FULL BENCH

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

1938 *April*, 28

CHATURBHUJ (DECREE-HOLDER) *v.* MAUJI RAM (JUDGMENT-DEBTOR)*

U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), section 5—Conversion into instalment decree—"Decree for money" confined to decrees in respect of "loans"—Decrees based on tort not included—Interpretation of statutes—Words —Intention of legislature—Court to which application for conversion is to be made—"Court" which "passed" the decree—Where suit dismissed by trial court and decreed by appellate court—Sub-section (2)—"Final", meaning of—Revisional jurisdiction—Civil Procedure Code, section 115.

The High Court can, in the exercise of its revisional jurisdiction, interfere with orders passed by the lower courts under section 5(1) of the U. P. Agriculturists' Relief Act. The fact that a right of appeal is not given to the decree-holder, while it is given to the judgment-debtor, by section 5(2) of the Act, and the provision about the "finality" of the decision of the appellate court contained in section 5(2), cannot warrant the inference that the legislature intended in any way to limit or control the revisional jurisdiction conferred on the High Court by section 115 of the Civil Procedure Code; the word "final" in section 5(2) of the Act can only mean "not subject to appeal". So, a decree-holder is entitled to challenge an order under section 5(1) by means of an application in revision to the High Court.

The court to which an application under section 5(1) of the U. P. Agriculturists' Relief Act is to be made is the court of first instance which decided the suit, whether decreeing it or dismissing it, and not the court which on appeal or revision passed the ultimate decree in the cause. This interpretation of the words "decree . . . passed by it" in section 5(2) was the one in consonance with the general object and scheme of the Act.

The decrees contemplated by section 5(1) of the U. P. Agriculturists' Relief Act are decrees in respect of "loans". Though the words "any decree for money" are very general and wide in their import, yet a reference to sections 3 and 8

*Civil Revision No. 83 of 1937.

and a consideration of the object of the Act demonstrate that the decrees for money dealt with by section 5(1) are decrees passed in respect of loans as defined by the Act. A decree for damages for malicious prosecution is not a decree passed in respect of a "loan" and the court has no jurisdiction to deal under section 5(1) with such a decree.

It is one of the recognized canons of interpretation of statutes that the words used in a statute should normally be given their plain and ordinary meaning. But if such a method of interpretation leads to manifest anomalies and is calculated to defeat the professed and declared intention of the legislature it is open to the courts to give a go-by to the rule mentioned above and to so interpret the words used as to give effect to the intention of the legislature.

Mr. *S. N. Katju*, for the applicant.

Mr. *S. B. Johari*, for the opposite party.

IQBAL AHMAD, HARRIES and RACHHPAL SINGH, JJ.:— The questions of law that arise for decision in this and the connected Civil Revision No. 84 of 1937 are:

(1) Whether this Court can, in the exercise of its revisional jurisdiction, interfere with orders passed by courts below under section 5(1) of the U. P. Agriculturists' Relief Act (Act No. XXVII of 1934)?

(2) Whether an application for the conversion of a decree for money into a decree payable by instalments is to be filed in the court of first instance which decided the suit or in the court which on appeal or revision passed the ultimate decree in the cause?

(3) Whether the words "any decree for money" in section 5 of the U. P. Agriculturists' Relief Act mean only a decree passed on the basis of a "loan" as defined by the Act or include decrees for money of any description whatsoever?

The answer to these questions depends on the true interpretation of section 5 of the Act. the relevant portion of which is as follows:

"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,

1938

CHATURBHUJ v. MAUJI RAM

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:

"(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."

The facts giving rise to the two applications in revision are undisputed and are as follows. Shah Chaturbhuj, the applicant in the two civil revisions before us, brought two suits for damages for false and malicious prosecution against Shah Mauji Ram, the opposite party in the two cases. Both the suits were dismissed by the trial court, but on appeal to this Court both the suits were decreed on the 3rd of December, 1935.

On the 31st of August, 1936, Mauji Ram filed two applications in the court below (the trial court) praying that the decrees in favour of Chaturbhuj be converted into instalment decrees in accordance with the provisions of section 5 of the U. P. Agriculturists' Relief Act. The learned Civil Judge granted those applications and ordered the payment of the decrees by instalments extending over a period of six years.

