(1934) 11 PAT CK 0014

In the Patna High Court

Case No : Appeal No. 259 of 1931 and Civil Revn. No. 635 of 1931

Kusum Kumari APPELLANT

Vs

Biseswar Lal Marwari and others RESPONDENT

Date of Decision : 15-11-1934

Acts Referred:

Citation : (1934) 11 PAT CK 0014

Final Decision : Dismissed

Judgement

Mohammad Noor, J.—This miscellaneous appeal and the application for revision arise out of a suit instituted by the plaintiffs Biseswar Lal Marwari and others for enforcing a mortgage executed by the late Thakur Pratap Narain Deo of Lachhmipur. The mortgage deed was for Rs 1,00,000 and claim was laid at Rs. 2,00,000. The mortgaged properties are situated partly in the District of Bhagalpur and partly in the District of the Santhal Parganas. As the area in which part of the mortgaged properties of the Santhal Parganas are situated were then under settlement, the suit was under S. 5, Regn. 3 of 1872 instituted before the Settlement Officer of the Santhal Parganas, who under S. 5-A of the Regulation transferred it to the Court of the District Judge of the Santhal Parganas, a Court established under the Bengal Agra and Assam Civil Courts Act. So far the proceedings were regular. The District Judge of the Santhal Parganas however without any authority transferred the suit to the District Judge of Bhagalpur, who, in his turn, transferred it to the Subordinate Judge of that District where on 12th May 1928, it was registered (No. 93 of 1928) and necessary court-fee was realised from the plaintiffs. The order of transfer is signed (most likely as has been stated by the learned Subordinate Judge due to the absence of the District Judge from the headquarters), by the Additional District Judge of Bhagalpur.

2. The principal defendant in the suit was the appellant, a widow of the deceased Thakur Pratab Narayan Deo, who was the administratrix of his estate. On 28th May 1928 the defendant third party (defendants 19, 20 and 21), other three widows of the deceased Thakur, filed an application before the Court, praying

that if any petition of compromise be filed by the plaintiffs and defendant 1, the same should not be accepted and that the plaintiffs be required to prove their case. On 6th June 1928, a petition of compromise, dated 27th May 1928, was filed on behalf of the plaintiffs and defendant 1. It was to the effect that after giving credit for Rs. 65,068-7-3 paid by the Thakur himself towards Rs. 2,00,000, a decree be passed for Bs. 1,38,804-0-9, the excess-amount of Rs. 3,872-0-0 being for the costs of the suit. On 3rd July 1928, the defendant third party filed a petition for time to put in a written statement. This was ordered to be put up on the date fixed (3rd July 1928). On the same day the plaintiffs applied that the names of defendants third party be struck off from the plaint. Passing of order on this petition was postponed, but no order seems to have been passed at all. On 6th August 1928, the defendants third party filed their written statement in which inter alia they questioned the jurisdiction of the Court to try the suit. Issues were then framed, and the case was adjourned to, 26th September 1928. On 4th September 1928, defendant 1 filed an application, withdrawing the petition of compromise she had filed on 6th June 1928. On 26th September 1928, the plaintiffs filed a petition, asking the Court not to allow defendant 1 to withdraw from the compromise and praying that a decree under O. 23, R. 3, Civil P.C., be passed according to the compromise. On 8th October 1928, the defendant third party (defendants 19, 20 and 21) filed a petition withdrawing their petition and written statement which they had filed on 28th May 1928 and 6th August 1928 respectively. The learned Subordinate Judge then proceeded to inquire into the genuineness and legality of the compromise between the plaintiffs and defendant 1. One witness seems to have been examined on behalf of the defendant on 5th March 1929. Before however the inquiry could be completed, defendant 1 on 20th February 1930 by a petition, dated 25th January 1930 withdrew her objection to the compromise dated 27th May 1928 filed on 6th June 1928 and asked the Court to pass a decree according to its terms. She further asked that a sum of Rs. 1,768 be added to the compromise amount fixed as interest for the subsequent period. Thereupon the learned Subordinate Judge on 28th February 1930 passed an order to this effect:

Suit decreed on terms of compromise petition, dated 6th June 1928, and the petition dated 25th January 1930,

