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entitled to claim the payment of dower debt as a condition precedent to the delivery of possession of property in dispute. In the present case we are not called upon to decide whether the dower debt is recoverable by the heirs or not. Unless we hold that the dedication of the dower money is a valid wakf the mutwalli will not be entitled to claim payment of the same. We have already held that the wakf of the three-fourths share left by Sheikh Nasru was illegal. In the circumstances, in our opinion, the plaintiffs can recover possession of the same without paying the proportionate amount of dower debt to the mutwalli.

For the reasons given above we allow the appeal, modify the decree of the court below and direct that the plaintiffs' suit for possession over three-fourths of the property left by Sheikh Nasru be decreed. The appellants will be entitled to their costs from the contesting defendant throughout.

Before Mr. Justice Bennet and Mr. Justice Verma

KAMLA PRASAD PANDEY (DEFENDANT) *v.* HASAN ALI KHAN (PLAINTIFF)*

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Evidence Act (I of 1872), sections 92 proviso (1), 93—Promissory note—Rate of interest entered as Rs.2 per month—"Per cent" omitted—Admissibility of oral evidence to prove that "per cent" was intended—Previous promissory notes between parties—Specific Relief Act (I of 1877), section 31—Usurious Loans Act (X of 1918), section 3—Rate of interest on promissory note.

A promissory note for Rs.875 was executed on a printed form in Hindi; the clause relating to interest was printed as follows: *"Sud wo sud dar sud upar asal har shashmahi ke aj ki tarikh se ta roz wasul kul mutalba ke basharah . . . mahwar"*, and the blank space was filled in by writing *"do rupiya"*. In the suit upon the promissory note the plaintiff contended that the interest agreed upon was two *per cent* per

*Second Appeal No. 536 of 1935, from a decree of Niaz Ahmad, Additional Civil Judge of Basti, dated the 20th of December, 1934, modifying a decree of Mohan Shanker Saxena, Additional Munsif of Basti, dated the 15th of February, 1934.

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month and that the words "per cent" had been omitted by mistake. The question was whether oral evidence was admissible on the point, and whether two earlier promissory notes between the same parties, mentioning interest at 25 per cent per annum, were admissible in evidence:

Held, that oral evidence was admissible, under proviso (1) to section 92 of the Evidence Act to prove that the rate of interest agreed upon was two per cent per month; for, the omission to mention "per cent" was a mistake in fact which would entitle the plaintiff to a decree for rectification, under section 31 of the Specific Relief Act, relating to the document. The case was not one of patent ambiguity, within the purview of section 93 of the Act.

The previous promissory notes between the parties, not being oral evidence, could not be barred out from evidence by section 92 at all.

Held, also, that the rate of 24 per cent simple interest for a promissory note was, in the absence of any special cause, a high and excessive rate, and it was reduced, under the Usurious Loans Act, 1918, to 18 per cent simple interest as being a fair and reasonable rate for an unsecured loan.

Mr. *Sankar Saran*, for the appellant.

Messrs. *K. Masud Hasan* and *Mahboob Alam*, for the respondent.

BENNET and VERMA, JJ.:—This is a second appeal by the defendant against a decree in favour of the plaintiff by the lower appellate court decreeing recovery of Rs.875 principal on a promissory note and interest at 24 per cent. per annum simple from the date of the promissory note, 15th January, 1931, up to the date of the suit, 6th January, 1934, and thereafter at 6 per cent. per annum simple. The appellant alleges that the interest which should have been decreed should be only at Rs.2 per mensem as a lump sum, that is Rs.24 per annum, for the three years Rs.72. This rate on Rs.875 is about Rs.2-9-0 per annum per cent. which is a remarkably low rate. The promissory note in question was on a printed form in Hindi, the kind of form which is commonly sold in the bazar, and it was as follows: *"Sud wo sud dar sud upar asal har shashmahi ke aj ki tarikh se ta roz*

