree. In my judgment, however, that argument is not correct. Once the appeal is admitted, the whole case becomes once more sub judice, and the appellate Court has to consider the questions which arise upon the merits, come to its own conclusions, and pass its own decree. It so happens that the point in question has been expressly considered and dealt with at length in a decision of the Federal Court. The case in question is AIR 1941 5 (Federal Court) . That case is directly in point. It relates to Section 7, and it is expressly held that the appellate Court can apply Section 7 at the appellate Court stage in a case where that section was not in force at the time of the decree under appeal. The decision is based on the view which I have just stated that an appeal is of the nature of a rehearing of the cause, which is once more sub judice, and the decree of the appellate Court whether of affirmance or reversal becomes the decree in the case. We are bound to follow this decision, and it follows that we cannot give effect to Mr. De''s contention.

17. The first point made by the appellants, therefore, succeeds, and the appeal must be decreed in part, and the decision of the Court below must be modified to this extent that the amount decreed up to the date of the suit will be reduced to the sum of Rupees 2749. We allow a fresh period of grace of three months from this date. The decision of the Court below with regard to interest pendente lite and future interest has not been challenged before us, and it is merely necessary to observe that the interest pendente lite will be calculated upon the reduced sum of Rs. 2749. The plaintiffs will get costs in proportion to the amount decreed in the trial Court, and in this Court we consider it proper that each party should near its own costs.

Chatterji, J.

I agree.

