

REVISIONAL CIVIL

Before Mr. Justice Bennet and Mr. Justice Verma

1938
December, 23

SUKHNANDAN MATHURAPRASAD (PLAINTIFF) *v.*
RAMGOPAL GIRJASHANKAR (DEFENDANT)*

U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), sections 2(10)(a) and 7—"Loan"—Sale of goods on credit is not a "loan"—Suit for price of goods sold is not a suit for recovering a loan.

The sale of goods on credit to an agriculturist cannot be held to be an advance to the agriculturist and thereby a "loan" to him as defined in section 2(10)(a) of the U. P. Agriculturists' Relief Act. The goods themselves are not advanced as a loan; they are actually sold and it is intended that the title in the goods should pass permanently to the agriculturist at the time of sale. A suit to recover the price of the goods sold is, therefore, not a suit for recovering a loan, and section 7 of the Act does not apply.

Mr. *Babu Ram Awasthi*, for the applicant.

Mr. *B. Malik*, for the opposite party.

BENNET and VERMA, JJ.:—This is a civil revision by the plaintiff against a decree of the lower appellate court holding that the trial court had no jurisdiction to entertain his suit and directing that the plaint should be returned to the plaintiff by the trial court for presentation to the proper court. The objection taken by the defendant to jurisdiction was that he was an agriculturist residing within the jurisdiction of the Munsif of Kaimganj in Farrukhabad district, and the suit had been tried by the Honorary Bench of Munsifs in Farrukhabad whose jurisdiction did not extend to Kaimganj. The plea was taken under section 7 of the U. P. Agriculturists' Relief Act of 1934. That section refers only to suits for recovering an unsecured loan against an agriculturist. The present suit is brought on the basis of bahi khata accounts for goods purchased by the defendant through the commission agency of the plaintiff. It has been held by a learned single Judge of this Court in *Khincha Mal*

*Civil Revision No. 161 of 1937.

Hari Kishan v. Khub Ram Munna Lal (1) that the purchase of goods and the fact that the price of the goods is owing does not constitute a loan by the seller to the purchaser. We consider that ruling should be accepted and that the principle is correct. In the definition of "loan" in the U. P. Agriculturists' Relief Act, section 2(10)(a), there must be an advance to the agriculturist. In the case of goods being sold we do not consider that this can be held to be an advance to the agriculturist. The goods themselves are not advanced as a loan. They are actually sold and it is intended that the title in the goods should pass permanently to the agriculturist at the time of sale. For these reasons we allow this civil revision and we return the appeal to the court below for disposal according to law on the merits. Costs hitherto incurred will abide the result.

1938
 SUKHNAN-
 DAN
 MATHURA
 PRASAD
 v.
 RAMGOPAL
 GIRJA
 SHANKAR

Before Justice Sir Edward Bennet and Mr. Justice Ganga Nath

JANG BAHADUR SINGH (PLAINTIFF) v. CHANDER BALI SINGH AND ANOTHER (DEFENDANTS)*

1939
 January. 4

Negotiable Instruments Act (XXVI of 1881), section 43—Promissory note without consideration—Transfer to "holder" for consideration—Rights of such holder—Negotiable Instruments Act, sections 8, 14, 15, 48—"Holder", who is—Transfer of promissory note, payable to order, by sale deed without any endorsement—Transferee not a "holder".

A promissory note, payable to order, was transferred by the payee for consideration, by means of a sale deed, but without any endorsement. In a suit by the transferee on the promissory note it was found that the note was made without consideration, and thereupon the plaintiff claimed a decree by virtue of section 43 of the Negotiable Instruments Act:

Held, that the transfer by means of a sale deed, and without any endorsement, of a promissory note payable to order is not a "negotiation" thereof nor is the transferee a "holder" thereof within the meaning of section 8 of the Negotiable Instruments

*Civil Revision No. 53 of 1937.
 (1) [1937] A.L.J. 766.