Shah Chaturbhuj, the decree-holder, has come up in revision to this Court and assails the validity of the orders passed by the learned Civil Judge on the ground that section 5 of the Act has no application to the decrees obtained by him.

Before we proceed to consider this contention we must deal with a preliminary objection that has been raised on behalf of Mauji Ram opposite party to the hearing of these revision applications. It is contended on his behalf that this Court is not competent to

exercise revisional jurisdiction with respect to orders passed by courts below under section 5(1) of the Act, and in support of this contention reliance is placed on clause (2) of the section that has been quoted above. It is pointed out that though a right of appeal is given by that clause to a judgment-debtor such a right is denied to the decree-holder, and it is argued that the legislature could not, therefore, have intended to give to the decree-holder the right to challenge an order under section 5(1) by means of an application in revision to this Court. Further emphasis is laid on the provision in clause (2) that "the decision of the appellate court shall be final." It is said that the remedy provided by clause (2) of section 5 for challenging orders passed by a court under clause (1) of that section is exhaustive, and, as such, an application in revision to this Court is barred. In this connection reference is made to section 167 of the Agra Tenancy Act (Act II of 1901) and to the decision of this Court in *Bhagwat Das* v. *Chhedi Koeri* (1). Section 167 of the Tenancy Act provided that "All suits and applications of the nature specified in the fourth schedule shall be heard and determined by the revenue courts and, except in the way of appeal, as hereinafter provided, no court other than a revenue court shall take cognizance of any dispute or matter in respect of which any such suit or application might be brought or made." It was held by a Full Bench in *Bhagwat Das* v. *Chhedi Koeri* (1) that section 167 of the Tenancy Act (Act II of 1901) is a bar to the exercise by the High Court of its powers in its revisional jurisdiction, in any suit or application relating to a dispute under the Tenancy Act.

It is contended that the provisions of clause (2) of section 5 are analogous to the provisions of section 167 of the Tenancy Act and accordingly this Court is debarred from exercising revisional jurisdiction with

(1) (1926) 24 A.L.J. 537.

1938

CHATURBHUJ v. MAGNI RAM

respect to orders passed by the courts below under section 5 of the Agriculturists' Relief Act. In our judgment the preliminary objection is without force.

The revisional jurisdiction of this Court is defined and regulated by section 115 of the Code of Civil Procedure. By that section this Court is empowered to exercise revisional jurisdiction with respect to all cases "decided by any court subordinate to" this Court, provided the conditions laid down by clause (*a*) or clause (*b*) or clause (*c*) of that section are satisfied. The section is one of wide application and embraces all cases decided by courts subordinate to this Court. By section 2(5) of the Agriculturists' Relief Act "court" is defined as meaning "a civil court". It follows that the court exercising jurisdiction under section 5 of the Act is a civil court, and, as such, subordinate to this Court. This Court is, therefore, in accordance with section 115 of the Civil Procedure Code, competent to revise the order passed by a court under section 5 of the Agriculturists' Relief Act. There is nothing in that Act that can be interpreted to divest this Court either expressly or by necessary implication of the revisional jurisdiction conferred by section 115.

By clause (2) of section 5 a judgment-debtor is no doubt placed in a more favourable position than a decree-holder in the matter of appeal and a right of appeal is not given to a decree-holder against an order passed under clause (1) of that section. But the mere denial to the decree-holder of a right of appeal cannot warrant the inference that the legislature intended to bar the revisional jurisdiction of this Court. In the first place the remedy open to a litigant by means of an application in revision to this Court is a much narrower and restricted remedy than the remedy open to him by way of appeal. It follows that the mere fact that a right of appeal is denied to a litigant is no ground for holding that he is debarred from invoking the revisional jurisdiction of this Court. In the second

place the jurisdiction of this Court to revise the orders passed by the courts below is independent of a motion being made by a party to the case. This Court can of its own motion exercise its revisional jurisdiction even though no application has been made for the revision of the order passed by a subordinate court. The fact that a right of appeal is not given to the decree-holder cannot, therefore, in any way affect the jurisdiction vested in this Court by section 115.

