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in the Code of Civil Procedure, 1908, in regard to suits shall be followed, so far as they can be made applicable, to all proceedings under this chapter, and all orders passed under this chapter shall be executed in the manner prescribed for execution of civil court decrees." The order passed by the Assistant Collector was passed under a section which is in the same chapter of the Agriculturists' Relief Act as section 27. In these circumstances the memorandum of appeal cannot come within the meaning of article 11 of the second schedule of the Court Fees Act, and therefore it must come within the provisions of article 1 of the first schedule. The result is that an *ad valorem* court fee must be paid on the amount of the subject-matter in dispute, which we have already said is the difference between the sum of Rs.375 and Rs.1,101-9-6. This is our reply to the reference which has been made.

REVISIONAL CIVIL

Before Sir Shah Muhammad Sulaiman, Chief Justice, and Mr. Justice Harries

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August, 13

MUZAFFARNAGAR BANK (PLAINTIFF) *v.* FATTA AND OTHERS (DEFENDANTS)*

U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), sections 3(1) first proviso, and 5—Conversion of decree into instalment decree—Simple money decree—Period of instalments—Date from which such period is to be reckoned—U. P. Agriculturists' Relief Act, sections 4, 5, 30(2)—Reduction of interest—Reduction of future interest—Simultaneous operation of sections 4 and 30(2).

When a simple money decree, passed against an agriculturist, is converted into an instalment decree under section 5 of the U. P. Agriculturists' Relief Act, the maximum period of such instalments is fifteen years, according to the first proviso to section 3 of the Act. An agriculturist who is a simple debtor and not a mortgagor does not come under the category of "an agriculturist to whom chapter III applies", mentioned in that proviso, for chapter III deals with mortgages and their redemption and is altogether inapplicable to the case of a

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simple debt; he therefore comes under the category of "other agriculturists" in that proviso, for whom the maximum period of instalments is laid down to be fifteen years.

Where a decree is converted under section 5 of the U. P. Agriculturists' Relief Act into an instalment decree, the period of instalments should start from the date of the new decree and not from that of the old decree. The meaning of the word "decree" in the first proviso to section 3(1) of the Act is the new decree for instalments and not the original decree which is so converted.

When a decree for money is converted into an instalment decree under section 5 of the U. P. Agriculturists' Relief Act the court not only has power to reduce future interest, but is bound to do so, in accordance with section 4 of the Act which applies to all decrees. There is no conflict between section 4 and section 30(2) of the Act. The latter section primarily applies to the reduction of interest on the loan itself and the court is to prepare an account and reduce the amount of interest up to the date of the decree. When it comes to fix the rate for future interest it is to be guided by the provisions of section 4.

It is not necessary to consider whether under section 30(2) the court can not also reduce future interest.

Mr. *Jagnandan Lal*, for the applicant.

Mr. *Vishwa Mitra*, for the opposite parties.

SULAIMAN, C.J., and HARRIES, J.:—This is an application in revision from an order of the Munsif of Muzaffarnagar, dated the 12th of September, 1936, allowing an application under sections 5 and 30 of the Agriculturists' Relief Act. The court below has proceeded on the assumption that the applicant was an agriculturist, as apparently the point does not appear to have been seriously contested before it. The court has fixed 28 equal six-monthly instalments beginning from 15th March, 1937, and has allowed future interest at the court rate.

The first point urged in revision is that the court had no jurisdiction to spread the instalments over a period of $13\frac{1}{2}$ years from the date of the decree, as under the first proviso to section 3 the court should not have extended the period beyond four years. It is argued

that the applicant is not a person as regards whom the limits prescribed for the payment of revenue and rent, etc., in section 2, sub-section (2) are to be omitted. It is then argued that he must come within the second category——"other agriculturists"——mentioned in that proviso. Now the proviso consists of two parts. Under the first part a period of four years only is fixed from the date of the decree "in the case of an agriculturist to whom chapter III applies", and the second part prescribes a maximum period of 15 years from such date "in the case of other agriculturists". It is thus clear that an agriculturist would fall under the second category if he cannot be brought under the first. Now there are two conditions necessary for the applicability of the first category. The applicant must be (*a*) an agriculturist and (*b*) to whom chapter III applies. If either the first or second or both of these conditions are not fulfilled, then he cannot come under that category and must come under the second category. Now chapter III deals with mortgages and their redemption, and all the sections in that chapter deal with disputes arising between mortgagor and mortgagee. The whole of that chapter is altogether inapplicable to the case of a simple debt in which there is no relation of mortgagor and mortgagee but only one between simple creditor and debtor. By no stretch of the language therefore can it be said that chapter III applies to a person who is a simple debtor and not a mortgagor. It would follow that such a person would not come under the first category but must come under the second, provided of course he is an agriculturist.

