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to the certificate may belong to a stranger who has no connection with the estate, and the provisions of sub-sections (3) and (4) of section 7 go to indicate that the right to the certificate must have some connection with the right to the estate though it may not be identically the same thing as the right to estate of the deceased. Thus sub-section (3) merely authorises the Court, where the determination of the right to the certificate involves an inquiry into questions of law or fact which seem to the Court to be too intricate and difficult in a summary proceeding to grant a certificate to the applicant if he appears to be the person having *prima facie* the best title to the certificate, but it does not authorise the Court to grant a certificate to any other person who may be best entitled to it,"—and so on.

We think that the learned Judge of the Court below ought not to have disposed of the questions raised before him in the way that he has done. We accordingly set aside his order and send back the record to him so that the question of the right to the certificate may be dealt with in accordance with law.

Costs will abide the result.

*Case remanded.*

31 C. 138.

[138] APPELLATE CIVIL.

*Before Mr. Justice Mitra and Mr. Justice Pargiter.*

PRAYAG KAPRI v. SHYAM LAL.\*

[12th June, 1903].

*Penalty—Interest, rate of—Exorbitant rate—Mortgage—Compound Interest—Date of payment—Transfer of Property Act (IV of 1882), s. 86—Contract Act (IX of 1872), s. 74—Act VI of 1899.*

Simple or compound interest at a high rate is not in itself a penalty within the meaning of s. 74 of the Contract Act.

*Pardhan Bhukhan Lal v. Narsing Dyal* (1), and *Satish Chunder Giri v. Hem Chunder Mookhopadhyu* (2) distinguished.

The mortgagee is ordinarily entitled to interest\* at the rate stipulated in the bond till the date fixed in the mortgage decree for payment. He is also entitled to recover reasonable interest from that date till the date of realisation.

*Rameswar Koer v. Mahomed Mekdi Hossein Khan* (3) and *Maharaja of Bhartpur v. Rani Karno Dei* (4) followed.

[Ref. 10 C. W. N. 1020 ; 16 I. C. 379=18 C. L. J. 43 ; 64 I. C. 247.]

SECOND APPEAL by the plaintiff, Prayag Kapri.

The defendants Shyam Lal and Gajadhar Prosad and their mother executed in favour of the plaintiff a mortgage bond dated 27th April 1896, for a loan of Rs. 98-8. The stipulation as to interest was as follows:—

"We agree to pay interest thereon, at the rate of Rs. 6-4 annas per cent. per mensem, and promise to pay off in one lump sum, the principal with interest thereon, on the 15th Pous 1304 F. S. (4th January 1897), by giving *sira bhao* paddy. If we do not give paddy at the time stated, the interest will run on at the said rate, till the repayment of the amount. We stipulate to pay off the amount of annual

\* Appeal from Appellate Decree No. 1861 of 1900, against the decree of W. H. Vincent, Offg. District Judge of Rhagalpur, dated Aug. 1, 1900, affirming the decree of Parash Chandra Banerjee, Munsif of Benka, dated Feb. 26, 1900.

(1) (1898) I. L. R. 26 Cal. 900.

25 I. A. 179.

(2) (1902) I. L. R. 29 Cal. 823.

(4) (1900) I. L. R. 23 All. 181 ; L. R.

(3) (1898) I. L. R. 26 Cal. 39 ; L. R. 28 I. A. 35.

interest. Should we fail to pay the annual interest, the amount of interest remaining unpaid will be treated as principal, and compound interest will run thereon at the rate of Rs. 6-4 annas per cent. per mensem for each year, and we shall not raise any objection whatever."

[139] The present suit was brought by the plaintiff for Rs. 600 upon the aforesaid mortgage bond. Amongst the pleas taken in defence were (i) that the defendant Gajadhar Prosad had made over a blank stamped paper bearing his signature to the plaintiff's father, and the said defendant was not present at the time of the execution of the bond which was not executed with his knowledge; (ii) and that the interest charged was very high, and that the plaintiff was not entitled to get it. The Munsif held that, having regard to section 74 of the Indian Contract Act as amended by Act VI of 1899, Illustrations (d) and (e), the stipulations as to interest contained in the bond were in the nature of a penalty. Overruling the other objections of the defendants, he accordingly decreed the suit awarding interest at the stipulated rate up to the date fixed for payment and reducing the rate of interest to 18 per cent. per annum after that date to the date of the suit, interest at the rate of 6 per cent. per annum being allowed to run on the amount decreed from the date of the suit till realisation.

