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CHHAB NATH
v.
KAMTA
PRASAD.

Munshi Hanuman Prasad and Lala Jokhu Lal, for the respondents.

The Court (PETHERAM, C. J., and MAHMOOD, J.) delivered the following judgments :—

PETHERAM, C.J.—I think that this appeal must be allowed. As I understand the matter, the principal and interest are claimed at Rs. 15,000 by calculating compound interest for a period of three years, and simple interest at Rs. 13-8 per cent. from the end of that period to the date of the institution of the suit. The terms of the bond are rather more wide than I at first supposed, and they appear to me to amount to a covenant to pay interest at the stipulated rate after the period of three years, so long as the principal remained due. The terms of the bond seem to bring it within the case cited by Mr. *Hill*; and, if so, we are bound to follow the decision in that case. But our own view is the same. If the bond contains an express covenant for the payment of interest at this rate, then the interest will not be affected by the considerations of the reasonableness or otherwise of the rate, because the amount was agreed upon by the parties. It is also well within what would have been due to the plaintiff, if he had taken the account strictly on the terms specified in the bond. The appeal must be decreed, and the decree will be for the amount claimed in the plaint with costs.

MAHMOOD, J.—I am of the same opinion.

Appeal allowed.

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January 10.

FULL BENCH.

Before Sir W. Comer Petheram, Kt., Chief Justice, Mr. Justice Oldfield, Mr. Justice Brodhurst, Mr. Justice Mahmood, and Mr. Justice Duthoit.

MAGNI RAM AND ANOTHER (DEFENDANTS) v. JIWA LAL AND OTHERS
(PLAINTIFFS). *

High Court's powers of revision—Civil Procedure Code, s. 622.

In a suit to enforce the right of pre-emption in respect of a usufructuary mortgage of immoveable property, the plaintiffs alleged that the consideration-money was less than that stated in the mortgage-deed. The Court of first instance gave the

* Second Appeal No. 1738 of 1884, from a decree of H. G. Pearce, Esq., Offg. District Judge of Mainpuri, dated the 5th September, 1884, affirming a decree of Maulvi Abdul Basit Khan, Subordinate Judge of Mainpuri, dated the 11th July, 1884.

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plaintiffs a decree for possession of the property, on payment of an amount less than that mentioned in the deed; and this decree was affirmed on appeal. The mortgagees appealed to the High Court on the following grounds :—“(i) Because it was for the respondents to prove that any portion of the consideration was not paid. (ii) Because the lower Court has not considered the evidence of the appellants. (iii) Because the finding of the lower Court is based on conjecture.”

Held, on the question whether, such grounds not being grounds on which a second appeal is allowed by Chapter 42 of the Civil Procedure Code, the appeal should not proceed rather under Chapter 46, s. 622 of that Code, that the appeal could not proceed under s. 622 of the Civil Procedure Code, in consequence of the decision of the Privy Council in *Amir Hassan Khan v. Sheo Bakhsh Singh* (1) that only questions relating to the jurisdiction of the Court could be entertained under that section.

THIS was a reference to the Full Bench arising out of the following facts. The plaintiffs in the case sued to enforce the right of pre-emption in respect of a usufructuary mortgage of certain immoveable property. They alleged that the consideration-money was less than that stated in the mortgage-deed. The Court of first instance gave the plaintiffs a decree for the possession of the property, on payment of an amount less than that mentioned in the mortgage-deed. On appeal by the mortgagees the appellate Court affirmed this decree. The mortgagees preferred a second appeal to the High Court. The grounds of appeal were as follow :—

“(i) Because it was for the respondents to prove that any portion of the consideration was not paid.

(ii) Because the lower Court has not considered the evidence of the appellants.

(iii) Because the finding of the lower Court is based on conjecture.”

The appeal was admitted under s. 551 of the Civil Procedure Code. The appeal came on for hearing before Petheram, C.J., and Duthoit, J. The learned Chief Justice being of opinion that the grounds of appeal were not grounds on which a second appeal is allowed by s. 584 of the Civil Procedure Code, and that therefore the appeal would not lie, and that the appellants should consequently seek their remedy under s. 622, the Bench referred the following question to the Full Bench :—

(1) I. L. R., 11 Calc., 6.

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“Should this appeal proceed under Ch. 42, or under Ch. 46, s. 622?”

MAGNI RAM
v.
JIWA LAL.

Pandit *Ajudhia Nath*, for the appellants.

The following opinion was delivered by the Full Bench:—

PETHERAM, C.J., and OLDFIELD, BRODTHURST, MAHMOOD, and DUTHOIT, JJ.—This appeal cannot proceed under s. 622 of the Civil Procedure Code, because the Privy Council has decided in *Amir Hassan Khan v. Sheo Bakhsh Singh* (1) that only questions relating to the jurisdiction of the Court can be entertained under that section. The appeal will be laid before a Division Bench for orders under s. 551.

APPELLATE CIVIL.

Before Sir W. Comer Petheram, Kt., Chief Justice, and Mr. Justice Brodthurst.

KAULESHWAR PANDAY (PLAINTIFF) v. GIRDIARI SINGH AND ANOTHER
(DEFENDANTS).*

Jurisdiction—Civil and Revenue Courts—Declaration that land is plaintiff's sir and defendant a lessee—Landholder and tenant.

A zamindar claimed a declaration that certain land was his *sir*, and that the defendants were in possession thereof as his lessees. The defendants resisted the claim on the ground that they were tenants of the land at fixed rates, and not lessees of it as the plaintiff's *sir*.

Held that the suit raised the question whether the land was *sir*, in respect of which no occupancy-rights could be created except by contract, and whether the defendants were the plaintiff's lessees, and that this was a question purely of contract, and one which was cognizable in the Civil Courts.

THE plaintiff in this suit, a zamindar, claimed a declaration that certain land was his *sir*, “that the defendants were in possession thereof as cultivators under a lease granted by the plaintiff, and that they should continue in possession of the land by payment of the rent entered in the lease.” The defence to the suit was that the defendants were tenants at fixed rates of the land, and not lessees of it, as the plaintiff's *sir*, and that as the relation of landlord and tenant admittedly existed between the parties, and the object of the suit was the determination of the nature of the tenancy, the suit was exclusively cognizable in the Revenue Courts.

* First Appeal No. 52 of 1884, from a decree of W. Barry, Esq., District Judge of Jaunpur, dated the 11th January, 1884.