

*Privy Council Appeal No. 12 of 1940*

*Oudh Appeal No. 5 of 1938*

**Thakur Raghuraj Singh - - - - -** *Appellant*

*v.*

**Rai Bahadur Lala Hari Kishan Das and another -** *Respondents*

FROM

**THE CHIEF COURT OF OUDH AT LUCKNOW**

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 21ST DECEMBER, 1943

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*Present at the Hearing:*

LORD ATKIN

LORD PORTER

SIR GEORGE RANKIN

*[Delivered by LORD ATKIN]*

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This is an appeal from a decree of the Chief Court of Oudh at Lucknow setting aside a decree of the Subordinate Judge Sitapur which under the provisions of sections 5 and 30 of the United Provinces Agriculturist Relief Act XXVII of 1934 amended a compromise decree dated July 4th, 1933, made in a suit in which the first respondent was the plaintiff, and the present appellant's predecessor in title was the defendant.

Thakur Raghuraj Singh, hereinafter called the debtor, who is now deceased and represented by the present appellant was the talukadar of a large property in the district of Sitapur. On the 17th February, 1928, he borrowed from the first respondent (hereinafter called the creditor) a sum of Rs.1,40,000 at 10 per cent. compound interest with six-monthly rests on the security of six named villages. On October 25th, 1931, he borrowed from the creditor a further sum of Rs.1,53,000 at 12 per cent. compound interest with six-monthly rests on the security of the former six villages and nine additional villages. The date of repayment of both loans was February 17th, 1933.

On April 25th, 1933, the plaintiff commenced the suit out of which the present proceedings arise. It was an ordinary mortgage suit claiming a decree for payment of Rs.3,88,300, the amount then due to the mortgagees, on default of payment sale of the mortgaged properties, and liberty to apply for the recovery of any balance after sale. The suit does not appear to have been contested: the parties arrived at a compromise agreement to be enforced by a decree, and on July 4th, 1933, the decree was made by the Subordinate Judge.

As amended by the Chief Court it is as follows:—

“ Civil side decree for sale under the terms of compromise (Order XXXIV, rule 4, Act V of 1908 where the court declares the amount due.)

## IN THE COURT OF THE SUBORDINATE JUDGE, SITAPUR.

Suit No. 27 of 1933.

Rai Bahadur Lala Hari Kishan Das, son of Lala Gobind Prasad, Khunkhunji Road, Lucknow ... .. Plaintiff,

versus

1. Thakur Raghuraj Singh, son of Thakur Baldeo Singh, resident and Taluqdar of Kanmau and Sita Rasoin, District Sitapur,
2. Thakur Sheo Ganga Bakhsh Singh, son of Sheo Dan Singh, resident and Zamindar of Bilahri, pargana Mahmudabad, District Sitapur ... .. Defendants.

Claim.—To recover Rs.3,88,300-2-6 by sale of the mortgaged property under mortgage-deeds dated 17th February, 1928, and 25th October, 1931. Valuation for jurisdiction of the Court and court-fees is Rs.3,88,300-2-6 on which a court-fee of Rs.4,500 has been paid.

This suit coming on this day of 4th July, 1933, in the presence of Babu Bishambhar Dass, advocate for the plaintiff, and of Pandit Raj Narain, advocate for defendant 1, and defendant 2 in person.

1. It is hereby declared that the amount due to the plaintiff on the mortgage mentioned in the plaint calculated up to this 4th day of July, 1933, is the sum of Rs.3,88,300-2-6 for principal, the sum of Rs.9,648-11-11 for interest on the said principal, and the sum of Rs.5,523 for the costs of the suit awarded to the plaintiff, making in all the sum of Rs.4,03,471-14-5 with future interest at 0-8-0 per cent. per month from 5th July, 1933, till payment.

2. And it is hereby ordered and decreed as follows.

That the said amount with interest be paid in the manner provided in the compromise which forms part of this decree."

After a schedule of the mortgaged properties "given under my hand and the seal of the Court this 4th day of July, 1933":—

"Translation of copy of compromise filed by the parties in case No. 27 of 1933, decided on 4th July, 1933.

Rai Bahadur Lala Hari Kishan Das ... .. Plaintiff,

versus

1. Thakur Raghuraj Singh Saheb
  2. Thakur Sheo Ganga Bakhsh Singh
- } Defendants.

Sheweth,

That in the above case the parties have come to terms as follows:—

1. That a final decree for sale, as sought for, for Rs.3,88,300-2-6 with future interest from the date of suit up to this date at the contractual rate and thereafter at the rate of 8 annas per cent. per month and for costs of the suit may be passed in favour of the plaintiff against the defendants.

