1939

MRS. VIOLET PETERSON v. MRS. ADELAIDE ELIZABETH FORBES

stated in section 10 of the Code of Civil Procedure on that basis, I am not able to hold that the matter in issue in these procedings before me is also directly and substantially in issue in a previously instituted suit between the same parties litigating under the same title, etc. etc.

This application accordingly fails and is dismissed.

Yorke J.

Application dismissed.

APPELLATE CIVIL

Before Mr. Justice G. H. Thomas, Chief Judge and Mr. Justice Radha Krishna Srivastava

1939 *November*, 29

THE DEPUTY COMMISSIONER, KHERI, MANAGER, COURT OF WARDS, MAHEWA ESTATE (PETITIONER-APPELLANT) *v.* KR. KHUSHWAQT RAI (CLAIMANT-RESPONDENT)*

United Provinces Encumbered Estates Act (XXV of 1934), section 14(4)(a), (5) (6)—Principal in section 14, meaning of—Statement or settlement of account within clause 6, whether to be between parties to original transaction only.

The ordinary meaning of the word "principal" is "the capital sum lent as distinguished from interest". By clauses (5) and (6) of the section a rule of law has been laid down by the United Provinces Encumbered Estates Act for the purpose of ascertaining the principal under clause (*a*) and they lay down that any amount of interest accruing or accumulating after the 31st December, 1916, cannot be treated as part of principal.

The contention that the statement or settlement of accounts and the contract subsequent to December 31, 1916, contemplated by clause (6) of section 14 of the United Provinces Encumbered Estates Act must be between the parties to the original transaction, or their legal representatives, has no force in view of the clear language of the clause.

Mr. *H. S. Gupta,* Government Advocate, for the appellant.

Messrs. *M. Wasim* and *Ali Hasan,* for the respondent.

THOMAS, C.J. and RADHA KRISHNA, J.:—The facts giving rise to these appeals are that Messrs.

*First Civil Appeal No. 82 of 1937, against the order of Mr. Mahabir Praasd Varma, Special Judge of 1st Grade, Kheri, dated the 1st May, 1937.

L. D. W. Hearsey and G. E. C. Hearsey executed a mortgage-deed on the 26th April, 1915, for a principal sum of Rs.20,000, carrying interest of annas 10 per cent. per mensem in respect of three villages in favour of respondent (*vide* Ex. A-3 in appeal No.. 83 of 1937). The same two persons on the 26th May, 1921, mortgaged 16 villages, including the three villages mortgaged under the mortgage-deed dated the 26th April, 1915, for a sum of Rs.1,00,000 in favour of Rani Rajeshwar Devi, the senior Rani of Thakur Jai Indra Bahadur Singh, the taluqdar of Mahewa, leaving, out of the consideration a sum of Rs.20,000 for payment to the respondent (*vide* Ex. A-4 in appeal No. 83 of 1937). The amount of Rs.20,000 made *dehanid* and due on the mortgage of the 26th April, 1915, was not paid by Rani Rajeshwari Devi.

Thomas C.J. and Radha Krishna J.

The said Rani together with her husband, Thakur Jai Indra Bahadur Singh, executed on the 28th July, 1923, a deed of mortgage for a sum of Rs.30,000 in favour of the respondent. The principal amount of Rs.20,000 and interest thereon up to that date amounting to Rs.1,884-14-9 was set off towards the mortgage consideration and a sum of Rs.8,115-1-3 was received in cash (*vide* Ex. 1). The estates of Rani Rajeshwari Devi and Thakur Jai Indra Bahadur Singh are now under the superintendence of the Court of Wards.

The Deputy Commissioner of Kheri, manager of the Court of Wards, representing the estates of Thakur Jai Indra Bahadur Singh and Rani Rajeshwari Devi, made two separate applications on behalf of each of them under section 4 of the United Provinces Encumbered Estates Act praying that the provisions of that Act be applied to them. The applications were forwarded to the Special Judge, First Grade, Kheri, and necessary notices under section 9 of the Act were published in the Gazette.

Thereupon the respondent to the two appeals, who held the mortgage in his favour dated the 28th July,

1939

THE DEPUTY COMMISSIONER, KHERI, MANAGER COURT OF WARDS, MAHEWA ESTATE v. KUNWAR KHUSHWAQT RAI

1923, filed a written statement of his claim under section 9(1) of the United Provinces Encumbered Estates Ac' in each case claiming a total amount of Rs.63,958 on the basis of the said mortgage.

The claims in the two cases were decided together. The debtors in their written statements contested the claim on the ground that the principal amount for the purposes of section 14 of the United Provinces Encumbered Estates Act could not exceed Rs.28,115-1-3. They further alleged that the claimant had agreed to accept Rs.56,230-2-6 in full satisfaction of his claim, and no more than that amount could be allowed to him.

Thomas C.J. and Radha Krishna J

The learned Special Judge decreed the claim for Rs.60,000, i.e. double of Rs.30,000 the amount for which Ex. 1 was executed with proportionate costs and interest at $3\frac{1}{4}$ per cent. per annum from the date of the application till the date of the payment. The learned Special Judge incorporated in the decree a condition to the effect that the claim will be enforced either against Thakur Jai Indra Bahadur Singh or against Rani Rajeshwari Devi or against both, but in all to the extent of the amount decreed only.

The debtors have filed the two appeals mentioned above, one from the decree in one case and the other from the decree in the other case. These appeals have been heard together.

The points that have been urged in these appeals are that the principal amount for the purposes of section 14 of the United Provinces Encumbered Estates Act should have been taken as Rs.28,115-1-3, i.e. Rs.20,000 actually advanced as principal by the deed dated the 26th April, 1915, and Rs.8,115-1-3 representing the cash advanced at the time of the execution of Ex. 1, and that in the circumstances of the case no costs should have been allowed to the claimant.