In our judgment the provision in clause (2) of section 5 that "the decision of the appellate court shall be final" means no more than this that the order passed by the appellate court cannot be made the subject of a second appeal. The U. P. Encumbered Estates Act (Act XXV of 1934) was passed by the local legislature in the same year in which the U. P. Agriculturists' Relief Act was passed. The former Act was passed to provide for the relief of encumbered estates and the latter Act was passed to provide relief to agriculturists from indebtedness. The objects with which the two Acts were passed were almost similar. By section 45 of the Encumbered Estates Act provision is made as regards appeals against decisions, decrees or orders passed under that Act. Clause (5) of section 45 of that Act provides that "the decision on an appeal under this section shall be final." This provision in the Encumbered Estates Act was the subject of interpretation by this Court in *Ashraf* v. *Saith Mal* (1) and it was held that the word "final" as used in section 45(5) could only mean "not subject to appeal". It was further held in that case that the order of the appellate court passed under section 45 could not be "final in the sense that the power to interfere in revision under section 115 of the Civil Procedure Code is shut out" and consequently the High Court had power to interfere in revision. The provision about the finality of the decision of the appellate court contained in

(1) I.L.R. [1938] All. 110.

1938

CHATURBHUJ v. MAUJI RAM

clause (2) of section 5 cannot, therefore, warrant the inference that the legislature intended in any way to limit or control the revisional jurisdiction conferred on this Court by section 115.

The argument based on the provisions of section 167 of the Agra Tenancy Act (Act II of 1901) is without force. By that section all courts other than the revenue courts are forbidden from taking cognizance, except by way of appeal, of suits and applications referred to in that section. No such provision has been enacted in the U. P. Agriculturists' Relief Act.

We therefore overrule the preliminary objection and pass to the consideration of the second question formulated above.

The power to fix instalments is given by clause (1) of section 5 of the Act to the court that "passed" the decree or to the court to which the business of the court passing the decree has been transferred. In the present case we are concerned with the question as to whether an application under section 5 is to be made to the trial court by which the suit was decided or to the court which, on appeal or revision, may have passed the ultimate decree in the cause. It is argued on behalf of the decree-holder applicant that applications under section 5(1) can be entertained only by the court that passed the decree that is sought to be converted into a decree for payment by instalments and by no other court. It is contended that as the decrees in the present case were passed on appeal by this Court the learned Civil Judge had no jurisdiction to entertain the applications for fixing of instalments.

On the other hand it is contended on behalf of the judgment-debtor that the only court that is competent to entertain an application under section 5 is the court of first instance which dealt with the suit that culminated in the decree which is sought to be converted into a decree for payment by instalments.

1938

CHATURBHUJ v. MAUJI RAM

The answer to the question raised is beset with difficulties of varying degree, but after giving weight to all that has been urged by the learned counsel for the parties we have come to the conclusion that the court contemplated by section 5(1) is the court of first instance and not the court which may have passed, either on appeal or in revision, the ultimate decree in the cause.

It has been held in a series of cases by all the High Courts in India that the decree of the trial court whether affirmed, modified or reversed by an appellate court merges in the decree of the appellate court and the only decree that is capable of execution is the decree of the ultimate court of appeal. It is, therefore, obvious that in a case in which a decree has been passed by an appellate court the application under section 5(1) must have reference to the decree of the final court of appeal and not to the decree of the trial court. In this view of the matter it can be argued with great force that the court mentioned in section 5(1) must be the court that passed the ultimate decree in the case. But there is an insurmountable difficulty in the way of accepting this argument. It is clear that by clause (2) of section 5 the legislature has given the judgment-debtor a right of appeal to the court to which the court passing the order under clause (1) of that section is subordinate. If the contention on behalf of the decree-holder is accepted it would lead to this anomaly that in cases in which this Court has passed a decree on appeal the order passed by this Court under clause (1) of section 5 will not be appealable for the simple reason that this Court is the highest civil court of appeal in the province [vide section 3(24) of the General Clauses Act]. It was suggested that an appeal against an order passed by this Court under clause (1) of section 5 may be taken to His Majesty in Council. This suggestion however does not meet the difficulty, for the simple reason that the Privy Council, even if it is a court (a matter on