2. That as to the satisfaction of the decree-money of the said decree it has been settled that out of the mortgaged property the defendant No. 1 shall execute in favour of the plaintiff a sale-deed in respect of some villages which will be selected by the plaintiff, which will be free and clear from all defects, alienations and attachment and which will be sufficient to satisfy the decree money, and that within one week he shall complete the sale-deed and that the plaintiff shall get it executed.

3. That the defendant No. 2 shall execute a deed of relinquishment in respect of those villages which will be sold.

4. That the sale-deed in favour of the plaintiff will be absolute but defendant No. 1 and his heirs, representatives and transferees or to whomsoever he may direct shall be competent in any fallow season in Jeth after 5 years and before another 15th year, whenever he likes, to take back the property sold wholly or in serial order on payment of the stipulated price, and in completing the return of the sale-deed the plaintiff and his heirs, representatives and transferees shall have no objection, and every person in whose possession the property sold will stand shall be bound by the said condition and this shall be a main condition of the absolute sale-deed mentioned above.

5. That from the date of the sale-deed the defendant shall deliver to the plaintiff possession of the property sold and shall cause the mutation of names to be effected.

6. That the price of the property sold has been settled in this way that after deducting revenue, Government remission and *sewai* items there will be net profit including income from *sir* and *khudkashht* for 1939 Fasli according to the Government record and on that net profit price will be fixed at the rate of 5 annas per cent. per month, that is, if the said net profit will amount to Rs.4-8-0 annually then the price of that property will be Rs.100.

7. That whatever liabilities in respect of the property sold remain on the defendant No. 1 according to the proposed sale-deed in favour of the plaintiff, then for discharging them the entire village Kanmau inclusive of hamlets shall as hitherto be deemed to be hypothecated and mortgaged and that from the date of the execution of the sale-deed the entire remaining mortgaged property shall be deemed to be discharged from the charge of the decree.

8. That the defendant No. 1 shall not claim ex-proprietary rights and if he does then he shall be bound to return the price to that extent.

9. That each party is competent to get the decree registered if he likes.

(Sd.) P. Kaul,  
Sub-Judge,  
Sitapur."

15th July, 1933.

On May 26th, 1934, the creditor applied for execution of the above decree of July 4th, 1933. The application was resisted and before the execution proceedings had been determined, on April 27th, 1935, there came into force the United Provinces Agriculturists Relief Act of 1934. This Act, which is described as "an Act to make provision for the relief of agriculturists from indebtedness" and has a preamble reciting the expediency of making such provision; amongst other sections has the two following provisions:—

"Section 5. (1) Notwithstanding anything contained in the Code of Civil Procedure, 1908, the Court shall, unless for reasons to be recorded it directs otherwise, at any time, on the application of the judgment-debtor and after notice to the decree-holder, direct that any decree for money or preliminary decree for sale or foreclosure passed by it or by any court whose business has been transferred to it against an agriculturist, whether before or after this Act comes into force, shall be converted into a decree for payment by instalments drawn up in such terms as it thinks fit in accordance with the provisions of section 3:

Provided that any final decree for sale which has not been fully satisfied, passed before this Act comes into force, shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, be revisable in the same manner and to the same extent as the preliminary decree for sale or foreclosure passed against an agriculturist.

(2) If, on the application of the judgment-debtor, the Court refuses to grant instalments, or grants a number or period of instalments which the judgment-debtor considers inadequate, its order shall be appealable to the court to which the court passing the order is immediately subordinate, and the decision of the appellate court shall be final.

Section 30. (1) Notwithstanding anything in any contract to the contrary 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 II for the period from January 1, 1930, till such date as may be fixed by the Local Government in the Gazette in this behalf.

(2) If a decree has already been passed on the basis of a loan and remains unsatisfied in whole or in part, the Court which passed the decree shall on the application of the judgment-debtor amend it by reducing, in accordance with the provisions of sub-section (1), the amount decreed on account of interest.

(3) A decree amended in accordance with the provisions of sub-section (2) shall be deemed to bear the date of the original decree, and, notwithstanding any provision in any law to the contrary, no appeal shall lie from any order amending a decree under that sub-section."

On July 23rd, 1935, the debtor applied in the Court of the Subordinate Judge Sitapur for relief under the Act and on January 11th the Judge made an order amending the decree by reducing the rates of interest, making no order as to sale, but directing that the principal money should be paid by twelve yearly instalments, on default in three instalments the whole to become due.

