

(1893) 11 PRI CK 0003

In the Privy Council

Ganga Pershad Sahu

APPELLANT

Vs

The Land Mortgage Bank

RESPONDENT

Date of Decision : 08-11-1893

Acts Referred:

Citation : (1894) 21 ILRPC 366

Hon'ble Judges : Hobhouse, Macnaghten, Morris, R. Couch, JJ.

Judgement

Hobhouse, J. 1. The plaintiff in this suit is the first mortgagee, in right of his father, Bunwari Lal Sahu, of certain property, and the defendants, the Land Mortgage Bank of India, are the second mortgagees. On the 19th March 1877, Bunwari Lal Sahu obtained a decree for the realization of his mortgage against the mortgagors of the property, but the defendants were no parties to that suit. Some time afterwards a sale took place in pursuance of the decree, and Bunwari Lal Sahu became the purchaser. Subsequently disputes arose between the defendants and the plaintiff, the defendants disputing the title of the plaintiff. The plaintiff thereupon brought the present suit in the Court of the Subordinate Judge of Bhagulpore to enforce his title as absolute owner. The defendants disputed the plaintiff's title in toto, and claimed to be the first incumbrancers upon the property, and in the alternative they claimed to be second mortgagees and to be entitled to redeem the mortgage. All the issues raised by the defendants claiming to be absolute owners were decided against them, but the alternative case that they made was decided in their favour, and it was held that the plaintiff could only stand as mortgagee of the property, and that the defendants were entitled to redeem. The question then arose as to the terms of the redemption, and the principal point raised on that part of the case, which has been the only point argued before their Lordships, was whether or no the plaintiffs mortgage debt should bear compound interest. 2. By the mortgage bond the mortgagors contracted to pay interest at 12 per cent., and that if they did not pay it they would, " after the expiration of 24th Assin, pay interest on the entire amount of interest not paid (treating it as principal) at one per cent, per mensem, regularly every year all along till the repayment in full of the amount covered by this bond

without any objection whatever." It is alleged by the defendants that the terms of the bond were altered by the decree of the 19th March 1877, and that thenceforth simple interest only was to be paid. The Subordinate Judge decided that there was no reason why compound interest should not be allowed according" to the terms of the bond. He says there is a stipulation for it in the bond, and he is unable to see why effect should not be given to that stipulation. It does not appear from the judgment of the Subordinate Judge what was the objection then made by the Bank to the payment of compound interest. 3. On the appeal to the High Court this point was raised amongst others, and on it the judgment of the High Court was in favour of the Bank. The reason given by the Judges of the High Court for so deciding is this. They say that the terms of the decree of the 19th March 1877 do not give compound interest; that the decree was one made by consent, and upon the petition of the mortgagors, admitting the claim of the plaintiff. The petition runs thus:

It is prayed that the claim may be decreed with costs and interest for the period of pendency of suit, as well as interest from the date of decree to the day of realization on the entire amount of decree, principal and interest at 1 per cent, per mensem, as per conditions set forth in the bond, the basis of the claim and costs, against the property mortgaged in the bond. The order made thereon was in the following terms: That the decree be decreed in accordance with the petition of admission of claim. 4. The High Court then set forth the contentions of the parties as follows: "It is contended on the one hand that the terms "as per conditions in the bond" referred only to the rate of interest, " 1 per cent, per mensem," and not to the rests which were specified in the bond, so as to make the interest compound interest; while for the plaintiff it is claimed, that the agreement embodied in the decree was to continue the conditions of the bond in every respect." The High Court then goes on to say: "We have, however, some indication of the manner in which the Court itself regarded this, for in the account of interest during the pendency of the suit, the calculation has been made, not on the consolidated amount of principal and interest forming the entire claim, but on the principal only; and this, we may observe, has been accepted by the parties concerned. We find, therefore, that the decree of 19th March 1877, gave simple interest thenceforth only at 12 per cent, on the amount claimed in the plaint of that suit"; and they varied the decree of the Subordinate Judge in that respect. 5. It seems to their Lordships that the High Court had no sufficient warrant for putting that construction upon the decree of the 19th March 1877. The terms in the body of the decree are such as to introduce all the conditions of the mortgage! The claim is to be decreed with costs and interest for the period of the pendency of the suit, as well as interest from the date of the decree to the day of realization on the entire amount of the decree, principal and interest, at 1 per cent. per mensem, "as per conditions set forth in the bond." Now, the condition of treating interest as principal, so as to carry interest if it were not paid by a date mentioned in the bond, is just as much one of the conditions of the bond as any other conditions therein, and therefore their

Lordships can see nothing in that language which indicates an intention of altering the contract made by the bond. 6. But the point relied upon by the Bank is this : The plaintiff in the suit of 1877 sued for Rs. 32,000, the principal secured by the bond, and for a sum of Rs. 15,961-15-3 interest accrued up to the day this plaint was filed, which, it is found by calculation, is compound interest. There is also another item set forth in the decree, namely, interest during the period of the pendency of the case from the 17th January 1877, which was the date of the filing of the plaint, until the 18th March 1877, which was the day before the date of the decree, and that interest was to be "on the principal amount at 1 per cent. per mensem for two months, one day," that is to say, on the Rs. 32,000. That amount is stated in the decree to be Rs. 650-10-8. From that circumstance it is argued that either the parties were making, or the Court was making, a material alteration in the contract effected by the bond. But there is this answer to the contention : The bond is not perfectly without doubt as to its construction. Certainly one construction may be that interest did not carry interest in any year until the 24th Assin had come round, and in that case interest for these two months would not accrue on interest if payment of the simple interest were made by the 24th Assin. That is one construction which may be put upon the bond. Of course another construction is that interest accrued from day to day or from month to month upon interest as well as principal, and that the whole accumulated sum was payable on the 24th Assin; but it is at least conceivable that the parties took the first construction, and in that case it seems that this small item of Rs. 650-10-8 would be as much as could be claimed as due at the date of the decree. 7. On the other view of the case there would be something more due than Rs. 650-10-8, but it would be something so small as to lead to the conclusion, either that the parties may not have taken it into consideration at all, or that taking it into consideration it was the price of the defendants' consent to a decree that some small sum less than what was actually due should be charged against them. Either of those explanations is a perfectly reasonable explanation, and it seems to their Lordships to be putting a very great strain upon the introduction of this item of Rs. 650-10-8 into the account stated at the foot of the decree, to make it the basis of an inference that the Court and the parties intended to alter this exceedingly important term of the bond. 8. The result is that their Lordships will humbly advise Her Majesty that the High Court were wrong on this point, and that the decree made by the High Court should be varied by striking out of it the following words: "On the basis of his decree of 19th March 1877, with simple interest at the rate of 12 per cent. per annum from that date on the entire amount of the decree" and by substituting these words: "Under the mortgage bond of the 7th August 1873, interest being calculated according to the terms of that instrument." The rest of the decree will be affirmed. 9. Their Lordships will humbly advise Her Majesty accordingly. The respondents must pay the costs of the appeal.