(1938) 02 PAT CK 0007

In the Patna High Court

Kusum Kumari APPELLANT

Vs

Kishorilal Marwari and Others RESPONDENT

Date of Decision : 25-02-1938

Acts Referred:
Santhal Parganas Settlement Regulations, 1872 — Section 27, 6(b)

Citation : AIR 1938 Patna 594

Hon'ble Judges : Yarma, J;Agarwala, J

Bench : Full Bench

Judgement

Agarwala, J.—In 1911 Thakur Pratap Narain Deo of Lachhmipur, the husband of the appellant judgment-debtor, executed a mortgage to secure a loan of Rs. 1,00,000.

2. In 1928 the suit out of which this appeal arises was instituted to recover the mortgage debt and interest thereon. In view of the fact that the mortgaged properties are situated partly in the district of the Santal Parganas and in view of the provisions of Section 6(b) of the Santal Parganas Regulation (III of 1872), the claim for interest was confined to Rupees 1,00,000. On 6th June 1928 the parties filed a petition of compromise praying that the suit should be decreed in terms of the petition for Rs. 1,38,804-0-9. This amount was made up as follows:

Rs. A. P. Principal amount of debt ... 1,00,000 0 0 Interest ... 1,00,000 0 0 _________________ Total ... 2,00,000 0 0 Less repayment ... 65,068 7 3 ___________________ Balance ... 1,34,931 8 9 To this was added the costs amounting to Rs. 3872.8.0 : Total Rs. 1,38,804.0-9.

3. The petition also provided for interest pendente lite and future interest. After this petition has been filed the judgment-debtor objected to the suit being decreed in terms of the compromise. The objection however was withdrawn on 21st January 1930, and an order directing the compromise to be recorded was passed on 28th February 1930. From that order the judgment-debtor appealed to this Court, which remitted to the Court below an issue for its determination. In

the High Court the order directing the compromise to be recorded was attacked on two grounds: first on the ground of fraud; and secondly on the ground that the compromise contravened the provisions of Section 6 of the Regulation. This Court held that there was no substance in the allegation of fraud; but remitted to the lower Court the other question, viz. whether the terms of the compromise contravened the Regulation.

4. The result of this order was that the appeal remained pending in this Court to await the arrival of the finding of the lower Court on the issue transmitted to it. The finding on remand was that the amount which the plaintiffs were entitled to claim by way of principal and interest was not Rupees 1,34,931-8-9, as stated in the petition of compromise, but Rs. 1,23,680-10-5. Neither of the parties was content with the order passed on remand and accordingly they both filed objections in this Court. On 19th March 1937 the appeal was dismissed at the request of the parties. The Bench which dismissed the appeal recorded the following order:

We are informed by the advocates on behalf of both parties that they have composed their differences and the appellant does not now challenge the correctness of the judgment and decree of the Court below but accepts the correctness of the decree passed by that Court and undertakes for herself and for her representatives to pay the decree-holders according to that decree.

5. Subsequently, the decree-holder applied for execution of the decree. The judgment-debtor objected that the decree was not executable. That objection has been overruled by the Court below and it is against the order overruling the objection and directing execution to proceed that this present appeal has been preferred by the judgment-debtor.

6. The objections to the execution of the decree are two. In the first place, it is contended that in view of the finding of the Court below on remand it must be taken that the amount awarded for principal and interest under the terms of the petition for compromise is in excess of what the plaintiff is entitled to recover in view of the provisions of Section 6(b) of the Regulation.

7. The second objection is that the compromise decree, following the petition of compromise, awards the decree-holder interest between the dates of the decree and the expiry of the period of grace (the amount in dispute under this latter head is about Rs. 5000).

8. It is contended on behalf of the appellant that the effect of passing a decree in contravention of Section 6(b) of the Regulation is that the decree is entirely void and that no Court may execute it.

9. Reference was made to the decision of a Full Bench of this Court in Uchit Lal Misser and Another Vs. Raghunandan Tewari and Others, . That was a case in which an ex parte decree for the sale of certain land which had been mortgaged to the plaintiff was passed directing the sale of the mortgaged property. In

execution an objection was taken that the mortgaged land being raiyati land was not saleable.

10. The objection was based on Section 27 of the Santal Parganas Settlement Regulation (III of 1872), which is in these terms:

(1) No transfer by a raiyat of his right in his holding or any portion thereof, by sale, gift, mortgage, lease or any other contract or agreement shall be valid unless the right to transfer has been recorded in the Record of Bights, and then only to the extent to which such right is so recorded.

