
(1936) 04 AHC CK 0028
In the Allahabad High Court

Misri Lal and Others

APPELLANT

Vs

Alexander Gardner and Others

RESPONDENT

Date of Decision : 17-04-1936

Acts Referred:

Agriculturists Relief Act — Section 30
Usurious Loans Act, 1918 — Section 3

Citation : AIR 1936 All 697

Final Decision : Dismissed

Judgement

1. These appeals arise out of a suit brought by the plaintiff Lala Misri Lal on foot of two mortgage deeds, one dated 14th January 1920 for Rs. 1,000 carrying interest at the rate of 2 per cent per mensem compoundable every six. months, and the other dated 5th July 1921 for Rs. 1,800 carrying interest at the same rate. The sum due under the first mortgage on the date of the suit (14th January 1932) was Rs. 11,550 and that due under the second deed on the aforesaid date was Rs. 19,500. Both deeds were executed by one Mr. Alexander Gardner, who appears to have owned considerable zamindari property in the district of Etah, in favour of the plaintiff Misri Lal and his brother Ulfat Rai since deceased. Shares in no less than 10 villages were hypothecated under the aforesaid mortgage deeds. The mortgaged property has since passed to subsequent transferees by private alienations or in execution of decrees against the original mortgagor. About 30 defendants were impleaded, some of whom contested the plaintiff's claim. The only defences which it is necessary to take notice of for the purposes of this appeal are two: (1) that the mortgage money due under the deeds in suit was satisfied by two subsequent deeds dated 17th August 1922, details of which will be presently given; and (2) that the interest stipulated in the deeds in suit was excessive and unfair in the circumstances of the case. Among other defendants, defendant 4, Mathura Prasad, the appellant in First Appeal No. 343 of 1933, raised the two pleas noted above.

2. The learned Subordinate Judge, Etah,. in whose Court the suit had been instituted, found that the sums due under the deeds in suit were not paid or

otherwise satisfied by the execution of the mortgage deeds dated 17th August 1922 as alleged by some of the defendants. On the question of interest the learned Judge held that the rate stipulated in the deeds in suit was excessive and unfair in the circumstances of the case. Accordingly it was reduced to 18 per cent per annum simple. Two appeals have been filed from the decree of the lower Court. First Appeal No. 228 of 1933 is the plaintiff's appeal in which the sole question raised is whether the lower Court was right in applying the Usurious Loans Act and in reducing the rate of interest. First Appeal No 343 of 1933 is by defendant 4 who challenged the decree of the lower Court in so far as it allowed 18 per cent per annum simple interest which, according to him, is too high a rate. It is contended that no more than 6 per cent per annum should have been allowed. Another question raised by this defendant is whether the lower Court was right in holding that the mortgages in suit were not satisfied by the execution of two subsequent deeds dated 17th August 1922 as alleged on behalf of the defendants. We proceed to deal with First Appeal No. 313 of 1933 first.

3. It is not disputed that Alexander Gardner executed on 17th August 1922 two deeds of simple mortgage, one in favour of Doongar Mal for Rs. 12,000 and the other in favour of Gopal Das for Rs. 13,000. The consideration of these mortgages included sums payable by the mortgagor to Misri Lal and Ulfat Rai and to a number of other creditors. Doongar Mal and Gopal Das were directed in their respective deeds to pay off what was then due under the deeds in suit. It was alleged by the defendants that the real mortgagee under the deeds of 17th August 1922 was the plaintiff, Lala Misri Lal and that Doongar Mal and Gopal Das were only benamidars for him. Evidence was led on behalf of the defendants to establish the benami character of the mortgage deeds of 17th August 1922. It may be mentioned at this stage that Doongar Mal is the wife's brother of the plaintiff Misri Lal while Gopal Das is the wife's brother of Ulfat Rai, the deceased brother of the plaintiff, Misri Lal. Ulfat Rai's sons are some of the defendants. The deeds in suit were executed in favour of Misri Lal and Ulfat Rai, but under a family partition they were allotted to the share of Misri Lal alone. Hence he and his sons are the plaintiffs in the present case. The defendants' case is that Misri Lal agreed to advance Rs. 12,000 under one deed ostensibly in the name of Doongar Mal and Rs. 13,000 under the other deed ostensibly in favour of Gopal Das and that Misri Lal, the real mortgagee should be considered to have paid himself the entire amount due under the deeds in suit immediately on the execution of the mortgage deeds of 17th August 1922. It will be seen that the defendants' plea implies two propositions, one of fact and the other of law.

