due by the court below and should be called upon to value the appeal accordingly.

ALLSOP, J.:—I agree.

BAJPAI, J.:—I agree.

Before Mr. Justice Iqbal Ahmad, Mr. Justice Allsop and Mr. Justice Verma

GANGA SAGAR (PLAINTIFF) *v.* REOTI PRASAD AND OTHERS (DEFENDANTS)*

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U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), *section* 2(2)(*f*)—"*Agricultural land*" *does not include grove-land on which a grove stands—Grove-holder is not an "agriculturist" within section* 2(2)(*f*)—*Interpretation of statutes—Anomaly—Hindu law—Alienation for legal necessity—Rate of interest on mortgage of joint family property.*

A holder of grove-land, on which a grove exists, is not an "agriculturist" within the definition in clause (*f*) of section 2(2) of the U. P. Agriculturists' Relief Act.

Grove-land, on which a grove exists, does not come within the term "agricultural land" in clause (*f*) of section 2(2). The mere possibility of the land being used for agricultural purposes or the mere fact that the land is capable of being used for such purposes does not make the land "agricultural land". In other words the land must not merely be land "let or held for agricultural purposes", but must actually be "agricultural".

In some other clauses of section 2(2) the term used is "land", which by definition in the Agra Tenancy Act includes grove-land; but in clause (*f*) the legislature has thought fit deliberately to use the term "agricultural and" in contradistinction to "land", and due weight must be given to this distinction. When the words of a statute are clear, it is not within the province of a court, simply with a view to avoid apparent anomalies, to put such an interpretation on the words as they are incapable of bearing.

The rate of interest at which money is borrowed on a mortgage of joint family property for legal necessity should not be more than what is, in the circumstances, a reasonable rate. Ordinarily, interest at the rate of 12 per cent. per annum is, in the absence of any evidence to the contrary, a reasonable rate of interest. The mere fact that the rate of interest is higher

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*First Appeal No. 331 of 1936, from a decree of A. P. Ghildial, Civil Judge of Aligarh, dated the 30th of March, 1936.

than the rate of interest on the antecedent debts forming the legal necessity does not necessarily make the rate an unreasonable one.

Mr. *Panna Lal,* for the appellant.

Messrs. *P. L. Banerji* and *S. B. L. Gaur,* for the respondents.

IQBAL AHMAD, ALLSOP and VERMA, JJ.:—This is an appeal by Rai Bahadur Seth Ganga Sagar plaintiff and arises out of a suit for sale on a mortgage deed dated the 23rd of May, 1934. The mortgage was executed by Reoti Prasad, defendant No. 1. The other two defendants in the suit were Kaushal Kishore and Brij Kishore, sons of Reoti Prasad. All the three defendants were admittedly members of a joint Hindu family. The mortgage was for a sum of Rs.37,000 and the stipulated rate of interest was 12 annas per cent. per mensem with six monthly rests. Out of the sum of Rs.37,000 advanced under the mortgage deed in suit a sum of Rs.2,762-15-6 was paid to Reoti Prasad in cash before the sub-registrar, and the balance of the mortgage debt was admittedly borrowed for the satisfaction of debts due on the basis of numerous hundis executed by Reoti Prasad.

It was recited in the mortgage deed that Reoti Prasad had started business in the name of Kaushal Kishore Shib Kumar at Aligarh and that in connection with that business he had incurred debts on the basis of hundis, and that the holders of the hundis were demanding the payment of the money due to them and were even prepared to file suits. It was also stated in the mortgage deed that because of the pressing demands made by the creditors it was necessary to raise a loan on the security of family property. The property mortgaged under the deed was admittedly ancestral property belonging to the defendants.

The suit giving rise to the present appeal was filed on the 4th of July, 1935. Before the date of the institution of the suit Reoti Prasad had paid to Ganga Sagar, the mortgagee, a sum of Rs.2,220 on account of part of the interest that had accrued due on the mortgage debt,

and the claim of the plaintiff was for the balance of the amount due, viz. for a sum of Rs.38,510-2-6.