3. No order for recording the compromise as provided in O. 23, R. 3, was passed. A decree was however prepared according to the terms of the petitions filed on 6th June 1928 and 28th February 1930. On 2nd June 1930 the appellant (defendant 1 filed a petition under S. 151, Civil P.C., praying that the decree be set aside mainly on the grounds that the compromise was obtained under misrepresentation and fraud, that it contravened S. 6 of Regulation 3 of 1872 as it allowed to the plaintiffs more interest than was permissible under that section and that the case was not properly disposed of. Though it was not specifically mentioned in the petition, but it seems to have been contended before the Court below that the decree was a nullity as no order for recording the compromise was passed. A miscellaneous case (No. 89 of 1930) was started Later on, on

27th June 1931, while this petition was still pending the appellant filed a second petition under S. 151 Civil P.C., in which she questioned the jurisdiction of the Court to proceed with the suit. A, second miscellaneous case, No.82 of 1931, was therefore started. The learned Subordinate Judge disposed of the two cases by his order, dated 29th August 1931. He has held that defendant 1 willingly compromised the suit and that it was binding upon her and the irregularity in the transfer of the suit to his Court was waived by her as she submitted herself to the jurisdiction of the Court. He seems to have held that the compromise did not contravene S. 6 of Regulation 3 of 1872. He also held that the omission to pass a formal order for recording the compromise on 28th February 1930 was a clerical mistake and therefore under that date (28th February 1930) he recorded an order in these terms: "Let the compromise petition, dated 6th June 1928, be recorded." He however held that the additional interest allowed under the petition, dated 25th January 1930, was illegal, inasmuch as it exceeded the principal amount of Rs. 1,00,000 covered by the mortgage deed and accordingly amended the order of 28th February 1930 by cancelling the words "and the petition dated 25th January 1930." The decree was also accordingly amended. Defendant 1 has preferred this appeal against the order and has filed the revision application against that part of it whereby the learned Subordinate Judge has held that the defendant had waived the irregularity of the transfer of the suit by submitting herself to the jurisdiction of the Court. The first and most important question is whether the Court had jurisdiction to try and dispose of the suit. I have stated above that under S. 5 of Regulation 3 of 1872 the suit was instituted before the Settlement Officer who under S. 5-A of the Regulation transferred it to the District Judge of the Santhal Parganas. So far no objection can be taken; up to this stage the proceedings were perfectly regular. The learned District Judge of the Santhal Parganas however on his own authority transferred the suit to the District Judge of Bhagalpur who made it ever for trial to the Subordinate Judge of that place. It is admitted that the District Judge of the Santhal Parganas had no power to transfer a suit pending before him to another District. The question therefore is as to the effect of this irregularity on the jurisdiction of the Subordinate Judge of Bhagalpur. It is clear and as a matter of fact has not been seriously disputed by the appellant that she did not raise the question of jurisdiction till more than three years after the suit was registered in the Court of the Subordinate Judge of Bhagalpur. She took the objection for the first time on 27th June 1931. In the meantime she took various steps in the Court of the Subordinate Judge, thereby indicating that she had no objection to jurisdiction of that Court and submitted herself to it. She filed a petition of compromise before that Court. Then she withdrew it. Thereafter she took part in the inquiry which was conducted at her instance about the genuineness and legality of the compromise. Later on, she abandoned her objection and asked for a decree to be passed. Then she asked for that decree to be set aside on the ground of illegality and fraud. For about a year she prosecuted this application and took various steps in that direction.

