

only. Admittedly there was no such instrument in the present case. The title to the plot in suit therefore did not pass from Ram Charan to Sita Ram or Ganga Din and Ram Charan's mortgage of it must be given effect to against Sita Ram and Ganga Din.

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The appeal is allowed with costs and the decree of the trial court modified so as to decree the plaintiff's suit in respect of plot no. 1076 also.

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*Appeal allowed.*

### MISCELLANEOUS CIVIL

*Before Mr. Justice G. H. Thomas, Acting Chief Judge and  
Mr. Justice Ziaul Hasan*

THAKUR RAGHURAJ SINGH (APPLICANT) v. R. B. LALA  
HARI KISHEN DAS AND ANOTHER (OPOSITE-PARTY)\*

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*United Provinces Agriculturists' Relief Act (XXVII of 1934), sections 5 and 30—Civil Procedure Code (Act V of 1908), sections 115 and 109—Revision whether lies against an order amending a decree under section 5, Agriculturists' Relief Act—Mortgage suit—Compromise decree in mortgage suit providing for satisfaction of decree by judgment-debtor executing a sale-deed of portion of mortgaged property—Section 5, if applies to such decree—Section 5, Agriculturists' Relief Act applies to decrees for payment of money—Construction of decrees—Discretion of court not to apply section 5 to a decree—Compromise decree not providing for payment of interest—Section 30, Agriculturists' Relief Act, if applies to such decree—Order dismissing an appeal as premature, whether a final order under section 109, Civil Procedure Code.*

High Court has power under its revisional jurisdiction to amend the decree so as to make it conform with the judgment and it is not necessary to send back the case to the lower court for amendment of the decree.

There is no bar to an application for revision being entertained against an order of the original court under section 5 if that court has exercised a jurisdiction which was not vested in it by law. *Man Mohan Das v. Izhar Husain* (1), followed. *Girdhari Lal v. Mohammad Ishrat* (2), distinguished.

\*Privy Council Appeal No. 21 of 1935, for leave to appeal to His Majesty in Council against the order of a Bench of this Court, dated the 18th of October, 1935.

(1) (1937) A.L.J., 370.

(2) (1937) O.W.N., 1153.

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Section 5 of the Agriculturists' Relief Act is meant to apply to such decrees as contain a direction for payment of money. Where, therefore, a mortgage decree based on a compromise provides for satisfaction of the decree by the judgment-debtor executing a sale-deed of a portion of the mortgaged property in favour of the decree-holder and there is absolutely no provision for payment of any money by the judgment-debtor that section has no application.

The words "unless for reasons to be recorded it directs otherwise" in section 5 of the United Provinces Agriculturists' Relief Act clearly show that in certain cases the court has discretion not to apply the provisions of section 5 to a decree. Where, therefore, the judgment-debtor agrees to pay off the decretal amount by executing a deed of sale in favour of the decree-holder it would not be just to allow him to resile from that agreement and section 5 cannot be applied.

Section 30 of the United Provinces Agriculturists' Relief Act regulates the rate of interest payable on a loan and the intention obviously is to regulate the amount of interest which is to be paid by a debtor to a creditor. Where, therefore, a compromise does not contain any provision for payment of any interest but the decretal amount is to be satisfied by the execution of a deed of sale by the judgment-debtor, the decree cannot be dealt with under section 30 of the United Provinces Agriculturists' Relief Act.

An order dismissing an appeal as premature cannot be said to be a final order within the meaning of section 109 of the Code of Civil Procedure.

Mr. *Radha Krishna Srivastava*, for the applicant.

Messrs. *Niamat Ullah, M. Wasim, Ali Hasan* and *B. N. Khanna*, for the opposite party.