All the three defendants filed three separate written statements. Reoti Prasad, while admitting the execution of the mortgage deed, denied the receipt of the entire consideration, and pleaded that the interest stipulated in the bond was excessive and unconscionable. He also maintained that he was an agriculturist within the meaning of the U. P. Agriculturists' Relief Act of 1934, and, as such, was, in any case, entitled to be allowed to pay the mortgage debt by instalments and, further, was entitled to have the rate of interest reduced in accordance with the provisions of the Act. Similar pleas were raised by the two sons of Reoti Prasad in their written statements, and they also put the plaintiff mortgagee to proof of legal necessity.

The learned Civil Judge held that out of the sum of Rs.37,000 an amount of Rs.34,715-0-6 was proved to have been borrowed for the payment of antecedent debts due from Reoti Prasad, and that the balance of the amount, viz. a sum of Rs.2,284-15-6, was not proved to have been borrowed for legal necessity. He gave effect to the contention of the defendants that Reoti Prasad was an agriculturist, and, accordingly, extended to the defendants the benefit of the provisions of the Agriculturists' Relief Act. As a result of his findings the learned Judge passed a decree for sale in favour of the plaintiff for a sum of Rs.34,715-0-6 with interest at Rs.5-8-0 per cent. per annum with yearly rests from the date of the bond to the 7th of May, 1935, and "thereafter at Rs.4-8-0 per cent. per annum and Rs.4-4-0 per cent. with yearly rests (up to 30th September, 1936, namely expiry of period of grace), in terms of order XXXIV, rule 4, Civil Procedure Code". He directed that the decretal amount would, after the 30th of September, 1936, carry interest at Rs.3-4-0 per cent. per annum on the aggregate amount including costs. He also granted to the plaintiff a decree for a sum of Rs.2,284-15-6 personally against Reoti Prasad with interest at Rs.9 per cent. per annum

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with yearly rests from the date of the bond up to the 7th of May, 1935, and thereafter at Rs.8 per cent. per annum up to the 14th of January, 1936, and thereafter at Rs.7-12-0 per cent. per annum.

The rates of interest provided by the decree are in accordance with the provisions of the Agriculturists' Relief Act. In the decree, however, the learned Judge, presumably by an oversight, failed to specify that the interest at the rate of Rs.4-8-0 per cent. per annum on the decretal amount with respect to which a decree for sale was passed was to run up to the 14th of January, 1936, and thereafter interest was to be calculated at the rate of Rs.4-4-0 per cent. up to the 30th of September, 1936.

The present appeal, as already stated, is by Seth Ganga Sagar the plaintiff in the suit. The defendants have not assailed the decree passed by the court below either by an appeal or by a cross-objection, nor has the finding of the court below, on the question of the passing of consideration and of a substantial portion of the consideration being required for the payment of antecedent debts, been assailed by the defendants.

It is argued on behalf of the plaintiff that the finding of the court below that Reoti Prasad was an agriculturist is erroneous and it is accordingly maintained that the court below was not justified in interfering with the stipulated rate of interest.

In the written statements filed by the defendants all that was pleaded was that Reoti Prasad was an agriculturist. No indication was, however, given in the written statements as to the facts that justified the assertion that Reoti Prasad was an agriculturist within the meaning of the Agriculturists' Relief Act. It is abundantly clear from the materials upon the record that the family of the defendants is a family of Agarwalas who are traders by profession, and that no zamindari or agricultural holding as defined by the Agra Tenancy Act was possessed by the family. Evidence was, however, led at the trial to show that on the death of a lady named

Mst. Shiamo in the year 1933, Reoti Prasad acquired an interest either by right of inheritance or by right of survivorship in a grove in Qasba Koil (Aligarh), the area of which was 1 bigha 19 biswas. To this effect was the evidence of the patwari of the Qasba who filed a copy of the current Khasra from which it appeared that a sum of Rs.9 was payable annually on account of the rent of the grove. Another witness named Hoti Lal was also produced by the defendants who testified to the acquisition of an interest in the grove by Reoti Prasad prior to the execution of the mortgage deed in suit. The learned Judge accepted the evidence of these witnesses and held that Reoti Prasad had acquired an interest in the grove before the execution of the mortgage deed and continued to retain that interest till the date of the suit giving rise to the present appeal.

