

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Champat Singh and others v. Jangu Singh, since deceased (now represented by Hanwant Singh) and another, from the Court of the Judicial Commissioner of Oudh; delivered the 3rd May 1912.*

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PRESENT AT THE HEARING :

LORD MACNAGHTEN.

LORD SHAW.

LORD MERSEY.

LORD ROBSON.

MR. AMEER ALI.

[DELIVERED BY LORD MACNAGHTEN.]

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This was an Appeal from an order of the Judicial Commissioners dismissing an application by the Appellants, as mortgagors, for the execution of a redemption decree. The mortgage in respect of which the decree was made was a usufructuary mortgage for a period which has expired, but there was a provision for payment on redemption of a sum in respect of interest. The mode of calculating interest was a matter in controversy in the redemption proceedings in regard to which this Board differed from the view of the Judicial Commissioners.

By the judgment of this Board, dated the 28th of July 1906, the Respondents, the mortgagees, were held entitled to simple interest at the rate of 24 per cent. per annum on Rs. 3,519, the original mortgage debt as from the 14th of January 1867, the date of the mortgage, as well as to mesne profits until redemption.

In 1902, previously to the judgment of this Board of the 28th of July 1906, the mortgagors had deposited in court Rs. 3,844, a portion of which they afterwards withdrew, leaving in court Rs. 3,335, a sum sufficient to satisfy the interest payable in respect of the mortgage according to the judgment of the Subordinate Judge of Sitapur affirmed in substance by the Judicial Commissioners in April 1902, and on the 5th of December 1902 the mortgagors were let into possession of the mortgaged premises, although an appeal to His Majesty against the order of the Judicial Commissioners was then pending.

After the judgment of this Board possession of the mortgaged premises was restored to the mortgagees on the 12th of November 1906.

On the 15th of December 1906 the mortgagors deposited in Court Rs. 40,000 and again applied for possession of the mortgaged premises.

The sum of Rs. 40,000 *plus* the sum of Rs. 3,335, making together the sum of Rs. 43,335, was more than sufficient to discharge the interest due in respect of the mortgage in accordance with the judgment of this Board of the 28th of July 1906, amounting on the 15th of December 1906 to Rs. 37,239. 2. 11, together with the amount due to the mortgagees for costs which amounted to Rs. 3,765, making together the sum of Rs. 41,004. 2. 11.

On the opening of the present Appeal it became obvious that the refusal of the Judicial Commissioners to restore the mortgagors to possession was due to a misconception of the effect of their Lordships' judgment of the 28th of July 1906, or to a slip in the order founded on that judgment. The error, if there was a slip in the order, is attributable to the mortgagees, as their Appeal was heard *ex parte*. Their Lordships

therefore intimated that they would humbly advise His Majesty that the present Appeal should be allowed, and minutes were to be settled by the Counsel for the parties. The learned Counsel, however, were unable to agree, and the matter has been referred to their Lordships.

It is stated that the sum of Rs. 3,335 has now lapsed to the Government under the Rules.

It appears that after having been restored to possession the mortgagees obtained a decree against the mortgagors for the sum of Rs. 9,800, which was the agreed amount of the mesne profits received by the mortgagors during the period of their possession.

On behalf of the mortgagors Mr. De Gruyther offered to set this amount, Rs. 9,800, against the amount of mesne profits received by the mortgagees since the deposit in Court of the sum of Rs. 40,000 by the mortgagors. Their Lordships think that this is a fair and reasonable proposal and that effect ought to be given to it.

Their Lordships also think that if the sum of Rs. 3,335 has lapsed to the Government, and is not forthcoming, the mortgagees must give credit for that amount as they ought to have taken it out of Court without prejudice to their pending Appeal either by arrangement or with the sanction of the Court in India or the sanction of this Board, which no doubt would have been given as a matter of course.

Their Lordships think that the proper order, therefore, will be that the mortgagors should be restored to possession forthwith, and that the mesne profits received by the mortgagees since the 15th December 1906 should be set off against the decree for Rs. 9,800 and taken in satisfaction of that decree and interest, and (the mortgagees being entitled to draw out of Court Rs. 41,004. 2. 11, the amount due to them for

interest and costs calculated up to the 15th of December 1906), the balance of the amount in Court increased by the addition of the sum of Rs. 3,335, if that sum has lapsed to the Government, should be paid out to the mortgagors.

Their Lordships will humbly advise His Majesty accordingly.

Their Lordships will make no order as to costs.

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In the Privy Council.

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CHAMPAT SINGH AND OTHERS

v.

JANGU SINGH, SINCE DECEASED  
(NOW REPRESENTED BY HANWANT  
SINGH) AND ANOTHER.

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DELIVERED BY LORD MAGNAGHTEN.

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