On appeal, the District Judge affirmed the decree of the Munsif.

Babu Joygopal Ghose, for the appellant.

Babu Umakali Mukerjee and Babu Surendro Nath Roy, for the respondents.

MITRA AND PARGITER, JJ. This appeal is based on a mortgage bond for Rs. 98-8, dated the 29th of Baisak 1303 (corresponding to the 27th of April 1896) which was executed by the defendants and their mother in favour of the plaintiff.

At the trial in the Munsif's Court the defendant pleaded, first, full payment, secondly, that one of them had signed only a blank bond, and, thirdly, that the interest, 75 per cent., was exorbitant and by way of a penalty. The Munsif found the first two pleas against the defendants, but allowed the third, and decreed the claim granting interest on the mortgage sum at the rate fixed in the bond from the date of its execution till the 15th of Pous 1394 only (that is, the 4th of January 1897) which was the date fixed in the bond for payment. He allowed interest at 18 per [140] cent. per annum from that date till the date on which the suit was filed, and thereafter at six per cent. per annum till the date of realisation. On appeal the learned District Judge confirmed the Munsif's decree.

The plaintiff has now appealed and he takes three objections *first*, that he is entitled to get interest at the rate agreed upon in the bond till the date of realisation; *secondly*, if not that, yet he is entitled to interest at the rate which the Munsif found reasonable till the date of realisation; and, *thirdly*, if not that, yet he is entitled to interest at that reasonable rate till the date fixed in the decree for payment. According to section 86 of the Transfer of Property Act, and the Privy Council decision in the case of *Rameswar Koer v. Mahomed Mehdi Hossein Khan* (1), the plaintiff is entitled to interest in the rate stipulated in the mortgage bond till the date fixed in the Munsif's decree for payment, unless the defendants can show any special grounds why that should not be so.

The defendants suggest two grounds; *first*, that the rate of 75 per cent. interest fixed in the bond is in itself a penalty, and *secondly*, that

(1) (1898) I. L. R. 26 Cal. 39; I. L. R. 25 I. A. 179.

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compound interest running annually at that rate is in itself a penalty, and they contend that these stipulations were inserted in order to enforce prompt payment.

The learned vakil for the respondents has referred to the case of *Pardhan Bhukhan Lal v. Narsing Dyal* (1), and cites a passage from page 310, where the learned Judges remarked that whether a stipulation for increased rate of interest in a bond is a penalty or not is a question of fact rather than of law. That is true, but that case is different from the present, for there is no increase in the rate of interest here, and no case has been cited which in any way supports the two contentions put forward, namely, that interest at 75 per cent. is in itself a penalty, or that compound interest accruing at that rate annually is in itself a penalty. Nor do we see anything in the facts to show that these stipulations, hard though they are, constituted a penalty; otherwise simple interest at a high rate or compound interest at the same rate must always be a penalty. The case is governed by section 74 of the Contract Act as it was amended by Act VI of 1899, and there is nothing therein [141] which would justify us in admitting the soundness of these contentions. It has been laid down in the case of *Satish Chunder Giri v. Hem Chunder Mookhopadhyaya* (2), by this Court, that if there be any fiduciary relation between the parties or any indication that the executant of a bond did not understand it, or any similar plea, the Court might interfere with a stipulation regarding exorbitant interest. But no such plea was taken in this case, unless we suppose such a plea to be included within the second defence, that one of the defendants signed a blank bond, but that has been found to be untrue by both the Courts, and their finding on this question of fact is conclusive. One of the executants, the defendants' mother, was a *purdanashin* lady, but she is no party to this suit.

For these reasons the appellant's contentions must succeed, and he must have interest at the contract rate till the date fixed in the decree for payment.

There remains one more point to be considered. The learned vakils for the respondents contended that the Court should not grant interest after that date. But looking at the remarks by their Lordships of the Privy Council in the case of the *Maharaja of Bhartpur v. Rani Kanno Dei* (3), we find that the appellant is equitably entitled to such further interest, and we fix the amount at six per cent. as given in the decrees of the lower Courts.

The appeal is, therefore, decreed as explained above, and the appellant will have his costs in all the Courts.

*Appeal allowed.*

(1) (1898) I. L. R. 26 Cal. 300.  
(2) (1902) I. L. R. 29 Cal. 823.

(3) (1900) I. L. R. 23 All. 181; L. R. 28. I. A. 35.