Before Mr. Justice Iqbal Ahmad, Mr. Justice Harries and Mr. Justice Rachhpal Singh

HAR PRASAD (DECREE-HOLDER) *v.* SEWA AND OTHERS (JUDGMENT-DEBTORS)*

1938 *April*, 29

U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), sections 2(10)(a), 5—"Loan"—Advance to agriculturist for growing and supplying sugarcane—Whether "loan" or advance payment of price of future crop—Conversion of decree into instalment decree.

By an agreement between the owner of a sugar factory and an agriculturist a sum of money was advanced to the latter, the advance being stated to be in connection with or in relation to the sale of the entire sugarcane crop on a specified area of the latter's land, to be harvested and delivered in the ensuing season, at a certain rate per maund; the money advanced was to be treated as payment or part payment for the sugarcane so delivered; the sugarcane crop of the specified area was hypothecated to the factory owner; and it was agreed that if the agriculturist failed to deliver the crop he would be liable to return the money advanced together with a specified rate of interest. A small quantity of sugarcane was delivered, and after giving credit for it the factory owner sued for recovery of the balance of the sum advanced, together with interest, and obtained a decree. The judgment-debtor applied under section 5 of the U. P. Agriculturists' Relief Act for conversion of the decree into an instalment decree:

Held that the transaction was not a sale of the crop and there being no out and out sale the sum advanced could not be regarded as a payment in advance of the purchase price, but the transaction in substance amounted to a loan to the agriculturist and the hypothecation and the agreement to sell the crops was by way of a security given to the lender for the money which he had advanced. As the decree was a decree for money passed upon the basis of a "loan" as defined in the U. P. Agriculturists' Relief Act, an application lay under section 5 of the Act for converting the decree into an instalment decree.

Mr. *G. S. Pathak,* for the applicant.

The opposite party was not represented.

IQBAL AHMAD, HARRIES AND RACHHPAL SINGH, JJ.:—This is a reference by the learned Munsif of

*Miscellaneous Case No. 319 of 1937.

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Pilibhit under order XLVI, rule 11 of the Civil Procedure Code arising out of an application under the U. P. Agriculturists' Relief Act of 1934. The matter originally came before a Bench of this Court and by an order, dated the 28th of March, 1938, that Bench referred the matter to the learned CHIEF JUSTICE for the constitution of a larger Bench. The case has therefore come before this Full Bench.

On the 17th of July, 1934, the judgment-debtors, who are admittedly agriculturists as defined in the U. P. Agriculturists' Relief Act, entered into an agreement with the decree-holder Sahu Har Prasad who is the owner of a sugar factory at Pilibhit. By that agreement the decree-holder advanced to the judgment-debtors a sum of Rs.1,086 and such advance is stated to be, in the agreement, in relation to the sale of sugarcane produce for the year 1342F., and the area of such sugarcane is specified in the agreement. The judgment-debtors also hypothecated 225 bighas kham of this sugarcane crop to the decree-holder. The jugdment-debtors also covenanted that they would deliver the entire sugarcane crop of the area specified to the decree-holder at the rate of Rs.36 per 100 maunds and the money advanced, viz., Rs.1,086 was to be treated as payment or part payment for the sugarcane so delivered. It is then provided that if on account of any terrestrial or celestial calamity there is a failure by the judgment-debtors to deliver the whole or any portion of the crop then they are to be liable for the return of the money advanced together with interest at the rate of 1 per cent. per mensem from the date of the agreement.

As we have stated, this agreement was entered into on the 17th of July, 1934, and it is clear that the sugarcane crop mentioned in the agreement would not be in a fit state to be harvested and ready for delivery until the end of January or the beginning of February, 1935.

It appears that the judgment-debtors only delivered sugarcane worth Rs.135-15-6 and consequently the decree-holder brought a suit No. 15 of 1936 in the court of the learned Munsif. Under the terms of the agreement he could have recovered a large sum by way of damages, but he abandoned his claim for damages and limited his claim to the balance of the sum advanced together with interest at the rate stated in the agreement. An *ex parte* decree was passed in favour of the decree-holder by the learned Munsif on the 30th of March, 1936, and thereafter the decree-holder proceeded to realise the decretal amount by attachment and sale of the crops belonging to the judgment-debtors.

The judgment-debtors thereupon filed this application in the court of the learned Munsif praying that the decree passed against them should be converted into an instalment decree under the provisions of section 5 of the U. P. Agriculturists' Relief Act. They contended that the advance of Rs.1,086 made by the decree-holder to them was a loan within the meaning of that term as used in the Agriculturists' Relief Act and further that as they were agriculturists both at the time the loan was made and at the time of the suit they were entitled to have the decree converted into an instalment decree under section 5 of the Act.

The decree-holder on the other hand contended that though the judgment-debtors were agriculturists they were not entitled to the benefit of the provisions of section 5 of the U. P. Agriculturists' Relief Act inasmuch as the transaction which was entered into between them was not a transaction by way of loan as defined by the Act. The judgment-debtors in answer to this contention contended that even if the transaction was not one of loan, that made no difference because section 5 of the U. P. Agriculturists' Relief Act was in terms applicable to any money decree. They therefore contended that even if the decree passed against them was not a decree

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passed on the basis of a loan or a transaction which was substantially a loan, yet they were entitled to have the decree converted into an instalment decree.

The learned Munsif who heard the application came to the conclusion that very substantial points of law were involved and that it was desirable that these points should be referred to the High Court. He points out in his reference that a large number of similar cases were pending in his court and that it was most desirable that an authoritative pronouncement should be obtained upon the points involved at the earliest opportunity. He therefore referred the following two questions to this Court:

1. Whether the provisions of fixing instalments under section 5 of the U. P. Agriculturists' Relief Act are so general in their scope as to apply to any decree for money irrespective of the fact whether the same was obtained on the basis of a loan or otherwise?

