

## REVISIONAL CIVIL

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

1937  
August 12,

GANESH SINGH AND ANOTHER (PLAINTIFFS-APPLICANTS) *v.*  
RAM SARUP (DEFENDANT-OPPOSITE PARTY)\*

*United Provinces Agriculturists' Relief Act (XXVII of 1934), section 5—Application for execution of decree made just before expiry of 12 years prescribed under section 48, Civil Procedure Code—Judgment-debtor applying under section 5, Agriculturists' Relief Act, after expiry of 12 years of decree—Application under section 5, Agriculturists' Relief Act, if competent—Court, if can grant instalments on that application—Remedy open to decree-holder on default in payment of instalments.*

Where a decree-holder's application for execution is made just before the period of twelve years has expired and while it is before the court the judgment-debtor makes an application under section 5 of the United Provinces Agriculturists' Relief Act, the application under section 5 is not incompetent on the ground that the period of 12 years prescribed by section 48 of the Code of Civil Procedure had expired when that application was made and the court is quite justified in allowing instalments on that application. The decree-holder will not be debarred from obtaining relief if default is made in payment of instalments firstly because in the event of default in the payment of instalments the execution application can be regarded as revived and secondly because according to the provisions of the fourth sub-clause of section 3 of the Agriculturists' Relief Act, which has to be read along with the provisions of section 5 of the Act, on the occurrence of default in the payment of instalments, a 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.

Mr. *Salig Ram*, for the applicants.

Mr. *Murli Manohar Lal*, for the opposite party.

SRIVASTAVA, C.J. and SMITH, J.:—This is an application in revision against an order of the learned Munsif

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\*Section 115 Application no. 170 of 1936, against the order of Babu Girish Chandra, Munsif, Havali, Lucknow, dated the 11th of August, 1936.

of Havali, Lucknow, by which he allowed instalments in respect of a certain decree, and fixed future interest at  $3\frac{1}{4}$  per cent.

The decree in question was a simple money decree which was passed as long ago as the 7th of January, 1924. Just before the period of twelve years prescribed by section 48 of the Code of Civil Procedure expired, an execution application was made by the decree-holders on the 3rd of January, 1936, and on the 23rd of April, 1936, the judgment-debtor made an application under sections 4, 5 ad 30 of the United Provinces Agriculturists' Relief Act, though subsequently it was confined to section 5. In the end the learned Munsif passed the order which has given rise to the present application in revision.

The only point taken by the learned counsel for the applicants is that as the period of twelve years prescribed by section 48 of the Code of Civil Procedure had expired before the judgment-debtor's application under the Agriculturists' Relief Act was made, that application was incompetent. We can see no point in this argument, in view of the fact that the decree-holders' application for execution had been made just before the period of twelve years had expired, and it was before the Court when the judgment-debtor's application was made. The learned counsel has suggested that as by this time twelve years have expired since the date of the decree, his clients will not be able to make any fresh application in execution in the event of the judgment-debtor's making default in the payment of the instalments. There are, we think, two answers to this objection. One is that in the event of default in the payment of the instalments the execution application of the 3rd of January, 1936, could be regarded as revived. The other is that according to the provisions of the fourth sub-clause of section 3 of the Agriculturists' Relief Act, which has to be read along with the provisions of section 5 of the

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Act, on the occurrence of default in the payment of instalments, a decree-holder "may, notwithstanding the provisions or any law for the time being in force, immediately enforce payment of the whole amount then remaining due under the decree". The result is that we think the learned Munsif was quite justified in allowing instalments to the judgment-debtor, and that his action will in no way debar the decree-holders from obtaining relief if default is made in the payment of the instalments.

The result is that this revisional application is dismissed with costs.

*Application dismissed.*

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## APPELLATE CIVIL

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*Before Mr. Justice G. H. Thomas and  
Mr. Justice Ziaul Hasan*

1937  
August 16,

LALA PARSOTAM DAS (PLAINTIFF-APPELLANT) v. SYED ALI  
HAIDAR AND OTHERS (DEFENDANTS-RESPONDENTS)\*

*Registration—Property not intended to be mortgaged included in the mortgage deed to give jurisdiction for registration—Registration, if valid—Transfer of Property Act (IV of 1882), sections 54, 91 and 92—Sale-deed, registration of—Registration of sham deed of sale, whether passes ownership—Civil Procedure Code (Act V of 1908), order XXI, rule 63—Encumbrances noted in sale-proclamation—No order that property sold subject to encumbrances—Auction-purchaser, if can question validity of encumbrances—Order under rule 63 of Order XXI, Civil Procedure Code, when conclusive—Subrogation—Auction-purchaser discharging prior mortgage, whether subrogated to rights of previous mortgage.*

Where a portion of the mortgaged property is entered in the mortgage-deed merely with the object of getting the deed registered in the office of a certain sub-registrar and it is never intended to make that property form part of the security, the

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\*First Civil Appeal no. 114 of 1935, against the decree of Saiyid Qadir Hasan, Civil Judge of Bara Banki, dated the 23rd of May, 1935.