It is argued on behalf of the applicant that the meaning of the expression "an agriculturist to whom chapter III applies" is that the applicant must possess a status which would make him an agriculturist coming within the purview of chapter III if he had been a mortgagor and had been applying under chapter III. This contention is opposed to the language used by the legislature which is to the effect "to whom chapter III *applies*" and not "to whom chapter III would have applied".

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Strong reliance is placed by the learned advocate on the ruling of a Division Bench of the Oudh Chief Court in *Girwar Singh* v. *Ramman Lal* (1) in which no doubt the Bench took the view which supports the applicant's contention. The learned Judges started with the consideration of the question "whether or not the opposite party are agriculturists to whom chapter III applies". They then considered the provisions of sections 2 and 3 and then stated what they considered to be the policy underlying the rule and concluded: "We are therefore definitely of opinion that the opposite party being an agriculturist of the class referred to in section 2(2), clause (*a*), and therefore an agriculturist to whom chapter III applies, the period of instalments which could be fixed in the decree standing against him could not extend beyond four years." Apparently it was thought that if the opposite party possessed the status of an agriculturist mentioned in section 2, sub-section (2), clause (*a*), he was a person to whom chapter III *applies*. With great respect, we are unable to agree with this view. Chapter III cannot apply to the present applicant at all because he is not a mortgagor. He may be an agriculturist, but he is certainly not an agriculturist to whom chapter III applies. The argument of the learned counsel comes to this that the agriculturist within the meaning of the proviso to section 3 is the agriculturist who comes within the groups (*a*) to (*h*). The legislature has however not chosen to say so. It may be pointed out that the proviso to section 2, sub-section (2) merely widens the scope. Ordinarily the persons who are agriculturists and can take advantage of this Act are those enumerated in the groups (*a*) to (*h*), but for the purposes of certain special sections and chapters the limits imposed regarding the amount of rent and revenue, etc., have been omitted and persons whose revenue and rent exceed the maximum can also be regarded as agriculturists. It is noteworthy that there are numerous other sections and other chapters in the Act which like

(1) A.I.R., 1937 Oudh, 141.

chapter III are not mentioned in this proviso. If the argument for the applicant were sound, then the result would be that for the purpose of the other chapters and sections the same difficulty would arise and the period allowed for instalments would be four years only. On the other hand, the legislature has in express terms provided in section 3 that all other agriculturists would have a period of 15 years for the purposes of instalments, while those to whom chapter III applies should have the shorter period. There is therefore no justification for substituting, in the first proviso to section 3, for the words "to whom chapter III applies" other words like "who come under groups (*a*) to (*h*) in section 2".

The Oudh decision comes to this, that the agriculturist within the meaning of the first category in the proviso to section 3 must be an agriculturist who is within the maximum limits prescribed and not one without such limits. But this interpretation of section 3 would be directly contrary to the provisions of the first proviso to section 2(2) under which *in section 3 also an agriculturist includes one as to whom the limits are to be omitted.* This point does not appear to have been pressed before the Oudh Bench. It follows that the only possible interpretation to be put on the first proviso to section 3 is that the person referred to therein for whom four years' limit is prescribed is one who has made an application under chapter III and to whom chapter III therefore applies. We think that on the plain language of the section, we must hold that the applicant is not an agriculturist to whom chapter III applies at all, and he cannot therefore come under the first category. We may point out that in the case of *Puran Chand* v. *Bhagwat Prasad* (1), although the point was not considered in detail, it was assumed that in the case of a simple money debt the applicant was not an agriculturist to whom chapter III applied.

The second point urged is that the court had no jurisdiction to reduce future interest in this case. As

(1) I.L.R., [1937] All., 502.