THOMAS, A. C. J. and ZIAUL HASAN, J.:—These four applications, the first of which is an application for amendment of a decree of the learned Civil Judge of Sitapur, the second is an application for revision of an order of the learned Civil Judge of Sitapur amending the decree under sections 5 and 30 of the Agriculturists' Relief Act, the third is an application for leave to appeal to His Majesty in Council against an order of a Bench of this Court dated the 18th of October, 1935 and the fourth is an application for transfer of the execution case pending in the Court of the Civil

Judge of Sitapur, arise out of an application for execution of a decree in the following circumstances:

On the 17th of February, 1928, Thakur Raghuraj Singh (hereafter to be called the judgment-debtor) executed a deed of simple mortgage for Rs.1,45,000 in favour of Rai Bahadur Hari Kishen Das (hereafter to be called the decree-holder). On the 25th of October, 1931, he executed another deed of mortgage for a sum of Rs.1,53,000 in favour of the decree-holder. The first mortgage carried compound interest at 10 per cent. per annum with six-monthly rests and the second mortgage, at 12 per cent. per annum with six-monthly rests. The decree-holder brought a suit on foot of both these mortgages against the judgment-debtor as well as Thakur Sheo Ganga Baksh Singh who was a subsequent transferee. This suit was compromised between the parties on the 4th of July, 1933. By this compromise it was declared that the amount due to the decree-holder up to the 4th of July, 1933, was Rs.3,88,300-2-6 for principal, Rs.9,648-11-11 on account of interest and Rs.5,523 for costs and that future interest on the total amount of Rs.4,03,471-14-5 would run from the 5th of July, 1933, till payment at annas eight per cent. per mensem. It was however provided that the judgment-debtor would execute in favour of the decree-holder within one week a sale-deed in lieu of the decretal amount transferring such villages out of those mortgaged as may be selected by the decree-holder and which may be free from all transfers and attachment and be of sufficient value to satisfy the decree. The defendant No. 2, namely, Thakur Sheo Ganga Baksh Singh was to execute a deed of relinquishment in respect of the villages to be sold to the decree-holder. It was further provided that the sale-deed to be executed shall be absolute but that the decree-holder shall have no objection to re-transferring the villages sold to him and executing a sale-deed in favour of the judgment-debtor after the expiry of five years if in any month of Jeth the judgment-debtor should

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pay the whole or a portion of the decretal amount. As to the price of the property it was stipulated that it would be calculated at the rate of annas six per cent. per mensem on the net profits of the year 1339 Fasli, that is to say, if the net profits amount to Rs.4-8-0 a year, the price will be Rs.100. After the execution of the sale-deed in favour of the decree-holder, the compromise goes on to say, the rest of the mortgaged property shall be free from encumbrance.

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On the 25th of May, 1934, the decree-holder made an application for execution of the decree by enforcement of the compromise. To this application the judgment-debtor objected on the ground *inter alia* that the decree was a declaratory one and that if the decree-holder wanted to enforce the terms of the compromise his remedy was by a separate suit. Various issues were framed by the learned Civil Judge for decision of the judgment-debtor's objections but before proceeding to determine them he decided two issues, with only one of which we are at present concerned, namely, whether the decree was a declaratory one or was capable of execution. The learned Civil Judge held that the decree was partly declaratory and partly capable of execution. He, however, simply made a note of this decision of his in order to proceed with the other objections of the judgment-debtor and deferred giving reasons for his decision till the final disposal of the objections. Against this order the judgment-debtor filed an appeal in this Court but a Bench of this Court was of opinion that the appeal was premature as the learned Civil Judge had not finally decided the judgment-debtor's objections. The appeal was accordingly dismissed and the Privy Council Appeal No. 21 of 1935 has been brought by the judgment-debtor against the order of this Court.

On the 24th of July, 1935, the judgment-debtor applied to the learned Civil Judge of Sitapur for amendment of the decree under sections 5 and 30 of the United

Provinces Agriculturists' Relief Act and on the 11th of January, 1936, this application was allowed and the decree amended. The application under section 115 of the Code of Civil Procedure (No. 30 of 1936) has been brought by the decree-holder against this order of the court below.

We have decided to dispose of all these applications together as they are closely connected with each other. First of all we take up the decree-holder's application No. 75 of 1938 for amendment of the decree. It is contended that clause 2(1) of the decree prepared by the office of the lower court is against the terms of the compromise on which the decree was passed and it is not denied by the learned counsel for the judgment-debtor that it is so. In fact the variance in the decree from the terms of the compromise is manifest since clause 2 of the decree gives the decree-holder a right of sale of the property whereas there is no such provision in the compromise. It is contended however that the decree can be amended by the court which passed it or by this Court if it had come before this Court in appeal. We are of opinion however that this Court has power under its revisional jurisdiction to amend the decree so as to make it conform with the judgment and that it is neither necessary nor convenient to send back the case to the lower court for amendment of the decree. On the compromise being filed on the 4th of July, 1933, the order of the court naturally was that a decree be prepared in terms of the compromise but though the compromise was made a part of the decree, the office of the court below added some provisions in the decree which were no part of the compromise. We therefore allow this application for amendment of the decree and order that the provisions of the decree which go beyond the terms of the compromise be deleted.

