

sentence each of them to undergo ten years' rigorous imprisonment. This sentence will run concurrently with the sentences passed upon these accused in this case in respect of the charges under sections 147 and 364/149 of the Indian Penal Code. We do not find Raghubar, Parbhu and Ratan guilty under section 450/149 of the Indian Penal Code and acquit them of that offence. To this extent these appeals are allowed; for the rest they stand dismissed.

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Appeal partly allowed.

APPELLATE CIVIL

*Before Mr. Justice Muhammad Raza and Mr. Justice
H. G. Smith*

CHHOTE LAL, O.B.E., RAI BAHADUR. BABU, PLAINTIFF-APPELLANT *v.* RAJA MOHAMMAD AHMAD ALI KHAN, DEFENDANT-RESPONDENT*

December 14

Civil Procedure Code (Act V of 1908), Order XXXIV, rule 11—Mortgage—Interest—Courts' power to grant interest at contract rate after filing of suit, on the principal money only, or on the amount due on that date—Meaning of the words 'principal amount found or declared due on the mortgage'—Future interest—Courts' power to grant future interest.

In the case of mortgage the question as to the rate of interest is to be determined under Order XXXIV, and not section 34 of the Code of Civil Procedure, and the court is justified in allowing interest at the contract rate on the principal amount only from the date of the suit to the date fixed for payment. The words "the principal amount found or declared due on the mortgage" in Order XXXIV, rule 11 of the Code of Civil Procedure do not include interest and must be taken to mean the principal money only. *Jagannath Prasad v. Surajmal* (1), relied on.

The trial court has discretion in the matter of the allowance of future interest which should not be interfered with

*First Civil Appeal No. 79 of 1931, against the decree of M. Ziauddin Ahmad, Subordinate Judge of Sultanpur, dated the 27th of March, 1931.

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unless there be sufficient grounds for doing so. *Said Ahmad*
v. Raja Barkhandi Mahesh Partab Narain Singh (1), relied on.

Mr. *Raza Ali*, for the appellant.

Mr. *Ali Zaheer*, for the respondent.

RAZA and SMITH, JJ. :—This appeal arises out of
 a suit brought by the plaintiff to recover Rs.1,00,325-0-6
 by sale of certain property comprised in a mortgage of
 the 4th of September, 1924.

The defendant (Raja Hasanpur) executed the mort-
 gage in suit in favour of the plaintiff (R. B. Babu
 Chhotey Lal) for Rs.50,000 bearing interest at 12 per
 cent. per annum with six monthly rests. The mortgage
 money was payable on demand. The plaintiff alleg-
 ing that the mortgagor failed to pay off the mortgage
 on demand, sued to recover Rs.1,00,325-0-6 due on
 the mortgage by sale of the mortgaged property (3 vil-
 lages in the district of Sultanpur).

The claim was resisted by the defendant. He
 pleaded at first that Rs.30,000 only were paid to him
 out of the consideration money entered in the mortgage
 deed and that Rs.20,000 were entered in the deed
 fictitiously. However, these pleas were subsequently
 withdrawn, and the only defence which was eventually
 set up by the defendant was that he was hard pressed
 for money and the plaintiff charged interest at a very
 high rate taking advantage of his (defendant's) help-
 less position.

The plea that the interest was charged at a high
 rate was repelled by the learned Subordinate Judge.
 He found that the rate of interest could not be reduced
 and that the plaintiff was entitled to the interest
 claimed. He passed the following order in decreeing
 the plaintiff's claim on the 27th of March, 1931.

“The plaintiff is given a decree for sale of the
 property in suit for Rs.1,00,325-0-6 with costs.
 The defendant is allowed six months' time to
 deposit the decretal sum. In case of default the

property shall be sold. The plaintiff shall get future interest from the date of the institution of the suit till 27th September, 1931, at the contract rate and after that at 6 per cent. on Rs.50,000 till realization."

The relevant portion of the decree which was prepared in the office of the learned Subordinate Judge is as follows :

"It is hereby declared that the amount due to the plaintiff on account of principal, interest and costs calculated up to the 27th day of September, 1931, is Rs.1,00,325-0-6 principal (together with interest) + Rs.3,280-13-9 costs plus Rs.6,779-4 interest at the contract rate on Rs.50,000 from 25th of August, 1930, till 27th of September, 1931, i.e. Rs.1,10,385-2-3 only and that Rs.50,000 only shall carry interest at the rate of 6 per cent. per annum until realization from 27th September, 1931.

The plaintiff has filed this appeal, contending that the court below should have allowed interest at the contract rate till the 27th of September, 1931, on the entire decretal amount, and not on Rs.50,000 only, and that the court below should have allowed future interest on the aggregate sum falling due to the plaintiff on the 27th of September, 1931, and not on Rs.50,000 only.

As pointed out by their Lordships of the Judicial Committee in the case of *Jagannath Prasād v. Surajmal* (1), in the case of mortgage the question as to the rate of interest is to be determined under Order XXXIV and not section 34 of the Code of Civil Procedure. The relevant rules of order XXXIV are as follows :

"Rule 11—In any decree passed in a suit for foreclosure, sale or redemption, where interest

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is legally recoverable, the Court may order payment of interest to the mortgagee as follows, namely :

(a) interest up to the date on or before which payment of the amount found or declared due is under the preliminary decree to be made by the mortgagor or other person redeeming the mortgage—

(i) on the principal amount found or declared due on the mortgage—at the rate payable on the principal, or, where no such rate is fixed, at such rate as the Court deems reasonable.

