

BIRENDRA PRASAD SUKUL AND OTHERS

v.

SURENDRA PRASAD SUKUL AND OTHERS

[SIR MAURICE GWYER, C. J., SIR SHAH SULAIMAN AND
SIR SRINIVASA VARADACHARIAR, JJ.]

1940.

Feb. 14;
Mar. 18.

Bihar Money-Lenders (Regulation of Transactions) Act, 1939 (Bihar Act No. VII of 1939), s. 7—Construction of—Mortgage suit—Liability of a co-debtor—Maximum amount of interest which could be decreed—“Amount of loan mentioned in the document”.

Where several executants of a mortgage had borrowed various sums and the creditor sued one of them for his separate share only, having already realized the balance from the others or settled with them.

Held, that under s. 7 of the Bihar Money-Lenders (Regulation of Transactions) Act, 1939, the maximum amount which the creditor was entitled to recover by way of interest was an amount equivalent to the sum borrowed by the particular defendant who was sued, and not an amount equivalent to the aggregate of the sums borrowed by all the executants of the mortgage.

APPEAL from the High Court at Patna.

Rajeshwari Prasad for the appellants.

Raghubir Singh (P. P. Varma with him) for the respondents.

The material facts and arguments appear sufficiently from the Judgments.

Cur. adv. vult.

SULAIMAN J.—This is a mortgagors' appeal arising out of a suit brought to enforce a mortgage, dated the 1st January, 1915, executed by Debindra Prasad Sukul, defendant No. 4, and Birendra Prasad Sukul, defendant No. 1, for Rs. 100,000 carrying interest at 0-8-0 per cent. per mensem, compounded every second year. The present plaintiffs were by inheritance entitled only to a two-sixths share in the mortgage deed. The rest has gone to the defendants.

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The courts below have found that there was a legal necessity for Rs. 25,000 only, which represented an unpaid purchase money for properties taken by both, while Rs. 25,000 went into the pocket of Debindra alone. The plaintiffs had discharged Debindra Prasad and his sons from all liability and sued to enforce the mortgage against the half share of Birendra and his sons. The amount claimed in the plaint was 1/6th of Rs. 100,000 plus corresponding interest. The courts below have passed a decree for Rs. 12,500 (1/6th of Rs. 75,000) and interest at contract rate up to the date fixed for payment in the decree. The defendants' plea that s. 11 of the Bihar Money-Lenders Act, 1938, should be applied was rejected by the High Court on the ground that the section had been held by a Full Bench to be void : *Sadanand Jha v. Aman Khan*(¹).

Section 11 of the old Act has now been replaced by s. 7 of the new Act (Act VII of 1939), the applicability of which is governed by our ruling in *Surendra Prasad Narain Singh v. Sri Gajadhar Prasad Sahu Trust Estate*(²), decided today.

If the principal sum due from the defendants-appellants were taken to be Rs. 12,500, and if the principle of s. 7 were to apply and the plaintiffs are to be given interest up to the date of the suit, not exceeding the principal sum, then the total amount due up to the 26th April, 1929, when the suit was brought, would be Rs. 25,000 only. According to the accounts as appended to the decree of the first suit, the amount of principal and interest calculated up to that date exceeds Rs. 28,000. It is contended on behalf of the appellants that this amount should be reduced to Rs. 25,000.

The learned advocate for the plaintiffs, however, contends before us that as the sum of Rs. 100,000 is mentioned in the mortgage deed, the maximum limit for the award of interest is that figure, and therefore the amount awarded by the courts below, being well below it, cannot be reduced. It seems difficult

(¹) (1938) I. L. R. 18 Pat. 13.

(²) *Antea*, p. 39.

to accept this argument, when the plaintiffs themselves have broken the integrity of the mortgage and split up the liability.

Reading s. 7 of the new Act as a whole, it is quite obvious that it deals with a suit brought by a money-lender (against the defendant who is sued) in respect of a loan advanced (to the defendant sued against), in which a decree has to be passed (against the defendant who is sued), the amount of interest allowed prior to the suit not exceeding the amount of the loan advanced (to the defendant sued against), or, if the loan (due from the defendant sued against) is based on a document, the amount of the loan (due from the defendant sued against) mentioned in, or, evidenced by, such a document. It could not have been the intention of the legislature that if there are several executants who have borrowed various sums and the creditor sues one of them for his separate share only, having already realised the balance from the others, then the maximum prescribed for the amount of interest to be decreed against him is not to exceed the aggregate of the various sums borrowed by him as well as all the other *pro forma* defendants who are not really being sued. The only reasonable interpretation to put on the section is to read it as referring to the claim brought against the particular defendant who is sued, and the amount which is due from him alone and is the subject matter of the claim.

The construction sought to be put on the section on behalf of the plaintiffs would frustrate the object in view. In the present case, on the findings of the courts below, the principal amount for which the contesting defendants were liable is only Rs. 12,500, and no more. This is therefore the only amount, apart from interest, for which the decree can be passed against them. The mortgage-deed was wholly invalid in respect of Rs. 25,000 as against them. In my judgment it will be in accord with the intention of the Provincial Legislature as disclosed by the various provisions in the Act for the reduction of interest, to interpret the section so as to give relief to the defendants in respect of the interest which they would otherwise be liable to pay. I am, therefore,

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of the opinion that the plaintiffs are entitled to have a decree for the principal sum of Rs. 12,500 and a total interest of Rs. 12,500 up to 26th April 1929, when the suit was filed, plus *pendente lite* and future interest as ordered by the High Court.

Sulaiman J.

VARADACHARIAR J.—I wish to add a few words with reference to the contention urged by the learned counsel for the respondents on the application of s. 7 of the Bihar Act of 1939 to the circumstances of this case. That section limits the interest claimable up to the date of the plaint to the “amount of loan mentioned in the document”. As Rs. 1,00,000 is the amount mentioned in the mortgage bond in the present case, the learned counsel argued that the plaintiffs were entitled to claim full interest as per terms of the bond, so long as it did not exceed Rs. 1,00,000. I am unable to accede to this contention. On the plaintiffs’ own showing, the liability of the appellants to the plaintiffs was only to the extent of one-sixth of the total liability and the total amount of the loan has for the purposes of this suit been found to be only Rs. 75,000. Though the respondents’ contention has the merit of plausibility and ingenuity, it seems to me that on a reasonable interpretation of the section, the appellants’ liability for interest up to the date of the institution of the suit must be limited to Rs. 12,500. The appeal is to this extent allowed and the case will be remitted to the High Court for a revised decree being passed on the above footing. The plaintiffs will be entitled to the costs awarded to them by the decrees of the High Court and the trial Court. There will be no order as to the costs of this appeal.

GWYER C. J.—I agree.

Case remitted to High Court.

Agent for Appellants : *G. Sahay.*

Agent for Respondents : *T. K. Prasad.*