4. On this fact it cannot be doubted that she submitted herself to the jurisdiction of the Court and took no objection to the irregularity of the transfer of the suit from the District Court of the Santhal Parganas to that of Bhagalpur. The question therefore which arises is whether the want of jurisdiction in the Court of the Subordinate Judge of Bhagalpur was of such a nature which could be waived ; in other words, was it a defect of procedure only or was there an inherent want of jurisdiction in that Court. Ordinarily the Subordinate Judge of Bhagalpur in whose jurisdiction a portion of the mortgaged property is situated had jurisdiction to entertain the suit and this proposition has not been disputed before us. Under the Schedule to Regn. 3 of 1872 as amended by Regn. 3 of 1879, S. 17, Civil P.C., is in force in the Santhal Parganas in respect of suits exceeding Rupees 1,000 in value. The Code is also in force in the District of Bhagalpur. The Courts of the Santhal Parganas and those of Bhagalpur have concurrent jurisdiction in respect of properties partly situated in one District and partly in the other. The test laid down by the Judicial Committee in Setrucharula Ramabhadra v. Maharaja of Jeypore, 1919 P C 150 = 51 I C 185 = 46 I A 151 = 12 Mad 813 (P C) is applicable to this case. The learned advocate appearing on behalf of the appellant has however contended that the jurisdiction which the Subordinate Judge of Bhagalpur had was taken away by virtue of S.5, Regn. 3 of 1872, That section runs thus:

(1) From the date on which, under S. 9, the Lieutenant-Governor declares that a settlement shall be made of the whole or any part of the Santhal Parganas until the date on which such settlement is declared, by a like notification, to have been completed, no suit shall lie in any civil Court established under the Bengal, Agra and Assam Civil Courts Act, 1887....nor shall any civil Court proceed with the hearing of any such suit which may be pending before it.

(2) Between the dates referred to in sub-S. (1), all suits... shall be filed before or transferred to an officer appointed by the Lieutenant-Governor.....

5. The officer so appointed is the Settlement Officer of the Santhal Parganas. S. 5-A authorizes the officer before whom the suit is instituted, if he thinks that the suit or an issue should be tried by the ordinary Court, he may transfer the record with a certificate to the Court which would otherwise have jurisdiction to try the suit. The learned advocate contended that during the pendency of settlement operations, the jurisdiction of the civil Court was entirely taken away and therefore the jurisdiction to hear the suit which the Subordinate Judge of Bhagalpur had was not possessed by him unless the suit be transferred to him in a regular and formal manner. I am unable to accept this contention. The words are no suit shall lie in any civil Court." The bar is to the institution of the suit and trial of suits already instituted. There is no bar to the civil Court trying a suit, which has been properly instituted before the officer referred to in S. 5 of the Regulation, namely, the Settlement Officer provided that the Settlement Officer transfers the case to the civil Court. This particular suit was not instituted in the civil Court as no suit lay in civil Court; but the suit having been] properly

instituted before the Settlement Officer and having been transferred by him to a civil Court of the Santhal Parganas became before it an ordinary civil suit to be dealt with according to the Code of Civil Procedure. S. 5-A, sub-Cl. (2) prescribes that:

On receipt of any such certificate (a certificate by the officer referred to in S. 5 that a suit is a fit one to be tried by a civil Court) and on payment of such court-fees as would have been payable if the suit had been originally filed in such Court (if the said fees have not already been paid), the Court shall proceed to hear and determine such suit or issue as if the suit had been originally instituted therein.

6. So once the suit came before the District Judge of the Santhal Parganas it became for all intents and purposes an ordinary suit instituted before him. It was contended before the Court below that the suit could be tried only by the District Judge of the Santal Parganas and even the High Court could not transfer it to Bhagalpur. There is no authority for this proposition. Before the District Judge of the Santhal Parganas the suit became an ordinary civil suit subject to the jurisdiction of this Court. No doubt, the District Judge had no power to transfer the suit to Bhagalpur, but certainly such an order could have been passed by this Court as has been done in numerous cases. In this case it is a question of irregular transfer, that is transfer by an officer who had no power to transfer the suit; but the suit came before a Court which had jurisdiction to try it. The learned Advocate for the appellant has referred us to the marginal note to S. 5 of Regulation 3 of 1872 where the words are. "Bar of jurisdiction of Civil Courts during settlement." Marginal notes cannot however override the provisions of the section itself. The section only bars the institution of suits before the Civil Courts and trial of suits already instituted before them.