wasul kul mutalba ke basharah do rupaiya mahwar." The signature of the defendant is in Hindi and is similar to the writing in which the form was filled in. It is clear therefore that the blank in the form between the words "*basharah*" and "*mahwar*" was filled in Hindi writing by the defendant and he wrote there the words "*do rupia*", that is he entered Rs.2.—The question is, did this entry correctly represent the oral agreement as to interest between the parties? The lower appellate court has held that oral evidence on this point is admissible and on the evidence on the record the court has held that the parties agreed that the interest should be Rs.2 per cent. per mensem and the words "per cent." had been omitted by the defendant when he filled in the blanks in the printed form. On the other hand, for the appellant defendant it is claimed that oral evidence is not admissible and that the entry as filled in by defendant should be taken to mean that there was a lump sum of Rs. 2 payable and the construction placed by learned counsel on the word "*basharah*" is that this word refers to the printed word which follows after the blank, that is "*mahwar*". The argument of learned counsel is based on section 92 that where the terms of a contract have been reduced to the form of a document, evidence shall not be admitted between the parties "for the purpose of contradicting, varying, adding to or subtracting from its terms". Learned counsel also relies on section 93 of the Evidence Act which provides: "When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects." On the other hand, reliance is placed for the plaintiff respondent on proviso (1) to section 92 which states: "Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake

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in fact or law." Under this proviso the respondent claims that there was a mistake in fact in filling in the document and that such a mistake was a mutual mistake and this would entitle him to a decree for rectification under section 31 of the Specific Relief Act. Alternatively if the defendant, knowing that the plaintiff agreed to Rs.2 per cent. per mensem interest, intentionally entered Rs.2 intending that the plaintiff should be defrauded, the plaintiff would be entitled to rectification under the same section 31 of the Specific Relief Act. As the plaintiff would be entitled to such a decree in either case, the plaintiff respondent claims that he is entitled to produce oral evidence in regard to this fact under the first proviso to section 92 of the Evidence Act.

Precisely a similar case arose in *Ram Bharosay Lal* v. *Janki Prasad* (1). This was in a more formal document, a mortgage deed, and the document specified that the interest was payable at the rate of Re.1 per cent. per mensem but by reason of a clerical omission the words "per cent." were left out from the deed. Oral evidence was allowed to show that the words "per cent." had been omitted and it was held that that oral evidence was permissible under the first proviso to section 92 of the Evidence Act. This ruling distinguished a ruling on which the appellant relied, namely *Pratap Chandra Shaha* v. *Mahomed Ali Sarkar* (2), on the ground that in that case no reference was made to proviso (1) to section 92 of the Evidence Act and that the omission in that case was whether the interest was payable monthly or annually and such an omission was tantamount to a blank in the document which would give rise to a patent ambiguity and therefore section 93 of the Evidence Act would apply to such a case. Learned counsel for the appellant relied on another ruling, *Sarju Sahu* v. *Sukhi Lal* (3), where there was a similar omission as to whether the rate

(1) A.I.R. 1930 Oudh, 95. (2) (1913) I.L.R. 41 Cal. 342.
(3) A.I.R. 1924 Pat. 96.

of interest was per mensem or per annum. We consider that the distinction drawn by the Oudh ruling is one which we should follow and that the present case is one to which the provision of the first proviso to section 92 of the Evidence Act applies. Moreover it does not appear to us to be a natural construction to apply the word "*basharah*" (at the rate of) to the words "per mensem". That expression is more commonly used in connection with the words "per cent."

Another point which was found by the court below is in regard to other transactions between the parties. One of these was an earlier promissory note for Rs.500 in which the defendant had filled in the rate of interest as Rs.25 per cent. per annum in a similar form and again there was a third promissory note for Rs.300 executed by the defendant on 5th March, 1928, in favour of the plaintiff which he had filled in in Urdu "*pachis rupia saikra salana*", that is Rs.25 per cent. per annum. The interest therefore between the parties would probably be 24 per cent. per annum and not Rs.2-9-0 per cent. per annum as is claimed by the appellant. We consider that the oral evidence was admissible. It may be noted that so far as these two earlier promissory notes are concerned, they are not barred out at all by section 92 of the Evidence Act because that section only applies to oral evidence. We consider that the court below was correct in allowing the oral evidence and in coming to the finding that the agreement between the parties was for interest at the rate of Rs.2 per cent per mensem and not a lump sum of Rs.2 per mensem.

