
(1944) 12 AHC CK 0004
In the Allahabad High Court
Case No : First Appeal No. 47 of 1942

Kishun Bahadur and others	Vs	APPELLANT
Badri Narain Pathak and others		RESPONDENT

Date of Decision : 04-12-1944

Acts Referred:

Citation : (1944) 12 AHC CK 0004

Hon'ble Judges : Malik, J;Allsop, J

Bench : Division Bench

Advocate : Messrs. P.L. Banerji, S.B.L. Gour, Shambhu Prasad, J.K. Srivastava, Madan Mohan Lal and K.L. Misra, for the Appellant; N. Upadhiya for Respondents, for the Respondent

Judgement

Allsop and Malik, JJ.—The plaintiff filed a suit for sale on the basis of a mortgage dated the 20th of May, 1927, for Rs. 4,408-10-0 carrying interest at 10 per cent. per annum with annual rests. This mortgage was in renewal of a previous mortgage dated the 17th of November, 1913, between the same parties for Rs. 1,225-14-0 at the same rate of interest. In these mortgage deeds two villages had been mortgaged. Nautanwan and Bishunpura. On the 30th of January, 1931, defendants Nos. 1 to 5 sold to defendants 6 and 7 village Bishunpura, one of the villages mortgaged and out of the sale consideration a sum of Rs. 6,272-7-9 was left in the hands of the transferees to pay up the mortgage. Defendants 6 and 7 did not pay this sum of Rs. 6,272-7-9. On the 22nd of November, 1936, however, defendants 6 and 7 paid Rs. 2,500 to the plaintiff and they entered into an agreement with the plaintiff for payment of the balance of Rs. 4,500 by instalments. The sum found to be due under the mortgage was Rs. 8,368 on the data of this agreement. It is not clear whether the sum of Rs. 8,368 was due at the rate of interest mentioned in the mortgage deed or at any reduced rate under the Agriculturists Relief Act. The mortgagee purported to remit Rs. 1,368 and the amount then settled as payable was Rs. 7,000 out of which Rs. 2,500 was paid and the balance of Rs. 4,500 was payable by instalments as mentioned above. The plaintiff, however, ignored this agreement of the 22nd of November,

1936 between himself and defendants 6 and 7 under which he had agreed to get from them a sum of Rs. 4,500 only by three instalments at the rate of interest at 6 per cent per annum. He filed this suit on the basis of the mortgage dated the 20th of May, 1927, against " defendants Nos. 1 to 7 for realization of Rs. 7,000 after giving credit for the sum of Rs. 2,500 received by him in the year 1936. This sum of Rs. 7,000 was claimed, after remitting a sum of Rs. 152-1-4. as due from all the defendants on the basis of the mortgage and he wanted both the villages, Nautanwan and Bishunpura, to be sold in satisfaction of the amount due to him.

2. The lower Court did not give the defendants any benefit under the Debt Redemption Act but granted them benefit under the Agriculturists' Relief Act and passed a decree for Rs. 5,400 in favour of the plaintiff. The defendants have appealed and they claim that they were entitled to the Debt Redemption Act. The lower Court had held that when the defendants, Nos. 1 to 5, sold village Bishunpura to defendants 6 and 7 and left in their hands a sum of Rs. 6,272-7-9 to pay up the entire mortgage, the amount due under the mortgage ceased to be a "ban" as defined by S. 2 (9) of the Debt Redemption Act.

3. The point taken on behalf of the appellants is that the defendants Nos. 1 to 5 were agriculturist on all relevant dates and it could not be said that they had, by any contract, transferred their liability and were no longer liable to the plaintiff for the amount claimed. From the sale deed dated the 30th of January, 1931 it does not appear that the plaintiff was a party to this sale, and it cannot be said that after the sale village Nautanwan was relieved from the liability for payment of the amount due under the mortgage. Under S. 2, sub-Section (9) of the Debt Redemption Act an advance in cash ceases to be a loan if by a contract with the borrower the liability is transferred to another person. Here, it is true that defendants 6 and 7 undertook to pay the amount to the plaintiff, but the original liability of defendants 1 to 5 still remained. As we have already said, it was not the plaintiff's case that he was a party to the contract of sale in the year 1931 and he had agreed to forego his security as against village Nautanwan. Learned Counsel for the appellant has cited a case *Badri Dass v. Qabul Chand* 1943 SLR 197 : A L W 288, in that case the identical question now before us arose, and Mr. Justice Plowden in his judgment stated that if the entire mortgaged property had been sold to the transferee, then probably it could be said that the original mortgagor was relieved of the liability and the amount due had ceased to be a "loan as defined by the U. P. Debt Redemption Act. If the transfer of the entire mortgaged property, however, was made within six years, it may be still possible to argue that the liability of the mortgagor remained unless the mortgagee was a party to this contract and agreed to relieve the mortgagor of his personal liability to pay the debt. But where only one out of two items mortgaged had been sold, even though the mortgagor may have arranged with his transferee that he would pay the entire debt, it could not be argued that the liability of the mortgagor had been transferred. His liability to the mortgagee remained and the mortgagee could still realise the mortgage debt from the property left in the hands of the

mortgagor. We are, therefore, of the opinion that this suit must be deemed to be a suit on the basis of a loan as defined in the Debt Redemption Act. The defendants will, therefore, be entitled to the benefit of S. 9 of the U. P. Debt Redemption Act, that is, the plaintiff will be entitled to get interest on Rs. 1,225-14-0 from the 17th of November, 1913 up to the 31st of December, 1916 at the contractual rate of interest. Thereafter, that is from the 1st of January, 1917, the plaintiff will be entitled to get interest at 4 1/2 per cent, simple on the principal amount due and on any accumulated interest which may have been converted into principal before the 31st of December, 1931 under the contract contained in the mortgage deed dated 17th November, 1913. A sum of Rs. 100 was further advanced on 20th May, 1937. This sum must be added to the principal on that date and interest must be calculated on this sum of Rs. 100 also from 20th May, 1937 at 4 1/2 %. From the amount found due on the 22nd of November, 1936 the sum of Rs. 2,500 received by the plaintiff on that date must be deducted first from the interest and then from the principal, and on the balance of the principal sum due the interest would continue to run at the same rate of 4 1/2 per cent up to the date fixed for payment, that is, on or before the 3rd of February, 1945.

4. Future interest after that date will run at 3 per cent, simple. Parties will receive and pay costs in proportion to their success and failure in both Courts.