Next we come to the decree-holder's application for revision of the learned Civil Judge's order amending the

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decree under sections 5 and 30 of the United Provinces Agriculturists' Relief Act.

A preliminary objection was taken by the learned counsel for the judgment-debtor that no revision lies against an order amending a decree under section 5 of the United Provinces Agriculturists' Relief Act. No doubt it has been held by this Court that no revision lies against an order passed by the appellate court under section 5(2) of the United Provinces Agriculturists' Relief Act but the present application is not against such an order. The learned counsel relied on the case of *Girdhari Lal v. Mohammad Ishrat Ali* (1) decided by one of us but in that case also the application for revision, though brought by the creditor, was against an appellate order passed under sub-section (2) of section 5 and not against the original order amending a decree under that section. We consider that there is no bar to an application for revision being entertained against an order of the original court under section 5 if that court has exercised a jurisdiction which was not vested in it by law. Such a revision was entertained in the case of *Man Mohan Das v. Izhar Husain* (2) relied on by the learned counsel himself. We therefore over-rule the preliminary objection.

On behalf of the decree-holder applicant it is contended that the decree in question is not one to which the provisions of the United Provinces Agriculturists' Relief Act could be made applicable and after hearing the arguments of the learned counsel of both sides at length, we have come to the conclusion that there is much force in this contention. Section 5 of the United Provinces Agriculturists' Relief Act runs as follows:

"(1) Notwithstanding anything contained in the Code of Civil Procedure, 1908, the court shall, unless for reasons to be recorded it directs otherwise, at any time, on the application of the judgment-debtor and after notice to the decree-holder, direct that any decree for money or preliminary

(1) (1937) O.W.N., 1153.

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

decree for sale or foreclosure passed by it or by any court whose business has been transferred to it against an agriculturist, whether before or after this Act comes into force, shall be converted into a decree for payment by instalments drawn up in such terms as it thinks fit in accordance with the provisions of section 3:

Provided that any final decree for sale which has not been fully satisfied, passed before this Act comes into force, shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, be revisable in the same manner and to the same extent as the preliminary decree for sale or foreclosure passed against an agriculturist.

(2) If, on the application of the judgment-debtor, the Court refuses to grant instalments, or grants a number or period of instalments which the judgment-debtor considers inadequate, its order shall be appealable to the court to which the court passing the order is immediately subordinate, and the decision of the appellate court shall be final."

It will be seen that this section applies to the following decrees only—

- (a) A decree for money,
- (b) a preliminary decree for sale,
- (c) a preliminary decree for foreclosure, and
- (d) a final decree for sale which has not been fully satisfied.

A common feature of all these decrees is that the decree provides for payment of money by the judgment-debtor to the decree-holder but there is no such provision in the decree in the present case. After carefully considering the terms of section 5 of the United Provinces Agriculturists' Relief Act, we are definitely of opinion that that section is meant to apply to such decrees as contain a direction for payment of money. As noted above, the terms of the decree based on the compromise provide for satisfaction of the decree by the judgment-debtor executing a sale-deed of a portion of the mortgaged property in favour of the decree-holder and there is absolutely no provision for payment of any money by the judgment-debtor.

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The learned counsel for the judgment-debtor lays great stress on the opening words of the compromise, namely,—

“*Digri nilam matluba qatai*”. And argues that these words showed that the decree was a final decree for sale. We are unable to accept this argument. The words quoted above, in our judgment, were only used to describe the nature of the suit and did not occur in the operative portion of the compromise. Moreover, the decree cannot in our opinion be said to be a decree for sale when the compromise which is the basis of the decree gives no power of sale at all to the decree-holder. In any case the decree in question not being one which can in any sense be said to be a decree for payment of money, the provisions of section 5 do not apply to it.

