

Privy Council Appeals Nos. 43 and 44 of 1919.
Allahabad Appeals Nos. 1 and 2 of 1917.

Raja Sir Mohammad Ali Mohammad Khan Bahadur - - *Appellant*

v.

Qazi Ramzan Ali and others - - - - *Respondents*

Raja Sir Mohammad Ali Mohammad Khan Bahadur - - *Appellant*

v.

Qazi Ramzan Ali and others - - - - *Respondents*

(Consolidated Appeals)

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF OUDH.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 20TH APRIL, 1920.

Present at the Hearing :

VISCOUNT CAVE.

LORD MOULTON.

SIR JOHN EDGE.

MR. AMEER ALI.

[*Delivered by MR. AMEER ALI.*]

The suit which has given rise to these appeals was brought in the Court of the First Subordinate Judge of Biswan, in the Province of Oudh, on the 4th May, 1914, for the redemption of a mortgage executed on the 26th September, 1881, by one Musammat Bhaga, the mother of Qazi Ramzan Ali, the first plaintiff. The two other plaintiffs are Qazi Ramzan Ali's sons. The defendant in the suit is the son and representative of the original mortgagee.

The allegations in the plaint were directed to show that the mortgagor, Musammat Bhaga, was an illiterate pardanashin "village woman," incapable of understanding business; and that she executed the mortgage without a comprehension of the nature of the deed. It was also urged that the rate of interest

and the conditions embodied in the mortgage deed were hard, penal and intended to defeat the right of redemption. And the plaintiffs contended that they were entitled to redeem the property on payment of only the principal amount.

Admittedly at the time of the mortgage Ramzan Ali had no interest in the property mortgaged ; he was evidently joined in the deed at the instance of the mortgagee by way of precaution. Qazi Ramzan Ali alleges that at the time of the execution of the deed he was only sixteen years of age and had no knowledge of business.

The defendant in his written statement denied the allegations relating to the incapacity of the lady to enter into the transaction, and alleged that the amount due on the mortgage was considerably more than the sum which the plaintiffs offered for redemption. He contended that he was entitled to interest upon the bond from the time of the mortgage in addition to the rents and profits of the mortgaged lands. The material part of the written statement may be given in the defendant's own words :—
 “ The condition is that after the expiry of thirty years at the time of redemption, interest shall be paid along with the principal at the rate of 1 per cent. per mensem ” ; and he contended that this meant the payment of interest should begin from the time of the execution of the deed ; he thus claimed Rs. 4,500 on account of principal, and Rs. 17,685 on account of interest up to the 26th June, 1914.

The Subordinate Judge who tried the case in the first instance quoted in his judgment the words of the deed, which it is not disputed substantially represent the meaning of the passage in the vernacular. He held upon the construction of the stipulation that the intention of the parties was that interest should begin to run after the expiration of thirty years. In coming to this conclusion he relied upon the covenant that the mortgagee was, during his possession of the property, to enjoy its rents and profits ; and he considered that it could not possibly have been intended that whilst he was receiving the usufruct he was also to be entitled to claim interest. He accordingly decreed the plaintiffs' claim in the following terms :—

“ The plaintiffs are entitled to redeem the mortgaged property in suit on payment of Rs. 4,500 (principal) plus Rs. 1,620 on account of interest thereon from the 26th September, 1911, till the 26th September, 1914 (3 years), total Rs. 6,120, together with future interest on Rs. 4,500 from the 26th September, 1914, till payment at the aforesaid rate.”

As the value of the property in dispute was below Rs. 5,000, both parties appealed to the District Judge of Sitapur, and both parties urged before him the same contentions as in the Court below ; the defendant claimed interest from the date of the mortgage irrespective of the rents and profits of the property, whilst the plaintiffs urged that no interest should be allowed to the mortgagee, as the stipulation was penal and unconscionable ; they further alleged it was not proved that the document had been properly executed by Musammat Bhaga.

The District Judge agreed with the Lower Court in holding that the liability for interest arose on the stipulation after the expiry of thirty years. He also concurred in the Subordinate Judge's view that no ground had been established for holding that the mortgage had been executed by Musammat Bhaga without a proper comprehension of its terms. He accordingly dismissed both the appeals and affirmed the decree of the Subordinate Judge.