Section 2(2)(*f*) of the Act provides that "a person . . . . who pays rent for agricultural land not exceeding Rs.500 per annum" is to be deemed to be an agriculturist. The learned Judge held that the grove-land held by Reoti Prasad was "agricultural land" within the meaning of this definition, and as the rent payable was only a sum of Rs.9, Reoti Prasad was an agriculturist within the meaning of the said provision both at the time of the advance of the loan and on the date of the institution of the suit. He, therefore, concluded that the plaintiff was not entitled to interest at a rate in excess of the rate sanctioned by the Act, and further that the defendants were entitled to pay the decree by instalments.

In the present appeal the finding of the court below that Reoti Prasad had an interest in the grove has been questioned, but, in the view that we take, it is unnecessary to enter into a discussion of the question of fact as to whether Reoti Prasad as a matter of fact, succeeded to an interest in the grove on the death of Mst. Shiamo. We shall, for the purposes of the present case, assume that Reoti Prasad is the holder of the grove referred to above. Even then, in our judgment, he cannot be held to be an agriculturist within the meaning of the Act.

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The word "agriculturist" has been defined by sub-section (2) of section 2 of the Act. Sub-section (2) consists of eight clauses, and all that was claimed by the defendants in the present litigation was that Reoti Prasad was an agriculturist in view of the provisions of clause (*f*) of sub-section (2) which has been quoted above. Reliance was not placed on bahalf of the defendants on any other clause of sub-section (2). We have, therefore, to decide whether or not a grove-holder comes within the category of persons referred to in clause (*f*). This question engaged the attention of a learned Judge of this Court in *Mahabir Prasad* v. *Sital Prasad* (1) and he held that "The expression 'agricultural land' has been used in clause (*f*) . . . . . in a comprehensive sense, so as to include all land which is fit for agriculture, though in fact it is being used for some other purpose." He, accordingly, concluded that "grove-land, assuming it is land which if denuded of trees can be used for agriculture, is 'agricultural land' within the meaning of clause (*f*)." With all respect we are unable to agree with this decision. A perusal of sub-section (2) would show that the word "land" has been used in clauses (*a*), (*c*), (*d*), (*e*) and (*g*). It is enacted by section 2, sub-section (9) of the Act that "land" shall have the same meaning as in the Agra Tenancy Act III of 1926. In view of this provision it is manifest that the word "land" has been used in the various clauses mentioned above in the same sense in which it is defined by the Tenancy Act of 1926. By that Act "land" is defined as meaning "land which is let or held for agricultural purposes, or as grove-land or for pasturage . . . " It follows that in the clauses mentioned above the word "land" includes grove-land or pasturage. But, as already stated, Reoti Prasad did not claim to be an agriculturist on the basis of the provisions of any of the said clauses. His assertion that he was an agriculturist was based on the provisions of clause (*f*) alone.

(1) I.L.R. [1937] All. 734.

Now it cannot be doubted that the expression "agricultural land" in clause (*f*) has been used in contradistinction to the word "land" used in the other clauses of sub-section (2). The legislature must be presumed to have introduced the word "agricultural" in clause (*f*) with a set purpose and in considering that clause due weight must be given to that word. It follows that in order to attract the application of clause (*f*) it is necessary that the "land" must be "agricultural". The mere possibility of the land being used for agricultural purposes or the mere fact that the land is capable of being used for such purposes is not the test. In other words the land must not merely be "land let or held for agricultural purposes", but must actually be "agricultural". The sites of buildings, in most cases, are fit to be put to agricultural use, but so long as the buildings stand it cannot be said that the sites are "agricultural land". Similarly grove-land cannot, so long as the grove exists, be said to be "agricultural land". Reoti Prasad cannot, therefore, be deemed to be an "agriculturist" within the meaning of clause (*f*).

In the course of arguments reliance was placed by the learned counsel for the appellant on the decision of a learned Judge of this Court in *Govind Prasad* v. *Batulan* (1). It was held in that case that a person who holds a proprietary grove in his village but pays neither any revenue, nor rent, nor any local rate, cannot be deemed to be an agriculturist within the definition of that term in section 2 of the Agriculturists' Relief Act. The question that formed the subject of decision in that case does not directly arise for decision in the present case. We are, therefore, relieved from the necessity of examining the correctness of that decision in detail. But we may observe in passing that if we had had to decide the question we would have found it difficult, if not impossible, to agree with that decision. Evidently the provisions of clause (*g*) of sub-section (2) of section 2 of the Act were not brought to the notice of the learned Judge.

