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along public roads or highways and their failure to agree to carry out the instructions of the police officer to dismount did not amount to an illegal act within the meaning of section 153 of the Indian Penal Code because in our opinion the police officer was not empowered to issue such an order. If there had been any apprehension of an immediate breach of the peace he might have asked the assembly to disperse under section 127, or if he had previous intimation of it he might have obtained an order under section 144 from the Magistrate. Failing to have adopted either of these courses he could not arrogate to himself the power to order that the bridegroom and the bride should not go in palanquins. We think that to uphold the conviction of the accused in this case would amount to an undue interference with the liberty of ordinary citizens which it is their right to enjoy.

We accordingly allow this application and setting aside the convictions and sentences of the accused acquit them of the charge and direct that the fines, if paid, be refunded.

REVISIONAL CIVIL

Before Mr. Justice Allsop

RAM GHULAM (PLAINTIFF) v. BANDHU SINGH
(DEFENDANT)*

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February,
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Agriculturists' Relief Act (Local Act XXVII of 1934), sections 3, 5, 8, 12—Conversion of preliminary decree on mortgage into instalment decree—Transferee of mortgagor is entitled to apply—Period of instalments—Date from which such period is to be reckoned.

A preliminary decree for sale on a mortgage was passed against a transferee of the property from the mortgagor. Subsequently, on the coming into force of the U. P. Agriculturists' Relief Act, he applied under section 5 of the Act for conversion of that decree into a decree for payment by instalments in accordance with section 3.

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Held, that the fact that the loan was not advanced to him did not disentitle him to apply, if he established that the mortgagor was an agriculturist and that he himself was an agriculturist at the date of the loan as well as at the date of the suit, as laid down in section 8.

Held, also, that if the applicant was, as he claimed to be, an agriculturist coming under explanation VI to section 2(2), he would be an agriculturist for the purposes of chapter III; and as he was a person who would have been entitled to redeem the mortgage under section 12 which is in chapter III, he was an agriculturist to whom chapter III applied; and therefore, in accordance with section 3, the period of instalments could not extend beyond four years from the date of the decree.

Held, further, that for the purposes of section 5 the meaning of the word "decree" in the proviso to section 3(1) is the decree for instalments and not the original decree which is converted into a decree for instalments; therefore, the period of instalments is to be reckoned from the date of the instalment decree which is to be passed under chapter II.

Messrs. *Baleshwari Prasad* and *Sri Narain Sahai*, for the applicant.

The opposite party was not represented.

ALLSOP, J.:—This is an application in revision against an order passed by the learned Munsif of Chandausi in the course of proceedings in execution of a decree. The suit which gave rise to these proceedings was instituted on the 27th of February, 1935. It was a suit for the recovery of a sum of Rs.1,040 with interest by the sale of property mortgaged by a deed dated the 6th of May, 1927. The defendants to the suit were the heirs of the deceased mortgagor and a subsequent purchaser of the property who is now the opposite party to this application. This subsequent purchaser, Bandhu Singh, acquired the property by sale in the month of August, 1933. He paid a sum of Rs.3,100 for the property. Out of this sum Rs.750 were left in his possession in order that he might redeem the mortgage of the 6th of May, 1927. He did not redeem and it was for this reason that the suit was instituted. The learned Munsif passed a preliminary decree on the 27th of March, 1935, and then

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Bandhu Singh put in an application that the decree might be converted into a decree for payment by instalments under the provisions of section 5 of the Agriculturists' Relief Act. The learned Munsif accepted his contention, reduced the interest and directed that payment should be made by annual instalments of Rs.150.

Two points are raised by the applicant. The first is that the Agriculturists' Relief Act did not apply to Bandhu Singh. The other is that the court below was not entitled to pass an order by which the period of payment by instalments extended beyond four years.

The argument upon the first point is based on the provisions of section 8 of the Act. Section 5 and section 8 are both in chapter II. Section 8 says 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 date of the suit." The applicant contends that Bandhu Singh had no existence as an agriculturist in so far as this transaction is concerned, because the money was not advanced to him. This argument has, in my opinion, no force. We cannot go beyond the plain meaning of the section. Bandhu Singh claims to be an agriculturist for the purposes of section 5 and therefore all that can be expected of him is that he should establish that he was an agriculturist at the date when the suit was instituted and also that he was an agriculturist at the date when the loan was taken. It cannot be said that he cannot be deemed to have been an agriculturist on this latter date merely because the loan was not advanced to him. In order that section 5 should apply it is necessary for Bandhu Singh to establish three facts, namely (1) that the mortgagor was an agriculturist, because otherwise the transaction would not amount to a loan within the meaning of the Act according to the definition given in section 2(10)(a); (2) that he himself was an agriculturist on the date of the loan; and (3) that he himself was an agriculturist at the

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date of the institution of the suit in which the decree was passed. I find that a specific objection was taken in the court below that Bandhu Singh was not an agriculturist at the date when the mortgage was executed. There is no finding upon this question and therefore the court below was not entitled to pass the order which it did pass. Unless it is found that Bandhu Singh was an agriculturist at that date it cannot be said that the court had jurisdiction to apply section 5 of the Act to him. For this reason the order of the court must be set aside and the case returned for decision.

The other point raised was that the instalments should not have been extended beyond a period of four years. Under section 5 of the Act a decree for payment of instalments must be drawn up in accordance with the provisions of section 3. Section 3 says that the period of instalments shall not extend beyond four years from the date of the decree in the case of an agriculturist to whom chapter III applies. The question therefore is whether chapter III applies to Bandhu Singh. Section 12 is in chapter III. It provides that "an agriculturist who has made a mortgage either before or after the passing of this Act, or any other person entitled to institute a suit for redemption of the mortgage, may, at any time after the principal money has become due and before a suit for redemption is barred, file an application before the court within whose jurisdiction the mortgaged property or any part of it is situate . . . praying for an order directing that the mortgage be redeemed." Bandhu Singh was a person who would have been entitled to redeem the mortgage under the provisions of section 12 of the Act and therefore he is a person to whom that chapter applies. The question now is whether he is an agriculturist to whom that chapter applies, because, if he is, the period of instalments must not extend beyond four years from the date of the decree. An agriculturist for the purposes of chapter III, in accordance with explanation VI to section 2(2), is a

person who, if he pays both rent and revenue, does not pay a total of rent and revenue exceeding Rs.1,000. Bandhu Singh says that he pays Rs.88 a year as Government revenue and Rs.50 a year as rent. He is consequently an agriculturist to whom the provisions of chapter III of the Act apply. It follows from this that the period during which instalments are to be paid shall not exceed four years.

There may be one further difficulty in applying a meaning to the term decree in the proviso to section 3(1) of the Act. The Act says that the period of such instalments shall not extend beyond four years from the date of the decree. Section 3 refers to those cases in which an instalment decree is passed in the first instance. Section 5 applies those terms to instalment decrees passed on the conversion of other decrees.

I have no doubt that for the purposes of section 3 the meaning of the word decree in the proviso to section 3(1) is the decree for instalments and not the original decree which is converted into a decree for instalments. I consider that the court at the time of passing an instalment decree under chapter II shall reckon the period of instalments from the date of the instalment decree and not from the date of the original decree.

As the court below has not decided whether Bandhu Singh was an agriculturist at the date when the loan was made, that is on the date when the mortgage was executed, the order of the court below is set aside and the case is remitted for decision according to law after all the necessary questions at issue have been decided. The costs in this application will abide the result.

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