

REVISIONAL CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge
and Mr. Justice H. G. Smith

1937
August, 23

THE ALLAHABAD BANK LTD., LUCKNOW BRANCH,
(PLAINTIFF-APPLICANT) v. BATEY KRISHNA (DEFENDANT-
OPPOSITE PARTY)*

United Provinces Agriculturists' Relief Act (XXVII of 1934), sections 4, 5 and 30—"Debtor and judgment-debtor" in section 5, whether include their legal representatives and transferees—Transferees and legal representatives of debtors or judgment-debtors, whether entitled to the benefit of section 30—Transferees, whether required to be agriculturists to be entitled to the benefit of section 30—Original debtor dying or ceasing to possess interest in mortgaged property before filing of suit—Section 8, construction of—Section 4, if applicable to decrees passed before the Act—Future interest in such decrees, modification of—Some debtors only applying for amendment of decree—Application, if can be treated to be for benefit of also debtors not joining.

Not only the original debtor, but also his legal representatives and successors are entitled to the benefit of the provisions of section 30. Similarly the word "judgment-debtor" used in section 30(2) should not be confined to the original judgment-debtor, but should extend to his successors and legal representatives who are subsequently substituted in his place. It is not necessary that the transferee of the original debtor should also be an agriculturist. If he is a "debtor" in the sense of a person liable to pay the debt, he is entitled to the benefit of section 30(1) of the Act. Similarly he would be entitled to the benefit of section 30(2) if he is a judgment-debtor, irrespective of the consideration whether he is an agriculturist or not. *Misri Lal v. Alexander Gardner* (1), and *Bireswar Das Bapuli v. Uma Kant Pandey* (2), referred to.

The word "judgment-debtor" as used in section 5 of the *Agriculturists' Relief Act* should be construed in the sense of the person liable for payment of the decree for the time being,

*Section 115 Application no. 15 of 1936, against the order of Babu Bhagwati Prasad, Civil Judge of Lucknow, dated the 15th of November, 1935.

(1) (1936) A. L. J. R., 1250.

(2) (1937) A. L. J. R., 563.

or in other words to include the legal representatives and transferees of the original judgment-debtor. According to the terms of section 5, all that is necessary is that the decree should have been passed against an agriculturist. Where, therefore, a decree is admittedly passed against a person who was an agriculturist both at the time of the loan as well as the date of the suit, the transferee is entitled to the benefit of the section irrespective of the consideration whether he is himself an agriculturist or not.

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The language of section 8 of the Agriculturists' Relief Act seems to require that the person referred to should be an agriculturist at the time of the advance of the loan as well as at the date of the suit. But it would be impossible to apply the section in that sense in cases in which the original debtor has died or has ceased to possess any interest in the mortgaged property before the institution of the suit. The reasonable construction, therefore, is to require proof about the original debtor being an agriculturist at the time of the advance of the loan, and about his successor or legal representative against whom the decree is passed satisfying that condition at the date of the suit.

Section 4, United Provinces Agriculturists' Relief Act does not apply to decrees passed before the Act, and future interest allowed in such decrees, though subject to reduction under section 30 according to the rates specified in Schedule III of the Act, is not liable to further modification according to the rate notified by the Government under section 4(2) of the Act.

Where an application under sections 30 and 5 of the United Provinces Agriculturists' Relief Act is made by some of the judgment-debtors only it can be treated as an application for amendment for the benefit of all the judgment-debtors.

Messrs. *M. Wasim, Ram Gopal and Ali Hasan*, for the applicant.

Messrs. *Radha Krishna and P. D. Rastogi*, for the opposite party.

SRIVASTAVA, C. J. and SMITH, J.:—These are two applications in revision against the orders of the Civil Judge of Lucknow directing certain amendments in a decree under sections 4, 5 and 30 of the Agriculturists' Relief Act.

The material facts of the case are that on 28th March, 1914, one Yusuf Husain Khan executed a mortgage-deed in respect of his half share in 12 villages in favour

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of the Allahabad Bank. He mortgaged the same property to Beni Madho and Basant Rai, opposite-parties nos. 2 and 3, on 9th January, 1917. These puisne mortgagees obtained a decree for sale on the basis of their mortgage on 26th November, 1921. The Allahabad Bank also obtained a decree on the basis of its mortgage on 28th January, 1922. This decree was for a sum of Rs.1,38,645-10-9 with interest at the contractual rate. It also provided for future interest at the rate of 8 per cent. per annum simple. Thereafter Girdhari Lal and Jagmohan Dass, opposite-parties nos. 4 and 5 who had attached the equity of redemption of Yusuf Husain Khan in six of the above-mentioned villages in execution of their money-decrees, and had put the aforesaid equity of redemption to sale, purchased it at the court auction on 7th November, 1923. On 20th March, 1926, Beni Madho and Basant Rai also purchased Yusuf Husain Khan's interest in the remaining six villages at a sale in execution of their own decree. The result of this was that Yusuf Husain Khan ceased to have any interest in the property mortgaged by him to the Allahabad Bank. On 1st March, 1928, opposite-parties 2, 3, 4 and 5 entered into a compromise with the Allahabad Bank, under the terms of which it was agreed that the amount due to the Bank on 31st December, 1927, was Rs.84,419-8-0, which was to be paid by the opposite-parties 2, 3, 4 and 5 in certain instalments. Default having been made in payment of the instalments as agreed, the Bank, on 15th March, 1933, made an application for execution in respect of Rs.31,349-2-0, the balance due on that date, by sale of an 8 annas share in five villages which had been purchased by Girdhari Lal and Jagmohan Dass. On 28th July, 1935, Jagmohan Dass made an application under sections 30, 5 and 4 of the Agriculturists' Relief Act for reduction of the interest and for grant of instalments. The Civil Judge has ordered the decree to be amended by reducing the interest from 1st