(ii) on the amount of costs of the suit awarded to the mortgagee—at such rate as the Court deems reasonable from the date of the preliminary decree, and

(iii) on the amount adjudged due to the mortgagee for costs, charges and expenses properly incurred by the mortgagee in respect of the mortgage-security up to the date of the preliminary decree and added to the mortgage-money,—at the rate agreed between the parties, or, failing such rate, at the same rate as is payable on the principal, or failing both such rates, at nine per cent. per annum; and

(b) subsequent interest up to the date of realization or actual payment at such rate as the Court deems reasonable—

(i) on the aggregate of the principal sums specified in clause (a) and of the interest thereon as calculated in accordance with that clause; and

(ii) on the amount adjudged due to the mortgagee in respect of such further

costs, charges and expenses as may be payable under Rule 10.”

“Rule 4, sub-rule (1)—In a suit for sale, if the plaintiff succeeds, the Court shall pass a preliminary decree to the effect mentioned in clauses (a), (b) and (c)(i) of sub-rule (1) of Rule 2, and further direct that, in default of the defendant paying as therein mentioned, the plaintiff shall be entitled to apply for a final decree directing that the mortgaged property or a sufficient part thereof be sold, and the proceeds of the sale (after deduction therefrom of the expenses of the sale) be paid into Court and applied in payment of what has been found or declared under or by the preliminary decree due to the plaintiff, together with such amount as may have been adjudged due in respect of subsequent costs, charges, expenses and interest, and the balance, if any, be paid to the defendant or other persons entitled to receive the same.”

“Rule (2)—Clauses (a), (b) and (c)(i) of sub-rule (1) of Rule (2) :

(a) ordering that an account be taken of what was due to the plaintiff at the date of such decree for—

(i) principal and interest on the mortgage,

(ii) the costs of suit, if any, awarded to him, and,

(iii) other costs, charges and expenses properly incurred by him up to that date in respect of his mortgage-security, together with interest thereon; or

(b) declaring the amount to be due at that date; and

(c) directing—

(i) that, if the defendant pays into Court the amount so found or declared

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due on or before such date as the Court may fix within six months from the date on which the Court confirms and countersigns the account taken under clause (a), or from the date on which such amount is declared in Court under clause (b), as the case may be, and thereafter pays such amount as may be adjudged due in respect of subsequent costs, charges and expenses as provided in Rule 10, together with subsequent interest, on such sums respectively as provided in Rule 11, the plaintiff shall deliver up to the defendant or to such person as the defendant appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, re-transfer the property to the defendant at his cost free from the mortgage and from all incumbrances created by the plaintiff or any person claiming under him, or, where the plaintiff claims by derived title, by those under whom he claims, and shall also, if necessary, put the defendant in possession of the property."

Bearing in mind these Rules of Order XXXIV of the Code of Civil Procedure, we are of opinion that the lower court was perfectly right in allowing interest at the contract rate on the principal amount (Rs.50,000) only from the date of the suit (27th of August, 1930), to the date fixed for payment (27th of September, 1931). The appellant's learned Counsel contends that the words "the principal amount found or declared due on the mortgage" should include interest also. We are not prepared to accept this contention. In our opinion the principal amount found or declared due on the mort-

gage must be taken to be the sum of Rs.50,000 only, and not the sum of Rs.50,000 plus Rs.50,325-0-6. The sum of Rs.50,000 is the sum which was found or declared due on the mortgage in this case. The sum of Rs.50,325-0-6 is not, and cannot be held to be, part of the principal amount. It is the interest which had fallen due on the mortgage. The sum of Rs.1,00,325-0-6 is the mortgage money which was due to the plaintiff on the mortgage on the date of the institution of the suit but it was not the principal money. The principal money was Rs.50,000 only, and the interest amounted to Rs.50,325-0-6. The first ground of appeal therefore fails, and must be rejected.

There is no force in the second ground of appeal also. In a similar matter a Bench of this Court in a ruling reported in *Said Ahmad v. Raja Barkhandi Mahesh Partab Narain Singh* (1), held that the trial court had discretion in the matter of the allowance of future interest. In that case, as here, the trial court had allowed future interest at 6 per cent. per annum from the date fixed for payment till realization on the principal amount of the deeds of further charge held binding on the plaintiffs. It was contended on behalf of the defendant-respondent, with reference to order XXXIV, rule 11, clause (b) of the Code of Civil Procedure, that such subsequent interest should have been allowed on the whole amount due, and not merely on the principal money. It was held that the matter was one in the discretion of the lower court, and that no sufficient grounds appeared to interfere with the exercise of its discretion. Taking the same view, we see no sufficient reason to interfere with the discretion of the lower court in the present matter as regards the question of interest subsequent to the date fixed for payment.

The result is that the appeal fails, and must be dismissed. Hence we dismiss the appeal with costs.

Appeal dismissed.

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