

REVISIONAL CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge,
and Mr. Justice Ziaul Hasan

1936
September 3

GIRWAR SINGH (PLAINTIFF-APPLICANT) v. RAMMAN LAL
AND ANOTHER (DEFENDANTS-OPPOSITE-PARTY)*

United Provinces Agriculturists' Relief Act (XXVII of 1934), sections 2(2), 3, 4, and 5—Words “an agriculturist to whom chapter III applies” in section 3, meaning of—Period of instalments to be fixed in decree against an agriculturist to whom chapter III applies—Date from which period of 4 years is to be reckoned in applications under section 5—Order directing that whole decretal amount would be due on default of 3 consecutive instalments, validity of—Interest not allowed in original decree—Court, whether can allow future interest under section 4, when fixing instalments under section 5.

The words “an agriculturist to whom chapter III applies” used in the proviso to section 3 mean an agriculturist falling under clauses (a) to (h) of the definition given in section 2(2). The reference in that proviso is not to the proceedings in which the instalments are to be fixed but to the status of the agriculturists to whom the benefit of instalments is to be allowed. The period of instalments which could be fixed in the decree standing against such an agriculturist cannot extend beyond four years. This period of four years is to be reckoned in the case of applications under section 5 of the Agriculturists' Relief Act from the date of the order converting the decree into a decree for payment by instalments. *Ram Ghulam v. Bandhu Singh* (1), relied on.

There is no provision in the Agriculturists' Relief Act authorising the court to limit the decree-holder's right for enforcing payment of the whole decretal amount to a case of default in the payment of consecutive instalments. The order of the court directing that the whole decretal amount would be due in case of default of three consecutive instalments is therefore liable to be set aside.

*Section 115 Application No. 1 of 1936, against the order of M. Mustafa Kamil Qidwai, Munsif of Shahabad at Hardoi, dated the 21st of September, 1935.

Section 4 of the United Provinces Agriculturists' Relief Act does not give the court any power to allow future interest when it allows instalments in cases in which no such interest has been allowed by the original decree.

Mr. *D. P. Khare*, for the applicant.

SRIVASTAVA, C.J. and ZIAUL HASAN, J.:—This is an application in revision under section 115 of the Code of Civil Procedure against an order of the learned Munsif of Shahabad, district Hardoi, passed on an application made under section 5 of the Agriculturists' Relief Act (XXVII of 1934). The admitted facts of the case are that on the 29th of May, 1934, the applicant obtained a simple money decree against the opposite party for Rs.413-4 and that the decree did not allow any future interest. It is also not disputed that the opposite party judgment-debtors pay a land revenue of about Rs.200 per annum and are as such agriculturists within the meaning of the Agriculturists Relief Act.

The learned Munsif has ordered the decree to be amended so as to allow the judgment-debtors to pay up the decretal amount with costs in eight equal yearly instalments. He has further ordered that in case of default of three consecutive instalments the whole decretal amount shall become due.

The first contention urged on behalf of the appellant is that the instalments allowed by the lower court could not extend beyond four years from the date of the decree and that the order making the decretal amount payable in eight yearly instalments is therefore without jurisdiction. Section 5 of the Act gives the court power to fix instalments after the passing of decrees in accordance with the provisions of section 3 which deals with the fixing of instalments at the time of the passing of the decree. The first proviso of section 3 is as follows:

"Provided that the period of such instalments shall not extend beyond four years from the date of the decree in the case of an agriculturist to whom chapter III applies and beyond fifteen years from such date in the case of other agriculturists."

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The question therefore is whether or not the opposite party are agriculturists to whom Chapter III applies. Chapter III prescribes a form of possessory mortgage in the case of mortgages made after the commencement of the Act by agriculturists classified in clauses (a) to (h) of section 2, clause (2) of the Act, and lays down certain rules for redemption of mortgages made by agriculturists classified in the aforesaid clauses of section 2(2) of the Act either before or after the passing of the Act. The first proviso to section 2(2) also shows that Chapter II applies only to the smaller agriculturists who fall within one or other of the clauses (a) to (h) of the section. It seems therefore clear that the words "an agriculturist to whom Chapter III applies" used in the proviso to section 3 quoted above mean an agriculturist falling under clauses (a) to (h) of the definition given in section 2(2). The fact that Chapter III prescribes the form of a special class of mortgage and deals with proceedings for redemption of certain mortgages appears to be immaterial because the reference in the proviso under consideration is not to the nature of proceedings in which the instalments are to be fixed but to the status of the agriculturists to whom the benefit of instalments is to be allowed. The policy underlying the rule laid down in the proviso might well be that in the case of decrees against the smaller agriculturists which would generally be decrees for comparatively smaller amounts a shorter period of instalments would meet the requirements of the case but that a larger period was necessary in the case of decrees which would generally be for large amounts against the bigger agriculturists. We are therefore definitely of opinion that the opposite party being an agriculturist of the class referred to in section 2(2), clause (a) and therefore an agriculturist to whom Chapter III applies, the period of instalments which could be fixed in the decree standing against him could not extend beyond four years.

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Next as regards the date from which this period is to be reckoned it is no doubt true that the words used in the proviso to section 3 are "from the date of the decree". These words are quite appropriate to section 3 which deals with the fixing of instalments at the time of the passing of the decree but the difficulty arises in applying those words to a case under section 5 in which the application for fixing of instalments is made after the passing of the decree. Suppose an application like this is made more than four years after the decree. If the words are to be construed as meaning the date of the original decree the provision would become quite nugatory in such a case. We think therefore that the more reasonable construction to be placed upon these words in the case of an application under section 5 would be the date of the order converting the decree into a decree for payment by instalments. We are supported in this view by the decision of a learned Judge of the Allahabad High Court in *Ram Ghulam v. Bandhu Singh* (1).

Objection has also been taken to the order of the learned Munsif directing that the whole decretal amount would be due in case of default of three consecutive instalments. Clause (4) of section 3 provides that where the number of instalments allowed is 4 or 5 and any two instalments are in arrears, or where the number allowed is 6 or more and any three instalments are in arrears the decree-holder may, notwithstanding the provisions of any law for the time being in force, immediately enforce payment of the whole amount then remaining due under the decree. It does not lay down that the instalments in arrears must be consecutive. We are not aware of any other provision in the Act authorising the court to limit the decree-holder's right for enforcing payment of the whole decretal amount to a case of default in the payment of consecutive instalments. This part of the order also must therefore be set aside.

(1) (1936) A.I.R., All., 434.

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Lastly it is contended that when the lower court fixed instalments for payment of the decretal debt and thereby extended the period of payment it should in fairness to the decree-holder have passed an order allowing future interest even though the original decree made no provision for it. Reference has been made to section 4 of the Act in support of this contention. Section 4 in our opinion does not give the court any power to allow future interest in cases in which no such interest has been allowed by the original decree. It only contains a provision as regards the rate at which future interest is to be allowed in the cases dealt with in that section. We would therefore overrule the contention.

The result therefore is that we allow the application and modify the order of the lower court in this way, namely, that the decretal amount and costs shall be payable in four equal yearly instalments and that in case of default in payment of any two instalments the whole decretal amount shall become due. In all other respects the order of the lower court will stand. As the opposite party is not represented we make no order as to costs of the application.

Application allowed.