January, 1930 to 7th May, 1935, to Rs.6-8 per cent. per annum simple; from 8th May, 1935 up to the date of the order, namely 15th November, 1935, at Rs.5-8 per cent. per annum simple; and thereafter at Rs.3-8 per cent. per annum simple. He has further ordered that the decretal amount is to be paid in ten equal instalments in *Jeth* and *Aghan* of each year, and that execution can be taken out in default of payment of any three instalments. The Allahabad Bank has made application no. 15 of 1936 for revision of this order. on 29th January, 1936, the Allahabad Bank also made an application to the Civil Judge praying that the amendment ordered by the court should be made in favour of Jagmohan Dass alone, and not in favour of the other judgment-debtors. This application was rejected by the Civil Judge on 29th January, 1936. Application No. 28 of 1936 is directed against the order just mentioned.

Jagmohan Dass died during the pendency of the applications in this Court, and his son Batey Krishna has been substituted in his place.

The first contention urged on behalf of the applicant, Allahabad Bank, is that no application under section 30 of the Agriculturists' Relief Act can be made by a transferee from the original debtor. It is pointed out that the material words of section 30(1) are that "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, etc.", and it is argued that the reference to debtor closely preceding the words "loan taken" indicates that it was intended to refer to the original debtor, and not to any subsequent transferee from him. Reference is also made to the definition of "loan" in section 2(10) which shows that the word "loan" has been defined as meaning an advance to an agriculturist, and it is argued that if the word "debtor" is held to include a transferee, it is possible

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that the transferee may not be an agriculturist. Further, emphasis has been laid on the preamble of the Act, which shows that the object of the legislation was to make provision for the relief of agriculturists from indebtedness. The inference drawn from this is that the Act did not intend to benefit transferees of original debtors, who may or may not be agriculturists. We might point out another consideration in favour of the applicant's argument, though it has not been urged by its learned counsel. It is this. Section 2(7) provides that "creditor" in Chapter V means a person who . . . advances a loan . . . and "includes the legal representatives and the successors-in-interest, whether by inheritance, assignment or otherwise, of a creditor." But the Act does not contain any such definition of the word "debtor" so as to include his legal representatives and successors-in-interest. Thus it will appear that the argument urged on behalf of the applicant is not without some force. At the same time, it would be seen that if the argument is accepted, it is not only the transferees, but also the heirs and legal representatives of the debtor who would be altogether deprived of the benefits of section 30. Such a result could not possibly have been intended, and we should try to avoid it as far as possible. In *Misri Lal and others v. Alexander Gardner and others* (1), a Bench of the Allahabad High Court held that any person who has to repay money advanced to an agriculturist as a loan is entitled to the benefit of the provisions in respect of interest contained in section 30. Similarly in *Bireshwar Das Babuli and others v. Uma Kant Pandey* (2), another Bench of the same High Court held that the word "debtor" in section 30 should not be limited to the person who took the loan, and can apply to the successor of the person to whom the loan was granted. We think that on a strictly literal interpretation of the word "debtor", it is possible to apply it to any one who has to pay the

(1) (1936) A. L. J. R., 1250.

(2) (1937) A. L. J. R., 303.

debt, be he the legal representative or a transferee of the original debtor. We also consider it desirable that the Act should be administered uniformly in the whole of the United Provinces. We should, therefore, so far as possible, try to avoid a conflict in the interpretations put by the two courts of highest jurisdiction in the province. So the conclusion reached by us is that not only the original debtor, but also his legal representatives and successors are entitled to the benefit of the provisions of section 30. For the same reasons we think that the word "judgment-debtor" used in section 30(2) should not be confined to the original judgment-debtor, but should extend to his successors and legal representatives who are subsequently substituted in his place.

