(1962) 08 MP CK 0010

In the Madhya Pradesh High Court

Case No : F.A. No. 10 of 1959

Jeewanchand APPELLANT

Vs

Kalibai RESPONDENT

Date of Decision : 20-08-1962

Acts Referred:
Registration Act, 1908 — Section 17

Citation : (1963) JLJ 444

Hon'ble Judges : T.P. Naik, J;T.C. Shrivastava, J

Bench : Division Bench

Advocate : P.R. Padhye, for the Appellant; S. Awasthy, for the Respondent

Final Decision : Allowed

Judgement

T.C. Shrivastava, J.—The suit out of which this first appeal arises was institute l by the Appellants against Biharilal and his sons (Respondents 2 to 4). Biharilal died during the pendency of the appeal and his legal representatives have been brought on record. The suit was on the basis of a mortgage deed (Ex. P-l), dated 30-4-1954, executed by Biharilal and Respondents 2 to 4 for a consideration of Rs. 6,000 only. Although Respondents 3 and 4 had raised several pleas to resist the claim, it is no longer in dispute between the parties that the mortgage deed was executed by all of them for consideration. The Plaintiffs had

claimed interest at 12 annas per cent per month from the date of the mortgage to the date of suit and also interest pendente lite and until payment of the amount, at that rate.

2. The Defendants filed a document Ex. P-7, dated 4-12-1946, which is a letter written by them to the Plaintiffs and pleaded that on the basis of this letter the rate of interest was reduced to 8 annas per cent per month from that date. It was also pleaded by them that this letter had been interfered with by the Plaintiffs by substituting "12 annas" in place of "8 annas" and as this was a material alteration, the claim was not tenable. They further pleaded that as the

Plaintiffs were money-lenders and did not send the annual statements of accounts, they were not entitled to interest and costs.

3. The trial Court held that the rate of interest was reduced to 8 annas per cent per month from 4-12-1946. Interest was allowed upto that date at 12 annas per cent per month and up to 26-6-1948 at 8 annas per cent per month. On 26-6-1948 the C.P. and Berar Moneylenders Act, 1934 (hereinafter called the Act) was applied to the State of Rajnandgaon which became a part of the Madhya Pradesh and the trial Court therefore disallowed interest after that date, Costs were also disallowed.

4. This appeal is directed against that part of the judgment of the trial Court which disallows interest and costs to the Plaintiffs appelants. Shri P.R. Padhye for the Appellants has urged the following points in support of the appeal;

(i) That the rate of interest could not be varied under Ex P-7, which is not registered;

(ii) (a) That the provisions of the

Money-lenders Act are not applicable to the present loan;

(b) That if they are applicable, then the annual statements of accounts for the years 1951 to 1954 were sent to the Defendants; and

(iii) That costs should have been allowed.

5. Point No. (i): The question-whether a document varying the rate of interest stipulated in a mortgage deed requires registration was considered in Kashinath Bhaskar Datar Vs. Bhaskar Vishweshwar Karve, . In that case after the mortgage deed was executed stipulating the rate of interest at 14 annas per cent per month a letter was executed between the parties reducing the rate to 8 annas, percent per month. Their Lordships of the Supreme, Court laid down the law as follows:

We agree with the learned Rangoon Judges in U Po Thin v. Official Assignee 1938 Rang. L.R. 293: AIR 1938 Range 285. that one part of the ''interest'' which a mortgagee has in mortgage property is the right to receive interest at a certain rate when the document provides for interest. If that rate is varied, whether to his advantage or otherwise, then, in our judgment, his ''interest'' in the property is affected. If the subsequent agreement substitutes a higher rate, then to the extent of the difference it ''creates'' a fresh ''interest'' which was not there before. If the rate is lowered, then bis original ''interest'' is limited.

It is thus clear that the variation of the rate of interest which has in effect on the interest in the equity of redemption amounts to an interest in property and the document varying the rate of interest''s compulsorily registrable u/s 17 of the Indian Registration Act. Accordingly, in the instant case the letter Ex. P-7 is not admissible in evidence. The Defendants are not entitled to the reduced rate of interest stipulated in that letter, as the contract cannot be proved.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/jeewanchand-appellant-hash-kalibai-...

6. Point No. (ii)(a) & (b): The C.P. and Berar Moneylenders Act, 1934, was extended to the State of Rajnandgam on 26-6-1948 (vide C.P. and Berar Gazette Extraordinary, dated 26 6-1948). It is for this reason that the trial Court has not applied the Act to the period before that date. Shri Padhye referred to Section 8 of the Act which provides, that the provisions of Sections 3 to 7 shall not apply to any loan made before "this Act comes into force". The provision regarding sending of annual statements of accounts and the power to disallow interest or costs for omission to do so is dealt with in Sections 3 and 7 respectively. It was urged on behalf of the Respondents that the expression "before this Act comes into force" in Section 8 should be interpreted to refer to the date when the Act was applied to the Central Provinces and Berar, that is, some date in 1934. According to the learned Counsel for the Respondents, the transactions, which are saved from the purview of Sections 3 to 7, are only those which took place prior to 1934. In our opinion, this contention is not well founded. The expression "before this Act comes into force" must be given its natural meaning and must refer to the date on which it was brought into force in the State of Rajnandgaon. For the purpose of loans advanced in Rajnandgaon State, the Act was not existent till 26-6-1948 when it first came into force there. The consideration, which impelled the Legislature to exclude the loans made before the commencement of the Act from the purview of Sections 3 to 7 apply with equal force to the loan which were advanced in Nandgaon prior to 26-6-1948. Accordingly, we must hold that as provided in Section 8 the provisions of Sections 3 to 7 do not apply to any loan which was advanced in Rajnandgaon State prior to 26-6-1948. That being the position, it was not incumbent on the Plaintiffs to send an annual statement of accounts u/s 3 in respect of the mortgage loan in suit. They cannot, therefore, be deprived of the interest on the loan or of costs of the suit for omission to send such statements.

7. In this view, it is not necessary for us to determine whether the accounts for the years 1951 to 1954 as contained in Exhibits P-2 to P-5 were sent by the Plaintiffs to the Defendants.

8. Point No. (iii): Costs have been disallowed by the trial Court on the consideration that the Plaintiffs tampered with the letter Ex. P-7 and did not comply with the provisions of the Money-lenders Act. We have already observed that the provisions of the Act are not applicable to the present loan and that costs cannot be disallowed on that account. The tampering of the document is not also material in as much as the document has been excluded from consideration altogether. We would, therefore, allow the costs to the Plaintiffs.

9. Accordingly, the appeal is allowed. The decree of the trial Court is set aside. Instead, we decree the suit as follows:

(i) The Defendants shall pay to the Plaintiffs the following amounts:

(a) Rs. 6,000 as principal;

(b) Interest at 12 annas per cent per month from the date of the mortgage

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/jeewanchand-appellant-hash-kalibai-...

(30-4-1955) to the date of filing of the suit (8-8-1955) and

(c) Interest at 6 per cent per annum from the date of the suit to the date fixed for redemption.

(ii) The Defendants shall pay the costs of the suit and this appeal to the Plaintiff,

(iii) The amounts due shall be paid by the Defendants to the Plaintiffs within two months from today, failing which the Plaintiffs shall be entitled to apply for final decree for sale of the mortgaged property.

A preliminary decree for sale shall be drawn up accordingly.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/jeewanchand-appellant-hash-kalibai-…