7. The position therefore is this. The Subordinate Judge of Bhagalpur had both pecuniary and territorial jurisdiction to try the suit. By virtue of S. 5 of Regulation 3 of 1872 the present suit could not be instituted before the Civil Court as a portion of the mortgaged properties situated within the District of the Santhal Parganas was under settlement. The suit was therefore properly instituted before the Settlement Officer of the Santhal Parganas and it was legally transferred by him to the District Judge of that District. It was irregularly transferred by the latter to the District Judge of Bhagalpur who transferred it to the Subordinate Judge of that place. The appellant did not raise any objection to the irregularity of this transfer for a period of about three years and in the meantime took various steps in the suit and thereby submitted herself to the jurisdiction of the Bhagalpur Court where the suit was irregularly pending. No doubt, the defendants third party in their written statement raised the question of jurisdiction, but later on they withdrew their written statement. In Moore v. Gamgee, (1890) 25 Q B D 244 = 59 L J Q B 505 = 38 W R 669, the plaintiffs commenced an action in the country where at the time of commencement of the action the defendant was not dwelling and carrying on business. Leave to sue was not obtained. The defendant appeared, and the case was heard and partly

determined. Later on, on objection being taken the Judge held that the defendant by appearing and contesting the action had waived the objection. The defendant applied to the High Court for prohibition. It was held that the objection, to the jurisdiction was one which could be raised and the defendant had waived it.

8. In Ex parte Pratt, (1833) 12 Q B D 334 = 53 L J Ch 613 = 50 L T 294 = 1 Morrell 27, at p. 341, Bowen L.J. observed:

There is a good old-fashioned rule that no one has a right so to conduct himself before a tribunal as if he accepted its jurisdiction, and then afterwards, when he finds that it has decided against him, to turn round and say, you have no jurisdiction. He ought not to lead a tribunal to exercise jurisdiction wrongfully.

9. In A.J. King Vs. The Secretary of State for India , Fletcher, J. held that when there was no want of jurisdiction in the Court over the subject-matter of the action, but leave under S. 12, Letters Patent, was required before the Court could entertain the suit, objection that such leave was not taken would be considered to have been waived if the defendant filed his written statement and applied for commission to examine witnesses. Similar view was taken in another Calcutta case: Saraswati Dasi v. Biraj Mohini Dasi, (1913) 17 C W N 512 = 18 I C 898, and in the Rangoon High Court: Mohamed Siddiq v. Mohamed Ahmed, 1929 Rang 61 = 115 I C 898 = 6 Rang 680.

10. The learned Subordinate Judge has relied on Kishen Lal v. Jai Lal, 1919 Lah 27 = 52 I C 352 = 1 Lah 158, Gurdeo Singh v. Chandrikah Singh, (1909) 36 Cal 193 = 1 I C 913 = 5 C L J 611, and Vishnu Sakharam v. Krishnarao, (1887) 11 Bom 15, and all of them support the view that the irregularity in assuming jurisdiction is waived if no objection is taken in time. In Minakshi Nadiu v. Subramanya Sastri, (1888) 11 Mad 26 = 14 I A 160 = 5 Sar 54 (P C), also relied upon by (The learned Subordinate Judge, their Lordships of the Judicial Committee observed as follows:

When the Judge has no inherent jurisdiction over the subject-matter of a suit, the parties cannot, by their mutual consent, convert it into a proper judicial process, although they may constitute the Judge their arbitrator, and be bound by his decision on the merits when these are submitted to him. But there are numerous authorities which establish that when, in a case which the Judge is competent to try, the parties without objection join issue and go to trial upon the merits, the defendant cannot subsequently dispute his jurisdiction upon the ground that there were irregularities in the initial procedure, which, if objected to at the time, would have led to the dismissal of the suit.

11. Their Lordships referred to the case of Ledgard v. Bull, (1887) 9 All 191 = 13 I A 134 = 4 Sar 741 (P C), where the same principle was laid down. I am therefore of opinion that there being no inherent want of jurisdiction in the Subordinate Judge of Bhagalpur and the defendant having submitted herself to the jurisdiction of the Court cannot be allowed to raise the question of

