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SRI
BHAGWAN
V.
SECRETARY
OF STATE
FOR INDIA

Indian and the Oudh and Rohilkhand railways." Under this notification the Agent of the East Indian Railway, Calcutta, was the proper person on whom notices should have been served, as they have been done both in the case of the suit and of this application in revision. There is, therefore, no defect in the frame of the suit or the service of summons of the suit or notice of this application in revision.

The lower court has not disposed of the remaining issues and the case has to go back to the lower court. It is therefore ordered that the application be allowed with costs, and the case be sent back to the lower court to re-admit it under its original number and to dispose of it in accordance with law.

Before Mr. Justice Bennet and Mr. Justice Verma

RAMANAND MISIR AND ANOTHER (PLAINTIFFS) v.
RAM BARAN CHAUBE (DEFENDANT)*

1938

December, 20

U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), section 30(1)—Reduction of interest—Suit on promissory note executed in lieu of balance due on previous simple mortgage—Only "loan" was that under the simple mortgage—Interest on the simple mortgage can be reduced in the suit on the promissory note.

The money due on a simple mortgage was, on the 25th of March, 1933, paid off in part and a promissory note was executed in lieu of the balance, Rs.500; no fresh advance being made. In a suit on the promissory note the defendant, an agriculturist, pleaded for reduction of interest on the simple mortgage according to the provisions of section 30(1) of the U. P. Agriculturists' Relief Act:

Held, that the only "loan" that was ever advanced being the one for which the simple mortgage was executed, and the promissory note having been executed merely in lieu of the balance due on that mortgage on the 25th of March, 1933, the court was entitled under section 30 of the Act to look behind the promissory note and to take into consideration the real "loan" transaction, namely the simple mortgage, and to apply the provisions of the section to that transaction.

Mr. *Haribans Sahai*, for the applicants.

Mr. *K. L. Misra*, for the opposite party.

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BENNET and VERMA, JJ.:—This is an application in revision by the plaintiffs in a suit for the recovery of a sum of Rs.710 on the basis of a promissory note executed by the defendant in favour of the plaintiffs on the 25th of March, 1933, for a principal amount of Rs.500.

There is a history behind this promissory note in suit which is given in detail in the plaint. It appears that on the 29th of June, 1926, a deed of simple mortgage was executed by the defendant and certain other persons in order to secure a loan of Rs.2,200. The amount due under this simple mortgage by the 25th of March, 1933, on account of principle and interest, was Rs.5,500. On that date, viz. the 25th of March, 1933, the mortgagors discharged this liability of theirs under the mortgage of the 29th of June, 1926, to the extent of Rs. 5,000. Not being in a position to pay anything in cash, they executed a sale deed in favour of the plaintiffs on that date in respect of certain property and thereby the loan was agreed to be satisfied to the extent of Rs.5,000. A sum of Rs.500 thus remained due to the plaintiffs on account of the loan advanced on the 29th of June, 1926. It was in respect of this balance of Rs.500 that the promissory note now sued upon was executed by the defendant.

The defendant pleaded that the transaction between the parties was substantially unfair and the rate of interest was excessive and that section 3 of the Usurious Loans Act should be applied, and that in any case he was an "agriculturist" within the meaning of the U. P. Agriculturists' Relief Act (XXVII of 1934) and was entitled to the benefit of the provisions of section 30 of that Act. The defendant pleaded that the interest should be calculated in accordance with the provisions of the Act from the date of the loan advanced on the 29th of June, 1926, and that, on this being done, nothing would be found due to the plaintiff.

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The learned Judge of the court of small causes did not accept the first contention of the defendant as all the parties to the mortgage deed and the deed of sale were not before him and also because he was not satisfied that the rate of interest was excessive and that the transaction between the parties was substantially unfair. But he has accepted the second contention of the defendant and has dismissed the suit.

The learned counsel for the plaintiffs applicants argues that the "loan" in this case is the one evidenced by the promissory note in suit and that the court below should have confined itself entirely to that document and was not justified in taking into consideration the earlier transaction of the mortgage of 1926. In our opinion this contention is not well founded. Section 30(1) of the Agriculturists' Relief Act runs as follows: "Notwithstanding anything in any contract to the contrary no debtor shall be liable to pay interest on a loan taken before this Act comes into force at a rate higher than that specified in schedule III for the period from the 1st of January, 1930, till such date as may be fixed by the Local Government in the Gazette in this behalf."

It seems to us that the only *loan* that was ever advanced in this case was the one in lieu of which the deed of simple mortgage of the 29th of June, 1926, was executed. A payment was made on the 25th of March, 1933, by the execution of the sale deed and a sum of Rs.500 was found to be still due from the debtors after that payment. The mere fact that a promissory note was executed for this amount of Rs.500 does not mean that the court is not entitled under section 30 of the Act to look behind the promissory note and to take into consideration the real transaction of the loan. If the argument of the learned counsel were to be accepted, the provisions of section 30 would be easily circumvented and the intention of the legislature would be frustrated in a large number of cases. In our judgment the view taken by the court below is correct and we dismiss this application for revision with costs.