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regards this point also, reliance is placed on a ruling of the Oudh Chief Court which has been expressly dissented from by a Bench of this Court in *Manmohan Das* v. *Izhar Husain* (1). It has been pointed out in that ruling that the provisions of section 4 are imperative and they make it obligatory on a court not to allow on any decree for money more future interest than at the rate prescribed by that section. It is argued that this interpretation would be in conflict with the provisions of section 30, sub-section (2), under which the court is enjoined to reduce the rate of interest. But that section primarily applies to the reduction of interest on the loan and calculation is to be made up to the date of the decree. There is absolutely no inconsistency between sections 4 and 30 simply because the two sections prescribed different maxima beyond which rates of interest cannot go. If there are two maxima prescribed and a case falls under both, then it will be the lower maximum which will govern the case. Quite apart from that, the chapter deals primarily with the rate of interest on the loan itself and the court is to prepare an account and reduce the amount of interest up to the date of the decree. When it comes to fix the rate for future interest, it is to be guided by the provisions of section 4, unless that section is inapplicable. It has been held in this Court that section 4 applies to all decrees. Now under section 5 the court has to convert a previous decree for money into a decree for payment by instalments drawn up in accordance with the provisions of section 3. This is undoubtedly a new decree into which the old decree is to be converted and it has been held by this Court that the court would not be empowered to fix future rate of interest beyond the maximum prescribed by section 4.

It is not necessary to consider whether under section 30, sub-section (2) the court cannot also reduce future interest. Under that section the court can amend the

(1) I.L.R., [1937] All., 536.

previous decree and sub-section (3) provides that the decree amended shall be deemed to bear the date of the original decree. It is significant that no such rule is laid down in the earlier sections, for example like sections 3 and 5 and it is nowhere said therein that after the decree is converted into a new decree, the new decree should be deemed to bear the date of the original decree. The objects of the two sections are quite different. Section 30 deals with reduction of interest only, whereas section 5 deals with the easy payment of the decretal amount by instalments. The court is empowered to allow the amount to spread over a longer period instead of compelling the debtor to pay up the amount immediately. Learned advocate for the applicant has brought to our notice the case of *Nannu Mal* v. *Hoti Lal* (1), decided by a learned Judge of this Court. That case can be distinguished on the ground that there no application under section 5 of the Act had at all been made and the learned Judge was considering the provisions of section 30(2) only. In any case, if that view is in conflict with the opinion expressed by the Division Bench ruling, it must be considered to have been overridden by the Division Bench ruling.

The third point urged on behalf of the applicant is that the court below was wrong in fixing instalments from the date of the new decree. It is urged that the instalments should run from the date of the original decree. It is significant that although for the purposes of section 30, sub-section (2), under which a previous decree is merely "amended", it is provided in sub-section (3) that the amended decree shall be deemed to bear the date of the original decree, there is no similar provision in sections 3 and 5 of the Act. No difficulty arises under section 3 where the court comes to pass the decree itself for in such a case it would be guided by section 4 which follows it. Under section 5 the court has to convert a previous decree into a new decree for

(1) I.L.R., [1937] All., 771.

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payment by instalments which is to be drawn up in accordance with the provisions of section 3. It is not merely an amended decree but it is a new decree for payment by instalments. There is no provision in section 5 to the effect that this decree into which the old decree is converted should be deemed to bear the date of the original decree. There is, on the other hand, a clear provision that it should be drawn up in accordance with the provisions of section 3. It would therefore follow that when a decree is converted into a new decree under section 5, the court can fix a period for payment by instalments starting from the date of the new decree and not necessarily from the date of the original decree. This was the view expressed by a learned single Judge of this Court in *Ram Ghulam* v. *Bandhu Singh* (1), in which ALLSOP, J., observed that for the purposes of section 5 of the Act the meaning of the word "decree" in the first proviso to section 3(1) is the decree for instalments and not the original decree which is converted into a decree for instalments. We agree with that view. We accordingly dismiss the revision with costs.

APPELLATE CIVIL

Before Sir Shah Muhammad Sulaiman, Chief Justice, and Mr. Justice Harries

1937
August, 16

RAM CHANDRA SINGH AND ANOTHER (DEFENDANTS) *v.* MISRI LAL AND OTHERS (PLAINTIFFS)*

Agra Tenancy Act (Local Act III of 1926), *sections* 44, 82—*Illegal transfer by tenant—Transfer of ex-proprietary tenancy —Suit by landlord against such transferee—Section* 44 *not applicable—Agra Tenancy Act, sections* 242(3), 271 *explanation II—Question of proprietary right—Appeal.*

The question whether certain plots of land in the possession of the defendants were the *sir* plots of the defendants or whether they were their tenancies is not a question of pro-

*Appeal No. 7 of 1936, under section 10 of the Letters Patent.

(1) (1936) I.L.R., 58 All., 941.