jurisdiction three years after the suit was registered in that Court. The next question for consideration is whether the compromise is fit to be recorded, namely, whether the suit has been adjusted by a lawful agreement. A preliminary objection was taken before the learned lower Court and has been repeated before us that a decree having been passed on the basis of the compromise on 28th February 1930, it cannot be set aside by an application under S. 151, Civil P.C., The remedy of the appellant was to institute a fresh suit for setting aside that decree, as the fraud alleged was not practised upon the Court. The allegations are of fraud committed upon the appellant herself: Sheodhar Prasad Singh v. Ramdeo Prasad Singh, 1924 Pat 229 = 148 I C 947 = 13 Pat 165 = 15 P L T 103. This objection has been rightly overruled by the learned Subordinate Judge, though his reasons are not quite clear. It is true that the allegations of fraud contained in the petition under S. 151, Civil P.C., are not of fraud upon the Court. The facts stated, even if true, only disclose a fraud upon the appellant herself and this cannot be a ground for setting aside the decree, provided however that a decree was passed in a legal and regular manner

12. I have already stated that no formal order for recording the compromise was passed on 28th May 1930. The learned Subordinate Judge has held it to be a purely clerical mistake and has inserted under that date a formal order for recording the compromise. He is obviously in error. The order for recording the compromise is not a purely formal matter, but is a question of substance. In Paban Sardar v. Bhupendra Nath, 1917 Cal 607 = 33 I C 769 = 43 Cal 85, the Calcutta High Court held that a consent decree under O. 23, R. 3, could be passed only after there has been an order that the compromise be recorded. This was not a mere matter of form as the aggrieved party had a right of appeal against this order, there being no appeal against a decree passed on compromise. This view has been adopted in this Court in Sabitri Thakurain v. F.A. Savi, 1927 Pat 351 = 105 I C 271 = 6 Pat 108. The observations of the Judicial Committee in Hemanta Kumari Debi v. Midnapore Zamindari, 1919 P C 79 = 53 I C 534 = 46 I A 240 = 47 Gal 485 (P C), support the view that recording of the compromise is essential. Before the Code of 1908 came into force there was some doubt whether the Court could record a compromise which was later on repudiated. Now it has been made clear that the Court is to be satisfied on proof that the suit has been adjusted by a lawful agreement thereby indicating, that if the compromise be disputed evidence has to be taken about the lawful adjustment of the suit in other words, the legislature provided an intermediate stage of inquiry before a compromise can be recorded and then the decree is to follow so far as the adjustment is within the scope of the suit. On 28th May the Court did not apply its mind to the compromise.

13. The original compromise was filed an 6th June 1928. It was then repudiated and an inquiry was being held. Before it could be completed the repudiation was withdrawn by the appellant on 28th February 1930. The order clearly shows that the Court did not satisfy itself about the lawfulness of the compromise. No doubt, no particular form of order for recording a compromise is necessary so long as

the order indicates that the Court applied its mind to the compromise and held it to be lawful and recorded it. It is clear that this was not done in this case, because the decree was ordered to be passed not only according to the petition filed on 6th June 1928, but also on the petition filed on 28th February 1930 which allowed the plaintiff more interest than was permissible under S. 6, Regn. 3 of 1872, In my opinion, therefore, the decree was irregularly passed and such a decree can be set aside on an application under S. 151, Civil P.C., as was held in the case of Sabitri Thakurain v. F.A. Savi, 1927 Pat 351 = 105 I C 271 = 6 Pat 108 already referred to, though in that case there was also a finding that fraud was practised upon the Courts.

14. The effect of my finding therefore is that the petition of compromise was not legally disposed of on 28th February 1930, and the case remained pending till the order under appeal was passed by the lower Court on 29th August 1931, Though the learned Subordinate Judge has inserted an order for recording the compromise under date 28th February 1928, it did not become an order of that date. The order for recording of the compromise was in fact passed on 29th August 1930, and it is that order which is under appeal. Now the appellant''s objections to the recording of the compromise, as I have stated, are two First that the compromise was obtained from her by fraud, and, secondly, that it contravenes the provisions of S. 6 of Regn. 3 of 1872, in respect of interest. The fraud alleged is said to have been practised upon her on two different occasions, first, when she was asked to sign the original petition of compromise, dated 27th May 1928, which was filed on 6th June 1928, and again when she was made to withdraw her objection to that compromise by the petition, dated 25th January 1930, which was filed on 28th February 1930.