The last ground of appeal was that the rate of interest was excessive. At the time at which this suit was brought, the Usurious Loans (U. P. Amendment) Act (U. P. Act XXIII of 1934) had not been passed and therefore under section 1, sub-section (3) thereof that Act does not apply to the present case. The Act which applies is Act X of 1918, Usurious Loans Act. We consider that the rate of interest Rs.24 per cent. per

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annum is excessive, even though in appeal the appellant plaintiff before the court below gave up his claim to compound interest with six-monthly rests which was entered in the promissory note and reduced his claim to simple interest only. It is true that the rate of 12 per cent. per annum simple has been laid down by this Court in various rulings such as *Gajraj Singh* v. *Muhammad Mushtaq Ali* (1), as a fair, proper and reasonable rate in a mortgage transaction and the present case is not one of a loan secured by mortgage but of a loan merely on a promissory note. We consider, however, that the rate of Rs.24 per cent. per annum is high without some special cause for a promissory note and no special cause has been shown in the present case. Under these circumstances, we reduce the rate from 24 per cent. per annum simple interest to 18 per cent. per annum simple interest. We allow the appeal to this extent with proportionate costs. The appeal is otherwise dismissed.

Before Sir John Thom, Chief Justice, and Mr. Justice Ganga Nath

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AMINA KHATUN BEGAM AND OTHERS (PLAINTIFFS) *v.* BENI RAM AND OTHERS (DEFENDANTS)*

Agra Tenancy Act (Local Act II of 1901), section 51—Agra Tenancy Act (Local Act III of 1926), sections 73, 219—Thekadar—Theka executed under the former Act—Condition against remission of rent upon remission of revenue—Whether operative—U. P. General Clauses Act (Local Act I of 1904), section 6(c)—Repeal of Act—Effect on rights acquired under repealed Act.

A theka, executed when the Agra Tenancy Act of 1901 was in force, contained a provision that if in any year remissions of revenue were made by the Government the thekadar would not be entitled to any remissions in the rent payable by him to the lessor. The theka continued after the Tenancy Act of 1926 came into force, and the question arose whether the provision against remission of rent was or was not operative under the Tenancy Act of 1926:

*Appeal No. 74 of 1937, under section 10 of the Letters Patent.

(1) (1933) I.L.R. 56 All. 263.

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Held, that the express provision in the theka against any remission in the rent consequent upon a remission of revenue was operative by virtue of section 219 of the Agra Tenancy Act of 1926, which modified section 73 of the Act. Section 219 applied to "all" thekadars; the word "all" indicated that no exception was made in the case of old thekadars whose thekas had come into existence while the Agra Tenancy Act of 1901 was in force.

Section 6(*c*) of the U. P. General Clauses Act did not stand in the way of the lessor's claim for the full rent; for although the right to obtain remission of rent upon remission of revenue had, in spite of the provision to the contrary in the theka, accrued to the thekadar by virtue of section 51 read with section 3(1) of the Agra Tenancy Act of 1901, this right could not be saved, upon the repeal of that Act, by section 6(*c*) of the U. P. General Clauses Act as the section would apply only "unless a different intention appears", and "a different intention" clearly appeared from the words "all thekadars" in section 219 of the Tenancy Act of 1926 by which the former Act was repealed.

Dr. *N. P. Asthana*, for the appellants.

Dr. *N. C. Vaish*, for the respondents.

THOM, C. J., and GANGA NATH, J.:—This is a plaintiffs' Letters Patent appeal against the decision of a learned single Judge of this Court. It arises out of a suit brought by the plaintiffs against the defendants respondents to recover arrears of rent. The defendants are thekadars. There was no dispute about the amount of arrears of rent due from the defendants, but the defendants contended that they were entitled to remissions on account of certain remissions of revenue having been made by the Government. The lower courts found in favour of the defendants and gave the benefit of the remissions to them. On appeal the learned single Judge confirmed their decision.

The lease sued upon was executed on the 16th May, 1914, when the Agra Tenancy Act of 1901 was in force. The lease provided that even if in any year during its continuance remissions of revenue were made