4. The plea of fact is that the plaintiff Misri Lal is the real mortgagee under the deeds of 17th August 1922. The plea of law is that the effect of Misri Lal taking those mortgages and agreeing to pay off the prior creditors of the mortgagor including himself under the deeds in suit is to wipe out the mortgage money due under the latter. The learned Subordinate Judge has found against the defendants on the plea of fact. He has expressed no opinion on the plea so far as it raises the question of law indicated above. We have been taken through the

evidence on this part of the case by the learned advocate for the appellant and do not feel justified in interfering with the finding of fact arrived at by the lower Court. The fact that the ostensible mortgagee under one of the two deeds is the brother of the wife of Misri Lal and that under the "other is the brother of the wife of Ulfat Rai creates a suspicion, but in the absence of any definite reliable evidence it is impossible to find positively that Misri Lal is the real mortgagee under the deeds of 17th August 1922. It is clear that a finding of this kind should not be recorded lightly as the interests of Doongar Mal and Gopal Das, who are also the defendants and who have joined issue with the appellant, will be materially affected by an adverse decision on this point. Alexander Gardner was examined as a witness in the case. His evidence is far from clear. He says that he made the two mortgages for Rs. 12,000 and Rs. 13,000 in favour of Lala Misri Lal and Ulfat Rai, but his evidence shows that this is only his inference. He is unable to say who actually advanced the money. A part of the consideration was in cash and was paid before the Sub-Registrar. The money was found by him placed on the Sub-Registrar's table in circumstances which did not make it possible for him to say whether it belonged to the plaintiff or the ostensible mortgagees under the deeds of 17th August 1922. Having regard to the relationship between Misri Lal and the mortgagees under those deeds it is not surprising that Misri Lal took interest on behalf of his relations. Even assuming that the whole or part of the money advanced under the deeds of 17th August 1922, was paid by Misri Lal, the benami character of the transaction cannot be inferred. There might have subsisted some arrangement between Misri Lal who advanced the money and the mortgagees in whose favour the deeds were executed. Clearly analysed the agreement between Alexander Gardner on the one hand and Doongar Mal and Gopal Das on the other hand was that Alexander Gardner recognised by a registered instrument that Doongar Mal and Gopal Das were his creditors and entitled to recover sums due under the deeds by a sale of the properties hypothecated thereunder. Where the transaction alleged to be benami is one of sale or out and out transfer the position is appreciably different from that in cases of alleged benami mortgages. As already stated there is no evidence worth the name that Misri Lal paid any part of the money advanced under the deeds of 17th August 1922.

5. Other witnesses were examined by the defendants but they merely stated that Ulfat Rai had told them that the ostensible mortgagees were benamidars. Any statement made by Ulfat Rai, who has since died, is not admissible in evidence. On the whole, we are satisfied that the finding arrived at by the lower Court is fully warranted by the state of evidence on the record. In this view it is not necessary to express any opinion on the legal aspect of the plea to which reference has already been made. On the question of interest the learned Subordinate Judge took into account the fact that the security offered by the mortgagor was ample and that the interest which he agreed to pay under the deeds in suit was abnormally high. The learned Judge also pointed out that Alexander Gardner was in an embarrassed financial position at the time when he