15. In her application under S. 151 she alleged in respect of the first fraud that her am mukhtar, Munshi Sambhu Nath Sahay (now dead) informed her that the mortgage was actually executed by her husband and that the account papers of the estate were examined and it was found that more than one lakh of rupees was advanced in cash and that the plaintiffs were entitled to Rs. 2,00,000 and as only Rs. 65,068-7-3 was paid towards the debt, the plaintiffs were entitled to Rs. 1,34,931-8-9. It was on this assurance that she signed the petition on 25th May 1928. Later on when she learnt that her co-widows had filed an application in Court to the effect that the compromise be not accepted and that the plaintiffs be called upon to prove their case, she became suspicious and withdrew her compromise. The plaintiffs, however, obtained from her the withdrawal of objection on the promise that they would withdraw their claim of about Rs. 20,000 which they had put forward before the Probate Court and which was disallowed by it and in respect of which an appeal was pending in the High Court. This the plaintiffs did not do. In her application withdrawing the compromise filed on 4th September 1928, she has not stated that she had signed the petition of compromise on the assurance of the mukhtaram, Sambhu Nath Sahay, and had pleaded that her amlas were ignorant of the real state of affairs and she signed the petition of compromise under a mistaken belief that the plaintiff''s claim was

correct. As a matter of fact when an inquiry relating to the compromise was pending, she examined this very Sambhu Nath Sahay as a witness on her behalf, whose evidence was to the effect that the lady signed the petition in ignorance of her legal rights; but now as Sambhu Nath Sahay is dead she has thrown the entire blame upon him. The learned Subordinate Judge has rightly held that there is absolutely no evidence to show that the original petition of compromise was obtained from the appellant by any misrepresentation or fraud. The lady has not offered her own evidence.

16. In the present inquiry the only witness examined in respect of the compromise is Gajadhar Prasad Das, who says that in his presence Sambhu Nath Sahay told the appellant that Rs. 1,00,000, was borrowed from the plaintiffs and that Rs. 2,00,000 was payable. It is impossible to believe this story as this is contrary to the recitations in the bond itself and the story is an after-thought because Sambhu Nath Sahay is now dead. The petition of compromise is signed not only by the lady herself but by also Babu Bideshwari Prasad, Pleader who certified that the petition was read over and explained to the Thakurain in his presence. It was read over in the presence of Mr. N.C. Ganguly, Advocate, who has signed it. The petition is also signed by Mr. Curtis, the manager of the estate. It is admitted by Haneshwar Sircar, witness for the appellant, that Babu Gobind Chandra Ganguly is a senior Vakil of the Bhagalpur Bar and was and is still a Vakil for the Lakshmipore estate. I need not dwell upon this topic. As has been rightly pointed out by the learned Subordinate Judge, there is absolutely no evidence worth the name to show that the lady was defrauded when she agreed to compromise the case on the terms mentioned in the petition, dated 27th May 1928. This is sufficient to dispose of this part of the case, as it is that petition on basis of which the decree has been passed. It is not necessary to examine her allegations about the circumstances under which the appellant withdrew her objection to the compromise later on. The plaintiffs are entitled to have the suit decided on the basis of the compromise, dated 27th May 1928, if it is lawful. Apart from this, as I have said, the only allegation being that she was wrongly informed about the amount actually advanced by the plaintiff, the matter is of importance as I propose to order an inquiry about the amount which was actually advanced by the plaintiffs.

17. Next comes the allegation of the appellant about the fraud said to have been practised upon her when she was made to sign the petition of withdrawal, dated 25th January 1930, filed on 28th February 1930. Here also the learned Subordinate Judge has rightly declined to accept her story. I have already stated that the lady has not offered her own evidence. The only witness in this respect is Hanseshwar Sircar, and the learned Subordinate Judge has rightly discarded his evidence. Had it been agreed that the plaintiff''s would withdraw their claim for Rs. 20,000, under the two ruckus, the fact, as has been pointed out by the learned Subordinate Judge, must have been mentioned in the petition of compromise. I therefore in agreement with the learned Subordinate Judge hold that no fraud was practised upon the lady in obtaining either the petition of

compromise, dated 27th May 1928, or the petition of withdrawal of objection, dated 25th January 1930. In fact, this part of the case was not seriously pressed before us.