The learned counsel for the judgment-debtor relies on some cases of this Court and of the Allahabad High Court in which it was held that a decree which provided for instalments could be amended under section 5 of the United Provinces Agriculturists' Relief Act and also on *Man Mohan Das v. Izhar Husain* (1) in which it was held that a decree passed on a compromise can also be similarly amended. The point however is not that section 5 of the Act does not apply to instalment decrees or to decree passed on compromises but that it does not apply to those decrees, whether passed on a compromise or otherwise, which do not provide for payment of money by the judgment-debtor to the decree-holder, so that the cases relied on by the learned counsel do not help him.

Even if it be supposed that the decree in question is one to which section 5 of the Act applies, the words—

“unless for reasons to be recorded it directs otherwise”, clearly show that in certain cases the court has discretion not to apply the provisions of section 5 to a decree and this we think is a case to which section 5 should



not be applied, the reason being that the judgment-debtor agreed to pay off the decretal amount by executing a deed of sale in favour of the decree-holder and it would not, we consider, be just to allow him to resile from that agreement.

So far as section 30 of the United Provinces Agriculturists' Relief Act is concerned, the remarks made by us above as to the applicability of section 5 apply with still greater force to section 30. Section 30 regulates the rate of interest payable on a loan and the intention obviously was to regulate the amount of interest which is to be paid by a debtor to a creditor. In the present case, however, though in the opening paragraph of the compromise a rate of future interest is specified, the operative portion of the compromise does not contain any provision for payment of any interest. Nor could there be any such provision seeing that the decretal amount was to be satisfied by the execution of a deed of sale by the judgment-debtor.

We are therefore of opinion that the decree in question could not be dealt with under sections 5 and 30 of the United Provinces Agriculturists' Relief Act. We accordingly allow the present application for revision with costs and set aside the order of the court below amending the decree under the aforesaid sections.

We now come to the judgment-debtor's application for leave to appeal to His Majesty in Council against the order of this Court, dated the 18th of October, 1935. That order dismissed the applicant's appeal as premature and cannot in our opinion be said to be a final order within the meaning of section 109 of the Code of Civil Procedure. Moreover, if the order of this Court be deemed to have affirmed the lower court's order we do not find that any substantial question of law is involved in the case. We therefore dismiss the application for leave to appeal, with costs.

Now remains the decree-holder's application praying that the execution case be transferred to the court of

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Mr. P. Kaul at present Civil Judge of Mohanlalganj at Lucknow, on the ground that the preliminary issues arising from the judgment debtor's objections were decided by him. The learned counsel for the judgment-debtor has no objection to the execution case being transferred to that officer and we think that it is advisable that the case be transferred to him especially as it was he who decided the judgment-debtor's objection in part. We therefore order that the case be transferred from the Court of the Civil Judge Sitapur to that of Mr. P. Kaul, Civil Judge of Mohanlalganj at Lucknow.

### APPELLATE CIVIL

*Before Mr. Justice A. H. de B. Hamilton and  
Mr. Justice R. L. Yorke*

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March, 4.

RAZA HUSAIN KHAN AND OTHERS (DEFENDANTS-APPELLANTS)  
v. SAIYID MOHAMMAD HUSAIN, PLAINTIFF AND ANOTHER  
DEFENDANT (RESPONDENTS)\*

*Grant—Crown grant—Houses granted to taluqdars by a general sanad before Oudh Estates Act subject to the condition that no taluqdar should transfer them to any one not taluqdar or the heir to a taluqdar—“Taluqdar” and “heir to a taluqdar” meaning of—Construction of the grant—Houses, whether appurtenant to taluqa and to go with taluqa—Transfer of houses, limitations to—Section 3, Crown Grants Act, meaning of.*

The Kaisarbagh Palace in the city of Lucknow had been forfeited by the British Government on the annexation of Oudh. In 1861 the Government with the object of providing town residences in the capital to the taluqdars of Oudh, granted all the houses situate in the Kaisarbagh Palace to the taluqdars of Oudh by means of a general sanad issued by the Chief Commissioner of Oudh on certain conditions. One of these conditions was that no taluqdar shall transfer his share in the buildings and appurtenances thereto to any one not a taluqdar or the heir to a taluqa and that in case of breach of the above condition the grant shall be resumed by the Government.

*Held*, that the expression “heir to a taluqa” as used in the sanad means the heir apparent to such person as was then

\*First Civil Appeal No. 77 of 1936, against the decree of Mr. Brij Krishna Topa, Civil Judge of Malihabad at Lucknow, dated the 31st of May, 1936.