executed the deeds in suit. It is quite obvious that advantage was taken by the mortgagees of his needs and they dictated the rate of interest which Alexander Gardner could not afford to refuse. For these reasons the learned Subordinate Judge held that the conditions required by the Usurious Loans Act were made out. Accordingly he reduced the contractual rate to 18 per cent per annum simple. The appellant, Mathura Prasad, is an auction-purchaser in execution of his own decree on the basis of a mortgage made in his favour by Alexander Gardner. The interest stipulated in the mortgage deed in his favour was also 2 per cent per mensem compoundable every six months. It is pointed out by the plaintiff's learned Advocate that it does not come with a good grace from Mathura Prasad to claim reduction of interest under the Usurious Loans Act in view of his own conduct in taking a mortgage deed at the same rate of interest from the mortgagor. We do not however think that the appellant is debarred from claiming the benefit of Section 3, Usurious Loans Act, by that circumstance. At the same time we are not persuaded to hold that the rate at which the lower Court has allowed interest in the exercise of its discretion is un-reasonable.

6. One further question was argued though it did not arise out of the pleadings. During the pendency of the appeals in this Court the Usurious Loans Act so far as it applies to these Provinces has been amended by the U.P. Usurious Loans (Amendment) Act 1934. We have also to take note of the U.P. Agriculturists' Relief Act of 1934. So far as the former is concerned, it is clear that it does not apply to suits instituted before that Act was passed. It cannot therefore apply in the present instance. The Agriculturists' Relief Act, specially Section 30 thereof may have a bearing so far as interest accruing between the dates referred to in Section 30 is concerned. Before that section is applied, we must be satisfied that Alexander Gardner was an agriculturist within the meaning of the Act. We have no materials before us for properly deciding that question. It is therefore necessary that the following issue should be remitted to the lower Court for a finding:

Was Mr. Alexander Gardner an agriculturist as defined in Section 2(2), Agriculturists' Relief Act, on 14th January 1920 and 5th July 1921? The finding shall be returned within 6 weeks. Ten days shall be allowed for objection. Parties shall be at liberty to produce evidence on this issue. The only question raised in First Appeal No. 228 of 1933, which is the plaintiff's appeal, is that no case existed for the application of the Usurious Loans Act. We have already dealt with this question above. We do not think there is any force in this appeal, but reserve final orders till receipt of the finding on the issue we are remitting in the connected appeal.

ORDER

7. We remitted an issue to the Court below upon the question whether the mortgagor Mr. Alexander Gardner was an agriculturist within the meaning of Section 2(2), Agriculturists' Relief Act, on certain relevant dates, viz. the dates when he executed the mortgage deeds in suit. It has been found that Mr.

Alexander Gardner was an agriculturist on these dates and that finding is not questioned. It has been suggested in arguments that Mr. Alexander Gardner's transferee who will have to pay up the amount due is not an agriculturist and therefore that he is not entitled to the benefit of Section 30, Agriculturists' Relief Act. That section does not contain the term "agriculturist." It says merely that no debtor shall be liable to pay interest on a loan taken before this Act comes into force at a rate higher than that specified in Schedule 3 for the period from 1st January 1930 till such date as may be fixed by the Local Government. The term "loan" is defined. It means without (specifying particular details an advance made to an agriculturist. As Mr. Gardner was an agriculturist and as none of the other details in the definition apply the money advanced to him was a loan within the meaning of Section 30 and any person who has to repay that money is entitled to the benefit of the provisions in respect of interest contained in that section.

8. We must therefore reduce the rate of interest in accordance with the terms of the section. We have already expressed our opinion that there is no force in the appeal of the plaintiff Misri Lal, No. 228. That appeal is therefore dismissed with costs. We have also expressed the opinion that there is no force in the other appeal, viz. No. 343, except upon the question of interest under the Agriculturists' Relief Act. We find that the benefit of Section 30 of the Act must be given and we therefore direct that the decree shall be modified to this extent that the rate of interest mentioned in it for the period from 1st January 1930 upto the relevant date given in the Government Gazette shall be the rate which is in accordance with the terms of Section 30, Agriculturists' Relief Act, and the notifications issued under the Act. As the appeal has in effect failed we direct that the respondents shall get their costs from the appellants.