18. The next question is whether the compromise is lawful. In my opinion the learned Subordinate Judge has not appreciated the objection. He has discussed that the law in this respect was well-known to the lady and her advisers and that she compromised the case with full knowledge of her rights. He has also referred to the fact that some inquiry was held in respect of the lawfulness of the compromise on the appellant''s objection to the compromise filed on 4th September 1928. The finding of the learned Subordinate Judge is not very clear and in my opinion he has not appreciated the point. No inquiry in this respect was made when the decree was passed on 28th February 1930. Before the inquiry could be completed the appellant withdrew her objection, and then a decree was drawn up. S. 6, Regn. 3 of 1872 runs thus:

All Courts having jurisdiction in the Santhal Parganas shall observe the following rules relating to usury, namely ; (a) interest on any debt or liability for a period exceeding one yea: shall not be decreed at a higher rate than two per cent per mensem, notwithstanding any agreement to the contrary, and no compound interest arising from any intermediacy adjustment of account shall be decreed : (b) the total interest decreed on any loan or debt shall never exceed one-fourth of the principal sum, if the period be not more than one year, and shall not in any other case exceed the principal of the original debt or loan.

Explanation; The expression "intermediate adjustment of account" in Cl. (a) of this section means any adjustment of account which is not final, and includes the renewal of an existing claim by bond, decree or otherwise, then without the passing of fresh consideration, the original claim is increased by such renewal.

Illustration: A bond is given for Rs. 75, of which Rs. 25 are interest. Unless the oblige can prove to the satisfaction of the Court Chat he gave such consideration for the bond as rendered the transaction fair and equitable, of the Rs. 75, Rs. 50 only will bear interest and the limit of the claim on the bond will be Rs. 100.

19. In Maha Prasad Singh v. Kamani Mohan Singh, 1914 P C 140 = 25 I C 451 = 41 I A 197 = 42 Cal 116 (PC), Lord Moulton observed that:

Any Court dealing with the subject-matter of the suit would the bound to give full force and effect to the provisions of S. 6, Regn. 3 of 1872 relating to usury, and therefore refuse to decree any compound interest arising from any intermediate adjustment of interest, or a total amount of interest exceeding the principal of the original debt or loan. This provision of S. 6 was not one of procedure but of substance, and so far as the Courts having jurisdiction within the Santhal Parganas are concerned, it places all '' contractual stipulations as to compound interest in a position of non-enforceability, and limits statically the total interest which can be decreed on a loan or debt.

20. It is not necessary to consider whether the observation is obiter dicta as the suit was dismissed on the ground that the Court; had no jurisdiction to entertain it by virtue of S. 5, Regn. 3 of 1872. The same view has been taken by this Court in Hari Prasad Singh v. Sourendra Mohan Sinha, 1922 Pat 450 = 66 I C 945 = 1 Pat 506 = 3 P L T 709. In my opinion the mandatory provisions of S. 6 of the Regulation cannot be evaded and the Courts are not empowered to pass a decree even on compromise which allows interest in its contravention. This aspect of the question was entirely ignored by the learned Subordinate Judge. In spite of the compromise and consent of the defendant he ought to have examined the transaction from its very inception and determined whether or not the defendant was agreeing to suffer a decree in contravention of the law. In my opinion S. 6 has been enacted on the grounds of public policy to protect the people of the Santhal Parganas from their own improvident acts. The very object will be defeated if money-lenders can persuade the debtors by agreeing to a decree and thereby get more interest than they would have gob on contest. I am fully conscious of the fact that the view which I am taking will in some cases mean the trial of the suit in spite of the fact that the defendant has compromised. This will be the practical result of the order which I propose to pass, but in my opinion S. 6 of the Regulation as interpreted by their Lordships of the Judicial Committee and by this Court leaves no option in the matter. As I propose to remand the case I refrain from expressing any opinion upon the merits, but I shall show in a general way that the matter requires investigation and a decree cannot be passed for the sum agreed to by the defendant unless the Court is satisfied that the amount is legally recoverable by the plaintiffs and that it is not in contravention of S. 6, Regn. 3 of 1872,