(2) No transfer in contravention of Sub-section (1) shall be registered, or shall be in any way recognized as valid by any Court, whether in the exercise of civil, criminal or revenue jurisdiction.

11. The Full Bench held that an executing Court was as much debarred from recognizing a transfer of a raiyati right as any other Court and that therefore the executing Court was bound to decline to execute a decree for sale of a raiyat''s right in his holding. The language of Section 27 of the Regulation is totally different from the language of Section 6 with which we are concerned in the present appeal. Section 6 is as follows:

All Courts having jurisdiction in the Santal Parganas shall observe the following rules relating to usury, namely:

(a) Interest oil any debt or liability for a period exceeding one year shall not be decreed at a higher rate than 2 per cent, per mensem, notwithstanding any agreement to the contrary and no compound interest arising from any intermediate adjustment of account shall be decreed;

(b) the total interest decreed on any loan or debt shall never exceed one fourth of the principal gum, 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.

12. The important words in the Section, so far as the present appeal is concerned, are the words:

The total interest decreed on any debt shall not in any other case exceed the principal of the original debt or loan.

13. This clearly is a provision which imposes on a Court which is about to pass a decree a duty to observe the rule contained in the clause. Section 27, on the other hand, is a general rule which debars any Court from recognizing a transfer of a raiyat''s right in his holding.

14. In my view therefore the decision in the Full Bench case is not applicable to the facts of the present case. Furthermore, the effect of the order passed by this Court on 19th March 1937 must also be taken into consideration. In the appeal that was disposed of by that order, the defendant had specifically raised an issue regarding the question whether the terms of the compromise and, the decree

passed in accordance with it contravened the provisions of the Regulation. It is true that the lower Court on remand had recorded a finding in her favour, but that finding had been challenged, and the objections to it were pending decision with the appeal. If the appeal had been disposed of in the ordinary course after consideration of the objections and the evidence on the record, I apprehend that it would no longer have been open to the executing Court to entertain a contention that the amount claimed was in excess of the amount permitted by the statute to be decreed; and I can find no reason or principle why a different consideration should arise when the appeal was disposed of not on a consideration of the evidence but on an admission by the judgment-debtor that the decree was correct.

15. It is contended however by the learned advocate for the appellant that if the decree on the face of it contravenes the statute, the executing Court is bound to decline to execute it; and it is contended that in so far as the decree contains a provision for interests pendente lite, it necessarily contravenes the statute inasmuch as the addition of interest pendente lite to the sum of Rs. 1,34,931-8-9 will bring the amount awarded as interest in excess of the principal debt. Whether that is so or not will depend to some extent on the sum on which the mortgagee is entitled to interest. In the petition of compromise it is stated to be a lakh. The lower Court on remand found a different figure. Both parties challenged that finding by filing objections but eventually the objections were not considered because the judgment-debtor admitted the decree to be correct and had her appeal dismissed.

16. The question is one which ought properly to have been considered by the trial Court which passed the decree or have been agitated in the appeal; but it is not in my view a question which may now be agitated in the executing Court. Nor do we know in this case, on the papers placed before us, whether the decree-holder is in fact attempting to realize under the decree any sum in excess of the amount permitted by the Regulation.

17. The learned advocate for the appellant referred to the decision of the Privy Council in Maha Prasad v. Ramani Mohan Singh AIR 1914 PC 140 which was a case in which Section 6 of the Regulation fell to be considered. The Judicial Committee there decided that the amount which a mortgagee may claim in a suit on his mortgage, is the principal sum and interest equal to the principal sum, but that he is not entitled to add to these two sums interest accruing from the date of the decree to the date of the expiry of the period of grace.

18. In that case the objection on the basis of Section 6 of the Regulation was raised in the suit itself and was decided by the Judicial Committee in favour of the debtor. In the present case there was no such objection in the suit. The compromise decree was open to challenge on the ground that it contained a provision for interest pendente lite which would have the effect of permitting the decree-holder to recover interest in excess of the amount of the principal debt.

19. The decree was challenged on this ground in the appeal preferred to this Court against the order recording the compromise, and that challenging was withdrawn on the admission of the judgment-debtor herself that the decree passed on the compromise was correct. In these circumstances, in my view, it is not open to the judgment-debtor now to object to the validity of the decree on this ground.

20. In the result the appeal must be dismissed with costs.

Yarma, J.

I agree.