(1) [1939] A.L.J. 47.

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It was argued by Mr. *P. L. Banerji* that if a grove-holder was to be excluded from the category of persons contemplated by clause (*f*) an obvious anomaly would arise inasmuch as a grove-holder who holds a grove free of rent, the area of which does not exceed 80 acres, would come within the class of persons specified in clause (g), whereas a grove-holder who pays rent for his grove would be excluded from the benefits of the Act. It cannot be denied that in accordance with the interpretation put by us on clause (*f*) this anomalous state of affairs is created, but when the words of a statute are clear it is not within the province of a court, simply with a view to avoid apparent anomalies, to put such an interpretation on the words as they are incapable of bearing. It is for the legislature to step in and to remove the anomaly if and when it considers it fit to do so. It follows from what has been stated above that Reoti Prasad was not an agriculturist and was, therefore, not entitled to the benefit of the provisions of the Act with respect to the rate of interest or granting of instalments.

No interference, however, is called for as regards the order of the court below granting instalments, as we are informed that during the pendency of the appeal in this Court the entire decree under appeal has been satisfied on the 2nd of May, 1938, by Reoti Prasad. The question of interest, however, remains as it has been argued on behalf of the respondents that Reoti Prasad was not entitled to incur the debt at the rate of interest evidenced by the mortgage deed. It has already been stated that a substantial portion of the mortgage debt with respect to which a decree for sale was passed by the court below was for the satisfaction of antecedent debts due from Reoti Prasad. It is conceded that Reoti Prasad was competent to alienate the family property for the satisfaction of those debts, but it is argued that it was not open to Reoti Prasad to borrow money on the security of family property at a rate of interest higher than the rate at which the antecedent debts were borrowed. We are unable to agree with this contention. It is well settled

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that it is within the competence of a Hindu father to burden the family estate by mortgage for the discharge of an antecedent debt; *Brij Narain* v. *Mangal Prasad* (1). The authority of Reoti Prasad to mortgage the family property for the payment of the debts due from him cannot, therefore, be questioned. In exercise of the right that Reoti Prasad had to raise a loan by mortgage of family property he was undoubtedly competent to agree to the payment of a reasonable rate of interest. The burden no doubt lies on a creditor to show that a mortgage of joint family property made by the father for the payment of antecedent debts was not at an unreasonable rate of interest, and if the agreed rate of interest is exorbitantly high the court, while passing a decree, can reduce the rate of interest. But in the present case, having regard to all the facts, we have come to the conclusion that the agreed rate of interest was not unreasonable.

The amount borrowed on the basis of the hundis had become due and it is clear from the recital in the mortgage deed that the creditors were pressing for payment. There is no evidence to show that the debt due on the basis of the hundis could be discharged otherwise than by mortgage of family property. The assertion of the appellant's counsel that the amounts advanced under the hundis carried interest at the rate of 9 per cent. per annum does not appear to be unfounded. Reoti Prasad was an experienced business man and it is fair to assume that if he had been able to secure a loan at a more favourable rate of interest from some other creditor he would not have executed the mortgage deed in suit. It has been held by this Court in *Gajraj Singh* v. *Muhammad Mushtaq Ali* (2) that interest at the rate of 12 per cent. per annum is, in the absence of any other evidence to the contrary, a reasonable rate of interest. The interest stipulated in the mortgage deed under suit was, as stated above, 9 per cent. per annum with six monthly rests.

(1) (1923) I.L.R. 46 All. 95. (2) (1933) I.L.R. 56 All. 263.

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The suit was filed within 15 months of the execution of the mortgage deed. The interest claimed by the plaintiff at the contractual rate works out to a figure less than the amount that would have been due if the stipulated rate of interest had been 12 per cent. per annum. Under these circumstances we consider that the rate of interest stipulated in the mortgage deed was reasonable.

For the reasons given above we allow this appeal and modify the decree of the court below only to this extent that we direct that the amounts decreed will carry interest at the contractual rate up to the 30th of September, 1936, and thereafter at the rate of Rs.3-4-0 per cent. per annum. The office will prepare a decree under order XXXIV, rule 4 of the Civil Procedure Code. In the circumstances of the present case we direct the parties to bear their own costs of this appeal.