From these decrees both parties appealed to the Court of the Judicial Commissioner; the defendant again raised the same ground on which he had failed in the Courts below, viz., that he was entitled in addition to the usufruct, to interest from the date of the mortgage, and he contended that the Subordinate Judge, as well as the District Judge, had put a wrong construction upon the terms of the deed; whilst the plaintiffs urged that they ought not to be made liable for any interest.

The Judicial Commissioners came to the conclusion that, as the language of the stipulation was equivocal, they were not prepared to say the construction put upon it by the Courts below was wholly unwarranted. But upon an examination of the practice of money-lenders in the Sitapur District they expressed their view on the point in question in the following terms:—"We are inclined to consider that the words 'after thirty years' refer to and qualify the term of redemption and not the time from which the payment of interest is to be calculated." Upon an examination, however, of the evidence relating to the execution of the document they were of opinion that advantage had been taken by the mortgagee of the illiteracy of the woman and her want of knowledge to obtain her consent to a stipulation which was by no means clear and was certainly harsh. They said that a covenant of such a character taken from persons, one of whom was a boy of tender years, and the other a pardanashin lady in a position more or less of subordination to the mortgagee, without it having been fully explained to her and without any opportunity for independent advice, could not be legally enforced even if it were otherwise legally valid. They accordingly allowed the appeal of the plaintiffs and dismissed that of the defendant, and made a declaration in the following terms:—
That the plaintiffs are

"entitled to redeem the mortgaged property on payment of Rs. 4,500 with the costs incurred by the defendant in the Court of first instance, within six months from this date. In case of default the mortgaged property will be liable to sale."

The defendant has appealed to this Board from both these decrees, and the two appeals have been consolidated. The defendant has again urged that the stipulation in the mortgage deed bound the mortgagor to pay interest from the date of the mortgage.

Their Lordships agree with the Lower Courts in India in holding that the condition to pay interest only came into force on the expiry of the thirty years. The fact that the property was to remain in the possession of the mortgagee through the whole of this period, and that he was to enjoy the rents and profits, leaves no room for

doubt as to the meaning of the stipulation and the intention of the parties. The plaintiffs, on their side, have strongly contended that, having regard to the position of the lady, her incapacity to understand the transaction, and the absence of clear evidence that she executed it intelligently, and with sufficient comprehension of the nature of the stipulation, the condition as to interest should not be enforced. They accordingly ask that the decree made in the Court of the Judicial Commissioner may not be altered. Their Lordships have given their serious consideration to this argument. They fully recognise the force of the learned Judicial Commissioners' observations that every protection should be given to pardanashin ladies, and that the proof required from persons who have entered into transactions with pardanashin ladies, and seek to enforce those transactions against them, should be adequate and satisfactory. Had the stipulation as to interest in the present case borne the meaning for which the defendant contended, it would certainly, in their Lordships' opinion, have pointed to the conclusion that Bhaga agreed to it without sufficient comprehension of its nature. But it does not bear that meaning. It is a contract to pay interest at a certain rate after the expiry of the period of the mortgage. Such a contract does not appear to be one which the lady could not understand. She appears to have had the advice of her son-in-law on the occasion, and the first two Courts in holding that she executed the mortgage with a full comprehension of the transaction relied on the fact that she did owe debts which were paid off with monies advanced on the mortgage; and no question was raised against the transaction in the lifetime of Bhaga. On the whole, their Lordships are of opinion that the decree of the Subordinate Judge was in accord with the equities of the case, and that it should be restored.

Their Lordships will, therefore, humbly advise His Majesty to discharge the decrees of the Judicial Commissioners and to restore that of the Court of First Instance, but they desire to make in addition the following declaration: that the defendant shall not be entitled to interest during the pendency of the appeals from the judgments and decrees of the Subordinate Judge, the District Judge and the Judicial Commissioners. The case has been hung up by his persistence in asserting an unwarrantable claim to interest from the inception of the mortgage. Their Lordships do not think that it would be justifiable to allow him interest for this period. The decree of the Subordinate Judge gave him interest up to the time of his decree, and he would be entitled to that amount.

The case will go back to the Court of the Judicial Commissioner for remission to the Subordinate Judge to give effect to His Majesty's directions, and the interest will run from the date of his order in that behalf. The first Court will fix the usual time for redemption and make the consequential decree. The parties should bear their own costs in the Appellate Courts in India and before this Board.

In the Privy Council.

RAJA SIR MOHAMMAD ALI MOHAMMAD KHAN
BAHADUR

v.

QAZI RAMZAN ALI AND OTHERS.

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DELIVERED BY MR. AMEER ALI.

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