

## PRIVY COUNCIL.

P. C.

ADITYA PRASAD (PLAINTIFF) *v.* RAM RATAN LAI  
AND ANOTHER (DEPENDANTS).\*

1930  
February,  
13.

[On Appeal from the Chief Court of Oudh.]

*Mortgage—Redemption—Further Loan—Construction of document—Creation of Charge—Redemption by purchaser of share—Justice, equity, and good conscience—Transfer of Property Act (IV of 1882) section 100.*

In July, 1881, a usufructuary mortgage of a village was executed to secure Rs. 5,500; redemption was to be in 15 years, not before. In November, 1881, the mortgagor executed a document, which after referring to the mortgage and stating that he had borrowed from the mortgagee a further Rs. 2,500, provided that he could not redeem the village without paying the further loan. The appellant, who had acquired a share of the village through a sale by the mortgagor in 1887, sued in 1926 to redeem.

*Held*, that the document of November, 1881, on its true construction created a charge, and that accordingly the appellant could not redeem without paying in respect of both loans; the principles of justice, equity and good conscience were applicable and for the purpose of the case could be taken as identical with the provisions of the Transfer of Property Act, 1882.

*Janardan v. Anant* (1), approved.

Decree of the Chief Court affirmed.

APPEAL (No. 30 of 1929) from a decree of the Chief Court of Oudh (January 31, 1928) varying a decree of the Subordinate Judge of Gonda (April 14, 1927).

On July 11, 1881, a zamindar executed a usufructuary mortgage on a village for Rs. 5,500 to be redeemed at the expiry of 15 years. On November 10, 1881, he executed a further document, the material terms of which appear from the judgment, acknowledging a further loan of Rs. 2,500 by the mortgagees.

\* Present: Lord ATKIN, Sir GEORGE LOWRY and Sir BINOD MITTAL.  
(1) (1908) I.L.R. 22 Bom., 986.

1920

ADITYA  
PRASAD  
o.  
RAM RATAN  
LAL.

The appellant acquired a 14 annas 6 pies share in the village through sales of shares made by the mortgagor in 1887. The remaining 1 anna 3 pies share in the equity of redemption had been acquired by the mortgagees who were represented at the date of the suit by the respondents.

P. C.

In 1926 the appellant instituted a suit against the respondents to redeem the village. The respondents by their written statement contended, *inter alia*, that the document of November, 1881, created a further charge, and that the appellant was not entitled to redeem the village without payment in respect of the principal and interest due thereunder.

The Subordinate Judge held that the document of November, 1881, did not create a charge but only a personal debt; he made a preliminary decree for redemption on payment of a proportionate part of the sum due under the mortgage of July, 1881.

On appeal to the Chief Court the learned Judges (HASAN and RAZA, JJ.) held that the later document created a charge, and rejecting other defences which were not relied on upon the present appeal, held that the appellant could not redeem without paying also the proportionate amount of the sum due under that document.

1930. February 13. *Dunne, K.C.* and *Wallach*, for the appellant.

*DeGruyther, K.C.* and *Dube*, for the respondents.

The judgment of their Lordships was delivered by Lord ATKIN :—

This is an appeal from the Chief Court of Oudh, in a redemption suit brought by the appellant against the respondents. The Chief Court had varied the decree of the Subordinate Judge of Gonda, and the question turns upon whether the plaintiff is obliged, in order to get redemption, to redeem

1926

ADITYA  
PRASAD

v.

RAM RATAN  
LAL.

P. C.

a debt which was created by him by a document in writing of the 10th of November, 1881. It appears that the predecessor in title of the plaintiff was the zemindar of the village of Parsapur, and that on the 11th of July, 1881, he executed a *usufructuary* mortgage of the village to the respondents for Rs. 5,500. and the terms of the mortgage were that the mortgagor was to have no power of redemption for a period of 15 years; after that he was to pay off the entire mortgage money. The respondents entered into possession, in the ordinary course of the village.

On the 10th of November, 1881, the zemindar executed a further document and the question is, whether or not this document created a charge upon the village. It is unnecessary to set it out at length but it recites that he had executed a possessory mortgage deed in respect of the whole village, and that he needed a further sum of Rs. 2,500, which he had borrowed, and he then stipulated to repay the entire amount of the debt, principal and interest, in a lump sum within the period stipulated in the former mortgage deed, namely, within 15 years, and he recited that he had borrowed the money by way, according to the correct translation, of a further debt with interest at the rate of Rs. 1-8-0 per cent. per month. The deed then provided: "I shall first pay up this debt, including principal and interest, and thereafter I can redeem the mortgaged village, having paid up the mortgage money. Without the payment of this debt I cannot redeem the mortgaged village." It then provides that he should pay every year the interest on the amount, and if he did not, then he would execute separate bonds each year, bearing interest at the same rate, and then it further stated, which is rather by way of repetition, that he could not pay up the prior mortgage money until he had paid off this debt, principal and interest.

1929  
 ADITYA  
 PRASAD  
 v.  
 RAM RATAN  
 LAL.

P. C.

Now, the question is whether that was intended by the parties to give a charge upon the property to the mortgagees for the amount of that debt. The Transfer of Property Act does not apply, as this transaction took place in 1881, and the Transfer of Property Act was passed in 1882; but the principles that prevail in those circumstances are the principles of justice, equity and good conscience, and for this purpose their Lordships think, may be taken to be identical with the provisions in the Transfer of Property Act. The only question that the Court had to determine was, whether or not the parties intended that this debt should be charged upon the property.

The Chief Court, reversing the decision of the Subordinate Judge, have held clearly that that was the intention. Their Lordships agree with that decision. It appears to them clear, when the subsequent deed is looked at that the parties intended that the original village should remain in the possession of the mortgagees until the second debt was paid off, and intended, therefore, that the property should be security for the debt.

In these circumstances it appears to their Lordships that the Court below could only come to one conclusion, and that their decision is amply supported by the case of *Janardan v. Anant* (1), a decision of Sir LAWRENCE JENKINS, where the facts were almost identical with the facts in this case.

Their Lordships, therefore, will humbly advise His Majesty that this appeal should be dismissed, and that the appellant should pay the costs. The case, however, must be referred back to the Chief Court to extend the time beyond the 31st of July, 1928, fixed by their decree, within which the appellant can redeem, and also to take any further accounts of principal, interest and costs.

Solicitors for appellant : *T.L. Wilson & Co.*

Solicitors for respondents : *H.S.L. Polak.*