

(1936) 07 BOM CK 0004
In the Bombay High Court

Raja K. Venkata Hanumantha Bhushana Rao	APPELLANT
Vs	
Gade Subbayya	RESPONDENT

Date of Decision : 27-07-1936

Acts Referred:

Citation : (1936) 38 BOMLR 1229

Hon'ble Judges : Thankerton, J;Shadi Lal, J;George Rankin, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Shadi Lal, J.—These consolidated appeals arise out of a suit brought to recover money on a mortgage by a sale of the mortgaged property. The mortgage deed was executed on July 13, 1911, in favour of one Nagabhushanam, the predecessor in interest of the plaintiff, by a Hindu widow Seshamma, who had inherited her husband's property for a widow's estate.

2. The trial Judge dismissed the suit, but on appeal the High Court at Madras has decreed the claim, but has disallowed compound interest on the ground that the stipulation for the payment of compound interest at an enhanced rate was in the nature of a penalty.

3. Both the parties have appealed to His Majesty in Council, and after considering the arguments advanced on their behalf, their Lordships are of opinion that there is no substance in either of the appeals.

4. The relevant facts may be shortly stated. The indebtedness of the widow Seshamma commenced in January, 1883, when she entered into a compromise with the mortgagee in order to settle his claim against her husband. She promised to pay Rs. 5,000" in five years with interest thereon at the rate of ten annas per cent, per mensem, and hypothecated a village as security for the principal sum and interest. In the event of her failure to pay the debt within the prescribed period, the creditor was entitled to take possession of the village and realise its produce, for which he was to credit her with a lump sum of Rs. 500

every year. It was agreed that after obtaining possession he should retain it until the whole of the debt was discharged. The terms of this compromise were embodied in a decree, which was made against the widow.

5. On behalf of the appellant Bhushana Rao, who is the son adopted to her husband by the lady, it is conceded that this decree cannot be impeached and must be held to be binding on the estate.

6. In 1888, when the period of five years had expired, the debt remained unpaid; and the widow had either to deliver possession of the village or to enter into a fresh contract. She did not surrender the village, as the rents and profits thereof were practically the only income available for her maintenance. It appears that the estate, inherited by her from her husband consisted of that village and a part of another property, for which she was receiving from her brother-in-law about Rs. 200 per annum as her share of the income.

7. In these circumstances she retained possession of the village, but satisfied the decree by granting the creditor, on March 28, 1888, a simple mortgage of the village for Rs. 5,000, which she promised to pay in five years by instalments with interest at eleven annas per cent, per mensem, to be enhanced to one rupee and four annas per cent, per mensem on arrears of instalments. It is to be observed that under the compromise decree the creditor was, as found by the High Court, entitled, in the event of default, to take possession of the village and to appropriate its income to the principal debt and interest thereon until about 1907, but this mortgage could be redeemed within a shorter period and was without the liability to deliver possession of the property.

8. The mortgagor, however, was unable to pay more than Rs. 2,000; and on March 13, 1903, she executed another mortgage deed for the payment of the debt which amounted to Rs. 11,000. Thereafter she paid a large sum of money by selling certain properties, but could not discharge the whole of the debt due to the mortgagee and had to grant him the mortgage on which the suit was founded. The amount secured was Rs. 20,000, which was to be paid in twenty annual instalments with interest at twelve per cent, per mensem. In the event of default, compound interest was to be paid at the rate of one rupee per cent, per mensem with annual rests.

9. This in brief is the history of the transactions entered into by the widow, and the question is whether the mortgage sought to be enforced binds the reversioner. The power of a Hindu widow to alienate the estate inherited by her for purposes other than religious or charitable is analogous to that of a manager of an infant's estate, as described in the case of *Hunoomanpersaud Panday v. Mussumat Babooee Munraj Koonweree* (1856) 6 M.I.A. 393. She can alienate it, not only for legal necessity, but also for the benefit of the estate. Now, it is conceded that it was the duty of the widow to pay the decretal amount which represented the debt due from her husband. And the mortgage, which she effected in 1888 in order to satisfy that decree, was, as already explained, an

ace advantageous to the estate.

10. If appears that sue made an effort to meet her liability under that mortgage, and, if she did not succeed, she was not, in any way, to blame. Her income was barely sufficient for her maintenance, and it cannot be seriously argued that she was bound to pay the debt out of that income. She could, no doubt, have discharged the debt by making a sale of the village, but that would have deprived her of her maintenance. The sum of Rs. 200, which she received from her brother-in-law, was wholly insufficient for maintaining a lady of her position. She had, therefore, no alternative but to execute, in lieu of the mortgage of 1888, another mortgage in 1903, and, after making some payments, a third mortgage in 1911. Both these mortgages must, in the circumstances, be regarded as the necessary consequence of the first mortgage, which, as stated, cannot be challenged. It is true that in the last mortgage deed she agreed to pay a higher rate of interest than that stipulated in the earlier deeds, but the increase in the rate cannot be held to be unreasonable except the stipulation as to compound interest.

11. Having regard to the difficult position in which the widow was placed, their Lordships think that she acted in a reasonable manner, and that by mortgaging the property she prevented the creditor from selling it for the satisfaction of his claim.

12. The mortgage must, therefore, be held to be binding on the estate. Nor is the plaintiff entitled to recover a larger sum than that allowed by the High Court.

13. There are two points which have been urged on his behalf. As regards the stipulation for the payment of compound interest, in the event of default, at a rate higher than that of the simple interest, the High Court was justified in holding it to be a penal provision. As observed in *Sundar Koer v. Sham Krishen* (1906) L.R. 34 I. A. 9 : 9 Bom. L.R. 304 "compound interest is in itself perfectly legal, but compound interest at a rate exceeding the rate of "interest on the principal moneys, being in excess of and outside the ordinary and usual stipulation, may well be regarded as in the nature of a penalty."

14. The plaintiff having been allowed simple interest at the higher rate of twelve per centum in the case of default has no grievance. ? On the second point, namely, the appropriation of payments first to interest and the balance, if any, to principal, it is sufficient to say that their Lordships' attention has not been invited to any account which would show that the appropriation has been wrongly made. If the relevant account has not been printed as a part of the record, the plaintiff himself must be held responsible for that omission.

15. The result is that both the appeals should be dismissed, and their Lordships will humbly advise His Majesty accordingly. The defendant-appellant must pay two-thirds of the costs incurred by the plaintiff in the appeals.