We feel satisfied that when the loan was advanced to Yusuf Husain Khan, he was an agriculturist within the meaning of the Act. In fact the position of Yusuf Husain Khan as an agriculturist at the time when the loan was advanced to him does not appear to have been disputed in the lower court. Therefore the money advanced to him by the Allahabad Bank was clearly a loan within the definition of that term contained in the Act. It is not necessary that the transferee of the original debtor should also be an agriculturist. If he is a "debtor" in the sense of a person liable to pay the debt, he is entitled to the benefit of section 30(1) of the Act. Similarly he would be entitled to the benefit of section 30(2) if he is a judgment-debtor, irrespective of the consideration whether he is an agriculturist or not. We are, therefore, of opinion that the necessary conditions of section 30 are satisfied, and that Jagmohan Dass was entitled to the benefit of the provisions of that section.

Next it is contended that in any case the amendment made on the application of Jagmohan Dass should enure only for his benefit, and should be limited to his share. It is urged that Beni Madho, Basant Rai and Girdhari Lal not having joined in the application and not being shown to be agriculturists, the decree

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could not be amended in their favour. In view of the interpretation which we have placed above on section 30, this contention loses all its importance. Having held that the debtor claiming the benefit of section 30 need not be an agriculturist, Beni Madho, Basant Rao and Girdhari Lal would be entitled to the benefit of section 30 just as much as Jagmohan Dass whether they were shown to be agriculturists or not. In the circumstances the application made by Jagmohan Das could well be treated as an application for amendment of the decree for the benefit of all the judgment-debtors, and we think that it has been rightly so treated by the lower court.

It has also been argued that the lower court was wrong in fixing instalments under section 5 because the conditions laid down in section 8 were not satisfied in the case. Section 8 provides that no person shall be deemed to be an agriculturist for the purposes of section 5 "unless he was an agriculturist both at the time of the advance of the loan as well as at the date of the suit." Section 5 provides that the court has power to fix instalments after the passing of decrees on the application of the judgment-debtor. For the reasons given by us in dealing with section 30, we think that the word "judgment-debtor" as used in section 5 should also be construed* in the sense of the person liable for payment of the decree for the time being, or in other words to include the legal representatives and transferees of the original judgment-debtor. The word "agriculturists" has been used in section 5 only in the description of the decrees in which instalments can be fixed. They are described as "any decree for money or preliminary decree for sale or foreclosure passed . . . against an agriculturist." Thus according to the terms of section 5, all that is necessary is that the decree should have been passed against an agriculturist. In the present case, the decree of the Bank was admittedly passed against Yusuf Husain Khan, who, as we have

already held, was an agriculturist. Turning next to section 8, there is no doubt that Yusuf Husain Khan was an agriculturist both at the time of the loan as well as at the date of the suit. We are, therefore, of opinion that the conditions of section 8 also were satisfied in the case. Difficulty can, however, arise in cases in which the original debtor has died, or has made an assignment of the mortgaged property, before the suit. In such a case, the suit will be instituted, and the decree passed, against the legal representatives or the assignees of the original debtor. For the application of section 5, it is necessary to show that the decree was passed against an agriculturist. The language of section 8 would seem to read as if it referred to the same person, and to require that the person referred to should have been an agriculturist at the time of the advance of the loan as well as at the date of the suit. But it would be impossible to apply the section in that sense in cases in which the original debtor has died or has ceased to possess any interest in the mortgaged property before the institution of the suit. The reasonable construction in such a case, therefore, would be to require proof about the original debtor being an agriculturist at the time of the advance of the loan, and about his successor or legal representative against whom the decree is passed satisfying that condition at the date of the suit. As we have already stated, this complication does not arise in the present case, but we have thought it proper to express our opinion in respect of it, because the matter was fully argued before us, and the question arises in certain other cases pending in the court.

As regards the amendments ordered by the lower court, the only amendment which has been questioned by the applicant is the one reducing the rate of interest from the date of the lower court's order from $5\frac{1}{2}$ per cent. to $3\frac{1}{2}$ per cent. per annum simple. This reduction has presumably been made under section 4 of the Act. The case is covered by the Full Bench decision of

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this Court in *Jhamman Lal and others v. Surat Singh and others* (1), in which it was held that section 4 of the Agriculturists' Relief Act does not apply to decrees passed before the Act, and that future interest allowed in such decrees, though subject to reduction under section 30 according to the rates specified in Schedule III of the Act, is not liable to further modification according to the rate notified by the Government under section 4(2) of the Act. It has been pointed out to us that a Bench of the Allahabad High Court in *Manmohan Das v. Izhar Husain and others* (2) has put a contrary interpretation on the provisions of section 4. It is enough to say that we are bound by the Full Bench decision of our Court, and must adhere to it.

We accordingly allow application No. 15 of 1936 in part, and modify the order of the court below in so far that interest will be calculated at the rate of $5\frac{1}{2}$ per cent. per annum simple from 8th May, 1935, right up to 14th January, 1936. From 15th January, 1936, till realization, the rate of interest will be $5\frac{1}{4}$ per cent. per annum simple. In all other respects the decree of the lower court will be maintained. As victory has been divided, the parties will bear their respective costs in this Court.

Application No. 28 of 1936 is dismissed. No order as to costs.

(1) (1937) I.L.R., 13 Luck., 287.

(2) (1937) A. L. J. R., 370.