2. Whether the advance of a part or whole price of the sugarcane contracted to be sold, as in the case before us, would come within the definition of the term "loan" as defined by the U. P. Agriculturists' Relief Act, and can instalments be granted under the provisions of section 5 of the U. P. Agriculturists' Relief Act?

It is unnecessary for us in this judgment to discuss at length the first question submitted by the learned Munsif. In another case, *Chaturbhuj* v. *Mauji Ram* (1), decided by this Full Bench on the 28th of April, 1938, we considered this question and held that the phrase "any decree for money" in section 5 of the U. P. Agriculturists' Relief Act has a restricted meaning and that it only applies to decrees for money passed upon the basis of loans as defined in section 2(10) of the Agriculturists' Relief Act. In short "any decree for money"

(1) See *ante*, p. 702.

means a decree for money passed upon the basis of an advance in cash or in kind or upon the basis of a transaction which substantially amounts to a loan within the meaning of the Act. We therefore answer the first question accordingly.

The answer to the second question depends upon the true construction of the agreement of the 17th of July, 1934, entered into between the parties. It has been strenuously contended by Mr. *Pathak* on behalf of the decree-holder that the advance of Rs.1,086 was in substance and in fact a payment in advance of part of the purchase price. If that were so, then it might well be argued that the decree in question was not a decree based upon a loan as defined by the Act but a decree for damages for breach of an agreement to sell or a claim for return of the purchase money as the consideration had wholly failed. We, however, are unable to agree with this view. In our judgment the transaction entered into between the parties on the 17th of July, 1934, was substantially a transaction by way of loan. The agreement commences with the statement that the executants have taken a sum of Rs.1,086 by way of advance, though it is stated that such an advance is in connection with or in relation to the sale of certain sugarcane. Further, the judgment-debtors hypothecated 225 bighas kham of the sugarcane crop and the purpose of that undoubtedly was to give the decree-holder security for the money which he advanced. The judgment-debtors also agreed to deliver to the decree-holder the whole of the sugarcane crop in an area specified, but, as we have pointed out, such would not be ready for delivery until many months had elapsed. It is also abundantly clear that the decree-holder protected himself in the event of the judgment-debtors failing to deliver any crop because it is stated that if owing to any calamity the crop was destroyed the decree-holder was entitled to the return

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of his money with interest at the rate of 1 per cent. per mensem.

There was clearly no sale of the crop in this case because under the agreement the crop still remained the property of the judgment-debtors and such could not have been the case if there had been an out and out sale. Accordingly it cannot be said that the advance of Rs.1,086 was a payment in advance of part of the purchase price on a sale of the crop. At most there was only an agreement to sell the crop when it was fit for delivery.

In our judgment this transaction in substance amounted to an advance of a loan of Rs.1,086 which was secured by hypothecation of certain sugarcane crop and further the parties entered into an agreement whereby the judgment-debtors agreed to sell their sugarcane so as to ensure that the decree-holder would obtain repayment of the money advanced by him. In effect the agreement to sell the sugarcane crop is a security given to the decree-holder for the money which he had advanced. It was clearly intended that he should receive back his money by delivery of the sugarcane crop under the agreement to sell. These transactions are not uncommon and in our view where there is no out and out sale it is impossible to regard advances made to the cultivators as payment in advance of the purchase price. In substance and in fact these advances are in the nature of loans to enable the cultivators to produce and harvest their crop and an agreement to sell the crop is a way of ensuring that the lender or purchaser receives back his money. In our view, upon the true construction of this agreement of the 17th of July, 1934, a sum of Rs.1,086 was advanced by the decree-holder to the judgment-debtors by way of loan within the meaning of the Agriculturists' Relief Act. That being so, a decree passed upon the basis of that transac-

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tion was a decree for money within the meaning of section 5 of the U. P. Agriculturists' Relief Act. Accordingly the judgment-debtors are entitled to have that decree converted into an instalment decree because admittedly they were agriculturists both at the date of the transaction and at the date of the suit. We accordingly answer question No. 2 in the affirmative.

APPELLATE CIVIL

Before Mr. Justice Collister and Mr. Justice Bajpai

KANHAIYA LAL (APPLICANT) *v.* MAHESHWAR NARAIN AND OTHERS (OPPOSITE PARTIES)*

1938
May, 2

U. P. Encumbered Estates Act (Local Act XXV of 1934), section 7(1)(a)—Stay of proceedings—"In respect of" any debt —Suit for specific performance of a contract to sell land—Bulk of the consideration being liquidation of debts due by the vendor to the vendee—Stay of proceedings, by whom to be ordered—Technicality.

Ordinarily a suit for specific performance of a contract to sell land would in effect be a suit for possession of immovable property and would not be a proceeding "in respect of" a debt, within the meaning of section 7(1)(*a*) of the U. P. Encumbered Estates Act; but where the bulk of the consideration for the sale agreed upon is to be paid in liquidation of existing debts due by the vendor to the purchaser, the suit for specific performance is in the nature of a proceeding "in respect of" a debt and falls within the scope of section 7(1)(*a*) of the Act.

The court whose duty it is, under section 7(1)(*a*) of the U. P. Encumbered Estates Act, to stay proceedings is the court in which such proceedings are pending; and the Special Judge has no power under the Act to order stay of proceedings pending in any court. Where, however, the same person was the Special Judge, as well as the Civil Judge in whose court the suit was

*First Appeal No. 142 of 1936, from an order of Jiwan Chandra Malik, Special Judge first grade of Farrukhabad, dated the 9th of July, 1936.