21. Mr. Das appearing on behalf of the respondents has contended that S. 6, Regn. 3 of 1872 does not stand in the way of a debtor admitting the amount of principal advanced and in this case the lady has admitted that Rs. 1,00,000 was advanced to her husband and on that admission the decree did not contravene S. 6 of the Regulation. In my opinion, this contention cannot be accepted in the face of the mortgage deed itself. The mortgage deed clearly shows that nothing in cash was advanced by the plaintiffs when it was executed. It was taken from the Thakur after an adjustment was made of the outstanding dues of the plaintiffs from him. According to the mortgage deed the amount due to the plaintiffs from the Thakur on, that date stood as follows:

Rs.

(1) Under the hand notes and parchas enumerated in the deed which are 18 in number

2,74,007-14-0

(2) Interest on the above from their dates up to the date of the mortgage ... .

9,157-15-0

Total ... 2,83,165-13-0.

(3) Over and above that, the bond mentions a further sum due on account of the price of cloth etc. ....

10,354-14-6

Making a total of ... 2,93,520-11-6

21. Out of this sum of Rs. 2,93,520-11-6, Rs. 1,50,000 is mentioned as having been paid in cash out of the loan which the Thakur took from Rai Shivashankar Sahay Bahadur and Rs. 43,520-11-6 was promised to be paid by other means. (We are not concerned with this amount. Presumably it was somehow or other satisfied). The mortgage was therefore for the balance, i.e., Rs. 1,00,000. Out of the rukkas mentioned in the mortgage deed there is one dated 25th Asia 1318, for Rs. 1,36,259-8-6. This rukka itself however was given on adjustment of the account of a number of previous rukkas mentioned in it. The learned advocate for the appellant has given us a statement (copies supplied to the respondents), showing that the dues under the previous rukkas, etc., came to Rupees 1,14,667-13-3. How this amount became Rs. 1,36,259-8-6 is not at all clear. It is suggested that it was interest due on the previous rukkas from their respective dates up to the date of the rukka, namely, 25th Asin 1318, but it is hot clear from the rukka itself. At any rate, it seems that there was an adjustment of accounts on 25th Asin 1318. In that case under S. 6 of the Regulation no interest was payable in respect of the interest portion of Rs. 1,36,259 and this will perhaps reduce the interest on this rukka which is mentioned as Rupees 6,358-12-3. It may be that on calculation the principal sum due on the date of the mortgage deed may be less than Rs. 1,00,000. Materials are not before us on which to come to any conclusion and decide the issue about the lawfulness of the compromise. As I have said, the learned Subordinate Judge has not considered this aspect of the question, namely, that a decree on compromise cannot be in contravention of S. 6, Regn. 3 of 1872, and for deciding the lawfulness of the compromise the entire transaction has to be examined and accounts made up. The figures which I have given above are as they appear from the mortgage deed and the statement supplied by the learned advocate of the appellant. They have to be verified and calculations made accordingly. In my opinion therefore the case must be remanded for a determination of lawfulness of the compromise.

22. The result is that Civil Revision No. 635 of 1931 is rejected with costs: hearing fee four gold mohurs. The case is referred to the lower Court under O. 41, R. 25, for trying the issue about the lawfulness of the compromise, namely, whether or not the compromise contravenes the provisions of S. 6, Regn. 3 of 1872, In order to do so it will be necessary for the lower Court to ascertain the principal sum advanced and interest thereon according to law up to the date of the mortgage and then after giving credit for the amount paid find out the sum due for which the mortgage is lawful and then to find out the sum due up to the

date of the suit after crediting the various sums paid. The principle to be followed has been laid down in the observation of Lord Moulton and by this Court in the cases already referred to. The parties will be at liberty to adduce such evidence as may be necessary. The appellant (defendant first party) will not however be allowed, to question the genuineness of the mortgage deed nor of the documents which have already been exhibited in the case. The lower Court will transmit to this Court the evidence taken and its findings on the issue in question within three months from the day the record is received in the Court below. The appeal will remain pending in this Court, and will come up for final hearing on receipt of the findings of the lower Court. Let the record be sent down at once.

Varma, J.

23. I agree.

wort, J.