The learned Special Judge has treated the entire consideration of the mortgage-deed (Ex. 1) as principal

money for the purposes of section 14 of the United Provinces Encumbered Estates Act on the ground that the applicants are not the representatives of the mortgagors of the deed dated the 26th April, 1915, executed by Messrs. L. D. W. Hearsey and G. E. C. Hearsey, and, therefore, as regards them the amount of principal is Rs.30,000 and not Rs.20,000. The second ground in support of his finding is that it could not be said that the mortgage deed in suit was in the course of the original transaction.

Thomas C.J. and Radha Krishna J.J.

Having regard to the provisions of section 14 (4) (*a*) of the United Provinces Encumbered Estates Act, we are of opinion that the principal, which was at the date of the application still due to the claimant, must be the amount of Rs.20,000 *plus* Rs.8,115-1-3, which was advanced on the 28th July, 1923, in cash. The ordinary meaning of the word "principal" is "the capital sum lent as distinguished from interest." It may be that the total liability, barring the cash advance, undertaken by the debtors when executing Ex. 1 on the 28th July, 1923, was fixed at Rs.28,115-1-3, but this amount consisted of the capital amount by which the claimant was out of pocket *plus* interest thereon from the 26th May, 1931, to the 28th July, 1923. By clauses (5) and (6) of the section a rule of law has been laid down by the United Provinces Encumbered Estates Act for the purpose of ascertaining the principal under clause (*a*) and they lay down that any amount of interest accruing or accumulating after the 31st December, 1916, cannot be treated as part of principal. In the present case it is to be noted that if we add Rs.1,884-14-9 to Rs.20,000 and treat the total as principal as agreed in Ex. 1, then we shall be transgressing the provisions of clause (6) mentioned above. This clause abrogates all contracts between the parties by which interest accumulating after the 31st December, 1916, is converted into principal. Further, it is to be noticed that clause (6) makes no distinction between a case

1939

THE DEPUTY COMMISSIONER, KHERI, MANAGER, COURT OF WARDS, MAHEWA ESTATE v. KUNWAR KHUSHWAQT RAI

where the prior debt, (principal *plus* interest), of a date earlier than 31st December, 1916, is renewed by the successor-in-interest of the original debtor, and a case where that liability is undertaken by a person other than such legal representative. We are of opinion that the question whether Thakur Jai Indra Bahadur Singh and Rani Rajeshwari Devi were the successors-in-interest of Messrs. L. D. W. Hearsey and G. E. C. Hearsey or not is entirely immaterial to the question under consideration. They are applicants under section 4 of the Act and that is enough.

Thomas C.J. and Radha Krishna J.

The contention raised by the learned counsel for the respondent that the statement or settlement of accounts and the contract subsequent to 31st December, 1916, contemplated by clause (6) of section 14 of the United Provinces Encumbered Estates Act must be between the parties to the original transaction, or their legal representatives, seems to have no force in view of the clear language of the clause.

The other ground upon which the learned Special Judge decided against the debtors is that the mortgage-deed, (Ex. 1), was not executed in the course of the original transaction. In our opinion this argument is the same as the first argument but only in another form.

In our opinion the principal amount for the purposes of section 14 of the United Provinces Encumbered Estates Act consists of Rs.20,000 originally advanced by the respondent on the 26th April, 1915, and Rs.8,115-1-3 further advanced in cash on 28th July, 1923, both of which were still due at the date of the application. Under section 14(4)(*a*) of the United Provinces Encumbered Estates Act the claimant was not entitled to more than that amount as interest. The claimant had claimed a sum of Rs.63,958. He will be allowed Rs.56,230-2-6 and no more.

As regards costs in the court below, we are of opinion that the same principle should apply as applicable to

a mortgage suit by a mortgagee. Under section 14(4) and (7) the learned Special Judge had complete discretion in the matter of allowing costs. He has allowed proportionate costs in his court to the claimant and we see no grounds either on the principle or on the facts of the present case to interfere with that order.

1939

THE DEPUTY COMMISSIONER, KHERI, MANAGER COURT OF WARDS, MAHEWA ESTATE v. KUNWAR KHUSHWAQT RAI

The result is that the appeals are partly allowed, the decrees passed by the learned Special Judge are modified only to this extent that in place of Rs.60,000 Rs.56,230-2-6 will be substituted in them. The rest of the decrees shall stand.

As regards the costs of these appeals, we order that the appellants will get their costs in this Court, but the pleader's fee will be taxed only in one appeal, i.e. Appeal No. 82 of 1937 and not in the other appeal.

Thomas C.J. and Radha Krishna J.

Appeal partly allowed.

APPELLATE CIVIL

Before Mr. Justice G. H. Thomas, Chief Judge, and Mr. Justice Radha Krishna Srivastava

MADHUBAN DAS, BABA (APPELLANT) *v.* AVADH BEHARI DAS, BABA AND OTHERS (RESPONDENTS)*

1939 *November* 30

Religious endowment—Definite scheme of management laid down in Endowment deed—Founder if precluded from interfering subsequently.

Where an express provision for the management in the shape of a definite scheme has been laid down in the deed of endowment by the founder, it must be held that the said founder intended to preclude himself from interfering with that scheme at a subsequent stage. Unless the power to change that scheme is reserved, the scheme of management is as irrevocable as the dedication itself.

Messrs. *Haider Husain* and *H. H. Zaidi,* for the appellant.

Messrs. M. *Wasim* and *Ali Hasan,* for the respondent No. 1.

*First Civil Appeal No. 33 of 1937, against the order of Mr. Maheshwar Prasad Asthana, Additional Civil Judge of Gonda, dated the 25th February, 1937.