1938

CHATURBHUJ v. MAUJI RAM

which we express no opinion), is not a Court to which this Court is subordinate within the meaning of clause (2) of section 5 of the Act. Again if the contention advanced on behalf of the decree-holder is correct an application under section 5(1) of the Act will have to be made to His Majesty in Council in cases in which the ultimate order has been passed by His Majesty in Council. In such a case it cannot be contended that the judgment-debtor will have a right of appeal, because it is impossible to imagine of a court to which the Privy Council may be subordinate.

Apart from this a consideration of the general scheme of the Act leads to the irresistible conclusion that the legislature by section 5(1) intended to confer jurisdiction only on the trial court or on the court to which the business of the trial court may have been transferred, to convert decrees for money into decrees for payment by instalments. The Act was passed with the professed object of giving relief to agriculturists from indebtedness and it is difficult to believe that the legislature could have intended that the agriculturists seeking relief under section 5 should be put to the expense and trouble of coming to this Court in order to have a decree for money converted into a decree payable by instalments. In many cases applications in revision are filed in this Court against decrees passed by small cause court Judges. If we were to give effect to the contention of the decree-holder we would have to hold that in all such cases this Court and this Court alone could convert decrees in small cause court suits into decrees payable by instalments. This would lead to an anomalous state of affairs as in most cases the relief gained by the agriculturist under section 5(1) would not be commensurate with the amount of expense and trouble that he would have to incur with a view to get that relief.

On behalf of Mauji Ram opposite party reliance was placed on section 37 of the Code of Civil Procedure

which defines the phrase "court which passed a decree" as including "in relation to the execution of decrees" the court of first instance. It was suggested that the same interpretation should be put on the words "the court" that "passed" the decree in section 5 of the Agriculturists' Relief Act. We find it difficult to accede to this contention for the simple reason that an application under section 5 is not an application "in relation to the execution of" a decree. An application in relation to the execution of a decree is ordinarily made by a decree-holder and not by a judgment-debtor, whereas an application under section 5 must necessarily be made by a judgment-debtor and not by a decree-holder. It is therefore impossible to hold that an application under section 5 is an application in relation to the execution of a decree; the more so as an application under section 5 can be made even though proceedings for execution may not have been initiated by the decree-holder or even contemplated by him.

We therefore hold that an application under section 5(1) can be made only to the court of first instance that dealt with the suit or to the court to which the business of the court of first instance that decided the suit may have been transferred. This was the view taken by the Oudh Chief Court in *Pirthipal Singh* v. *Raghubar Dayal Shukla* (1).

The question however remains whether the decrees for damages for false and malicious prosecution obtained by Chaturbhuj applicant were decrees "for money" within the meaning of that phrase in section 5 of the Act. The words used in section 5 are "any decree for money" and these words are undoubtedly words of very wide import. According to their plain and ordinary meaning these words embrace decrees for money of every description. It is accordingly contended on behalf of the judgment-debtor opposite party that section 5 is general in its scope and it applies to all

(1) (1935) I.L.R. 11 Luck. 511.

1938

CHATURBHUJ v. MAUJI RAM

decrees for money irrespective of the fact whether those decrees were passed on the basis of a loan. In this connection it is argued that the court can convert all decrees for money into decrees payable by instalments and that where a money decree has been passed it is not permissible for the court to go behind the decree in order to ascertain the nature of the transaction that formed the basis of the decree.

On the other hand it is contended on behalf of the decree-holder that the words "any decree for money" mean only decrees passed for recovery of loans and not decrees for damages for false and malicious prosecution.

It is one of the recognized canons of interpretation of statutes that the words used in a statute should normally be given their plain and ordinary meaning. But if such a method of interpretation leads to manifest anomalies and is calculated to defeat the professed and declared intention of the legislature it is open to the courts to give a go-by to the rule mentioned above and to so interpret the words used as to give effect to the intention of the legislature.

While the words "any decree for money" are of general application, a consideration of the other provisions of the Act leads to the conclusion that these words were used by the legislature in a restricted and not in a general sense.