On February 9th, 1936, the creditor applied to the Chief Court at Lucknow for revision under section 115 of the Code of Civil Procedure alleging that the Subordinate Judge had acted without jurisdiction. The Chief Court, after amending the decree to conform to the compromise without objection of the parties, decided that the application for relief was not within the terms of the Act and set aside the order of the Subordinate Judge granting relief. Their judgment points out that section 5 of the Act refers to four kinds of decree only: a decree for money, a preliminary decree for sale, a preliminary decree for foreclosure, and a final decree for sale which has not been fully satisfied. Being of opinion that all such decrees had the common feature of providing for the payment of money by the judgment debtor to the judgment creditor, they came to the conclusion that the section was only meant to apply to such decrees as contained a direction for payment of money. In the present case they found no such provision, and so they held that the Act did not apply.

Their Lordships do not agree with this reasoning. The words of a remedial statute must be construed so far as they reasonably admit so as to secure that the relief contemplated by the statute shall not be denied to the class intended to be relieved. But in the present case the provisions of the decree plainly indicate that it is a final decree for sale. It is made in suit No. 27 of 1933. It is headed "civil side decree for sale under the terms of compromise." It recites the claim "to recover Rs.3,88,300.2.6. by sale of the mortgaged property." It declares the amount due up to July 4th, 1933, and "it is hereby ordered and decreed as follows:—

1. That the said amount with interest be paid in the manner provided in the compromise which forms part of this decree." When the compromise is looked at clause 1 provides "that a final decree for sale as sought for for Rs.3,88,300.2.6 may be passed in favour of the plaintiff against the defendants." It then proceeds in clause 2 to provide that as to the satisfaction of the decree money the defendant shall execute in favour of the plaintiff a sale deed in respect of villages to be selected by the plaintiff which will be sufficient to satisfy the decree money and within a week complete the sale deed. It has a provision in section 4 providing that the sale deed should be absolute but that after five years the defendant was to have the right to take back the property on payment of the stipulated price: and a provision that the price should be fixed at a capital sum on which the net profit of the villages shall return  $4\frac{1}{2}$  per cent. per annum. The position therefore is that in a suit in which the plaintiff was entitled to a preliminary decree for sale followed by a final decree for sale the parties agreed to forego any preliminary decree. It was rightly conceded by the creditor's counsel that this did not invalidate the final decree. If the parties had not come to terms the final decree might have given the creditor the right to bid, and if his bid was accepted the price to be paid by him would be set off against the debt. There seems to be no reason at all why the parties should not dispense with these forms, and arrange that the sale should be direct by the debtor to the creditor: and as part of the transaction agree for a condition of repurchase. The sale is still a sale by decree of the Court: and the debtor in the last resort is under the compulsion of the Court. It is difficult to see how the Chief Court finds in the ordinary decrees mentioned in the Relief Act a common feature providing for payment of money by the judgment debtor to the decree holder. On a public sale the money is paid into Court: if the creditor is allowed to bid the price is set off. But in any case in the present decree the "price" when ascertained is to satisfy if possible the amount of the declared debt. Further, in their Lordships' opinion there seems no reason why the debtor in the present proceedings should not have had the right given him by O. XXXIV. r. 5 within 30 days of the sale to bring the whole sum due into Court and put an end to the sale. It has been unnecessary to deal separately with the claim for reduction of interest under section 30 of the Relief Act. This seems to be so clearly the case of a decree "passed on the basis of a loan" that the right to relief appears indisputable. The learned Judges in the High Court appear to overlook

the fact that the relief decreed on this matter is not confined to future interest but modifies the past interest from January 1st and February 23rd, 1930, respectively.

In the course of their judgment the High Court, referring to the discretion given to the Judge under section 5 to grant relief " unless for reasons to be recorded it directs otherwise ", expressed an opinion that this was a case to which section 5 should not be applied for the reason that the judgment debtor agreed to pay off the decretal amount by executing a deed of sale, and it would not be just to allow him to resile from that agreement. This consideration appears, with respect, to be more appropriate to appeal than to revision; but as the operation of a Relief Act is one of general importance it may be as well to point out that the object of all such Acts is to give relief from agreements made by the applicants whether under the laws relating to usury or otherwise, and that it cannot in ordinary circumstances be an objection to relief that the applicant is seeking to resile from the very agreement against which the law has expressly said he may be relieved.

For the reasons given above this appeal should be allowed and the order of the Subordinate Judge dated January 11th, 1936, amending the decree of July 4th, 1933, as altered by the Chief Court on revision should be restored: the first respondent must pay the appellants costs in the Chief Court and before this Board. It appears that since the hearing in the Chief Court the sale deed has been executed and the creditor has been placed in possession of the property. The appellant must have liberty to apply in the Court of the Civil Judge at Sitapur to redress the situation. This will of course not prejudice the right of any competent tribunal to remove the case elsewhere. Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council

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THAKUR RAGHURAJ SINGH

v.

RAI BAHADUR LALA HARI KISHAN  
DAS AND ANOTHER

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DELIVERED BY LORD ATKIN

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