

Aziz Khan - - - - - *Appellant,*
- - - - - *v.*
Duni Chand and Others - - - - - *Respondents.*

FROM

THE CHIEF COURT OF THE PUNJAB.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 16TH APRIL, 1918.

Present at the Hearing :

VISCOUNT HALDANE.
LORD DUNEDIN.
LORD SUMNER.
SIR JOHN EDGE.
MR. AMEER ALI.

[*Delivered by MR. AMEER ALI.*]

This is an appeal from a judgment and decree of the Chief Court of the Punjab, dated the 15th July, 1913, and arises out of a suit brought by the plaintiff in the Court of the District Judge of Attock for the redemption of two mortgages in respect of a large tract of land in that district of which he has acquired by purchase a one-third share.

It appears that the lands in suit belonged originally to one Bahadoor Khan, who on the 23rd May, 1878, gave it in usufructuary mortgage to the defendant respondent for a term of fifteen years. The amount borrowed on that mortgage was 400 rupees, and it was stipulated that the mortgagee should receive the rents and profits in lieu of interest, and that at the end of the fifteen years the mortgagor should be entitled to take back the property on payment of the principal amount borrowed. In 1881 Bahadoor borrowed from the defendant another sum of 550 rupees on mortgage of the same property. The document in respect of this loan is dated the 17th January, 1881. It recites the first mortgage and states the money now borrowed is 550 rupees, the total debt being 950 rupees; it then provides that for four years the money borrowed should carry no interest; that after four years if the

debt is unpaid it should bear interest at 25 per cent. per annum, and in case of default in the annual payment of interest it should be calculated at compound rate.

In the suit the plaintiff claimed to redeem on the basis of the first mortgage, his contention being that the second mortgage, owing to ambiguity was void under the provisions of section 29 of the Indian Contract Act. The defendant, on the other hand, contended that the plaintiff could only redeem on payment of the whole mortgage debt with compound interest at the contractual rate, amounting in the aggregate to over a lakh of rupees. The District Judge held, in substance, that, although the second mortgage was somewhat ambiguous, the meaning of the parties was sufficiently clear, viz., that interest should be chargeable only on 550 rupees. He held further that the contract as to compound interest was unconscionable, entered into by the mortgagor when he "was under pressure amounting to undue influence." He accordingly decreed redemption upon payment by the plaintiff of the sum of 950 rupees, with simple interest on 550 rupees at the rate of 25 per cent. from the date of the second mortgage to date of suit, which amounted to something like 3,351 rupees. With the principal the total amount decreed came to 4,301 rupees.

From this decree the defendants appealed to the Divisional Judge, who was of opinion that the plaintiff was bound by the mortgagor's contract to pay compound interest. But as the defendant had claimed in appeal only 10,000 rupees in addition to the amount decreed by the first Court, and as this amount, in his opinion, was considerably below what was actually due, he varied the district Judge's decree by increasing the amount to be paid by the plaintiff in order to enforce redemption to 14,301 rupees, but restricted the redemption to one-third of the property mortgaged.

The plaintiff thereupon appealed to the Chief Court on the same grounds he had urged in the Courts below. The learned Judges have held that although the language of the second mortgage is by no means free from ambiguity, the interpretation offered by the counsel for the respondents appeared to them clear and consistent, viz., that the first mortgage was subject to its own conditions, that the loan under the second mortgage was to carry no interest for four years; that after four years interest was payable on it annually at the rate of 25 per cent., and in default of such annual payment of interest, compound interest was chargeable; and that the amount borrowed plus such interest was repayable at any time after *four years* from the date of the mortgage. They also held that there was no evidence that the contract as to compound interest was entered into under pressure or undue influence. They accordingly dismissed the plaintiff's appeal as regards the amount but varied the Divisional Judge's decree by declaring that the plaintiff was entitled to redeem the entire property on payment of the 14,301·7·9 rupees.

Their Lordships see no reason to interfere with the judgment and decree of the Chief Court. The interpretation of the second document on which the learned Judges have proceeded appears to their Lordships reasonable and consistent. The transaction was undoubtedly improvident, but in the absence of any evidence to show that the moneylender had unduly taken advantage of his position, it is difficult for a Court of Justice to give relief on grounds of simple hardship.

Their Lordships will accordingly advise His Majesty that the appeal should be dismissed but without costs, as the respondents do not appear.

In the Privy Council.

AZIZ KHAN

v.

DUNI CHAND AND OTHERS.

DELIVERED BY MR. AMEER ALI.

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