As observed above, the U. P. Agriculturists' Relief Act was passed with the object of giving relief to agriculturists from indebtedness. A decree for damages for false and malicious prosecution is surely not a decree to enforce payment of a debt. It is a decree for damages sustained by the decree-holder in consequence of his malicious and wrongful prosecution by the judgment-debtor. By section 5(1) the court is authorized to convert a decree for money into a decree for payment by instalments "in accordance with the provisions of section 3." Section 3 authorises the court to fix instalments for the payment of "the total amount found due

for principal, interest and costs" at the time of passing a decree for money. The mention of principal and interest in the section leads to the conclusion that section 3 is confined in its operation only to decrees passed for recovery of loans. As the procedure of the court under section 5(1) is to be regulated by the provisions of section 3, the decree for money contemplated by section 5 must be a decree of the same description as is referred to in section 3. This leads us to conclude that the words "any decree for money" used in section 5 mean decrees for money passed with respect to a loan as defined by the Act.

This conclusion becomes irresistible when one turns to section 8 of the Act. Sections 3, 5 and 8 are in chapter II of the Act. Clause (1) of section 8 provides that "No person shall be deemed to be an agriculturist for the purposes of this chapter, unless he was an agriculturist both at the time of the advance of the loan as well as at the time of the suit." Section 5(1) makes provision only with respect to decrees passed against agriculturists. Section 5 read with section 8, therefore, demonstrates that the decrees contemplated by section 5 are decrees with respect to loans.

"Loan" is defined by section 2(10)(*a*) as meaning "an advance to an agriculturist, whether of money or in kind, and shall include any transaction which is in substance a loan, but shall not include . . ."

A transaction of loan is generally the outcome of a contract between the parties whereas a decree for damages for false and malicious prosecution is in consequence of a tortious act committed by the judgment-debtor. The decree for damages is passed not in enforcement of any contractual obligation but to compensate the decree-holder for the wrong done to him by the judgment-debtor. Further a decree for damages is not a decree with respect to an advance made to the judgment-debtor, nor is such a decree the

1938

CHATURBHUJ v. MAUJI RAM

outcome of any transaction which may be characterised "in substance" as "a transaction of loan".

For the reasons given above we hold that the court below had no jurisdiction to convert the decrees held by Chaturbhuj applicant into decrees for payment by instalments.

The view that we take is opposed to the decisions of the Oudh Chief Court in *Nihal Singh* v. *Ganesh Dass Ram Gopal* (1) and *Yusuf Husain Beg* v. *Waqar Ali Beg* (2), but for the reasons given above we respectfully dissent from those decisions.

We accordingly allow these two applications in revision, set aside the orders passed by the court below and dismiss the applications filed by Mauji Ram opposite party for the conversion of the two decrees into decrees payable by instalments. The applicant is entitled to his costs both in this Court and in the courts below.

Before Mr. Justice Bennet, Mr. Justice Ismail and Mr. Justice Verma

1938
April, 29

KANHAIYA PRASAD (PLAINTIFF) *v.* HAMIDAN AND OTHERS (DEFENDANTS)*

Transfer of Property Act (IV of 1882), *section* 58—*Mortgage of mixed character partly simple and partly usufructuary—Possessory mortgage with covenant to repay but not conferring a right of sale—Whether decree for sale can be passed—Transfer of Property Act (IV of* 1882), *sections* 67, 68 *(old)—Deprivation of part of mortgaged property—Suit for mortgage money—Decree for sale of mortgaged property—Contract Act (IX of* 1872), *section* 62—*Novation—Subsequent contract turning out to be invalid—Suit on original contract valid.*

Where in a mortgage there are certain provisions which indicate a usufructuary mortgage and certain provisions which

*Second Appeal No. 1303 of 1934, from a decree of M. O. Karney, Civil Judge of Cawnpore, dated the 7th of September, 1934, confirming a decree of Manzoor Ahmad Khan, Munsif of Akbarpur, dated the 29th of November, 1933.

(1) A.I.R. 1937 Oudh, 124. (2) A.I.R. 1937 Oudh, 487.