

PRIVY COUNCIL.

GOKULDAS

v.

GHASIRAM.

P.C.*
1907.

Nov. 4, 19.

[On appeal from the Court of the Judicial Commissioner,
Central Provinces.]

Decree—Construction of decree on mortgages—Decree under sections 86 and 88, Transfer of Property Act (IV of 1882)—“Future interest”—Power to give interest after date fixed for payment—Interest to date of realization of mortgage debt.

In a suit for foreclosure a conditional decree was made under sections 86 and 88 of the Transfer of Property Act (IV of 1882) for the sum due for principal and interest on the mortgage, and for cost, for redemption on payment of the amount so due, “with future interest at 7 annas per cent. per mensem from the date of suit, on or before the 18th March 1897,” and for sale on default of payment: and the decree was made absolute on 25th June 1898:—

Held, on the construction of the decree, that on such default the plaintiffs were entitled in execution to “future interest at 7 annas per cent. per mensem” after the date fixed for redemption, and up to the date of realization of the entire amount.

Maharajah of Bharatpur v. Kamano Dei (1) and *Sundar Koer v. Rai Sham Krishen* (2) followed.

APPEAL by special leave from a judgment and decree (30th January 1904) of the Additional Judicial Commissioner of the Central Provinces which reversed the decree (4th November 1903) of the Civil Judge of Narsinghpur.

The plaintiffs, Gokuldas and another, were the appellants to his Majesty in Council.

In a suit for foreclosure the plaintiffs obtained, in the Court of the Civil Judge of Jubbulpore, on 18th September 1896, a conditional decree under the provisions of sections 86 and 88 of the Transfer of Property Act (IV of 1882), in the following terms:—“It is hereby ordered that the defendant, Ghasiram, is indebted to

*Present: LORD ROBERTSON, LORD COLLINS, AND SIR ARTHUR WILSON.

(1) (1900) I. L. R. 28 All. 181;

(2) (1906) I. L. R. 34 Calc. 150;

L. R. 28 I. A. 35.

L. R. 34 I. A. 9.

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the plaintiffs in the sum of Rs. 20,457-4 for principal and interest on the mortgage mentioned in the plaint, and in the further sum of Rs. 1,106-10 for costs, and that upon the defendant paying to the plaintiffs or into Court the amount so due, with future interest at 7 annas per cent. per mensem from the date of suit, viz., 22nd July 1896, on or before the 18th March 1897," the mortgaged property should be transferred to the defendant; and in default the property should be sold, and the proceeds applied in payment of what was due to the plaintiffs.

This decree was made absolute on 25th June 1898 by an order of which the material part was as follows :—

"Whereas it appears to this Court that the defendant in this suit has not paid into Court or to the plaintiff the sum of Rs. 20,457-4 + 1,106-10 and interest at 7 annas per cent. per mensem from the 22nd July 1896 which by the conditional decree passed by this Court on 18th September 1896 he was required to pay on or before the 18th March 1897, it is hereby ordered that the conditional decree be made absolute."

On 13th July 1898 it was transferred to the Narsinghpur District for execution, there being then due Rs. 18,322-7-6 after deducting Rs. 5,000 paid. Execution was taken out on 21st September 1898 for Rs. 18,484-1 as due at that time. Between that time and 1901 several applications for execution were made and for increased amounts, the increases being caused by "future interest" being added to the amount due. No objection to this was made by the defendant. It was only on 24th August 1903 that a petition was filed by the defendant in which he complained for the first time that the plaintiffs had wrongfully calculated future interest on the decretal amount to the date of execution, and contending that the decree on a right construction thereof did not carry interest beyond 18th March 1897, the date fixed for redemption; and issues were raised on this contention, of which the only one now material was "what is meant by the expression 'future interest'; cannot the plaintiffs get interest beyond 18th March 1897?"

As to this issue the Civil Judge said :—

"Future interest" clearly means interest payable after the decree. The decreed under section 88 of the Transfer of Property Act is the real decree in the

case. It clearly awards future interest from the date of the suit. It does not say that this future interest is to be paid up to the date fixed for payment of the decretal amount, *i.e.*, 18th March 1897 or up to realization; but as laid down by the Full Bench ruling of the Allahabad High Court in *Bakar Sajjad v. Udit Narain Singh* (1) and by their Lordships of the Privy Council in *Rameswar Koer v. Mahomed Mehdi Hossein Khan* (2), and *Maharajah of Bharatpur v. Kanno Dei* (3), there is nothing either in the decree or in law which would prevent the decree-holders from getting interest at 7 annas per cent. per mensem from the date of the suit to the date of realization.

Upon principle and apart from authority, statutory or otherwise, it is difficult to see why the mortgagee should not have interest on his money so long as the debt remains unpaid. The 18th March 1897 is only named in the decree as the date on which payment is to be made, and after which, if payment is not made, the property is to be sold. It is not named with any special reference to interest.

In the absence of any express direction as to the date up to which interest is to be paid, the decree is rather ambiguous on the point. The Allahabad High Court has held [*Amolak Ram v. Lachmi Narain* (4), and *Pirbhu Narain Singh v. Rup Singh* (5)] 'that a Court executing a decree the terms of which are ambiguous should, where it is possible, put such a construction upon the decree as would make it in accordance with law.' Formerly there was a conflict of opinion on the interpretation of sections 86, 88, 89, of the Transfer of Property Act, read with sections 90, 94 and 97 of the same Act, and with section 209 and Forms 109 and 128 of the 4th Schedule of the Civil Procedure Code, but since the decision of the Privy Council in *Rameswar Koer v. Mahomed Mehdi Hossein Khan* (2) the point has been settled, and it has been held that the Court has power in a decree under section 88 of the Transfer of Property Act to award interest subsequent to the decree and the date fixed for payment until realization. To be in conformity with these sections as interpreted by the Privy Council the decree must be construed as awarding interest, not merely until 18th March 1897, but until realization of the mortgage money.

"If future interest is awarded under section 88 of the Transfer of Property Act, it is not necessary that specific mention of it should be contained in the order absolute for sale: *Rajkumar v. Bisheshar Nath* (6).

"I accordingly hold that plaintiffs (decree-holders) are entitled to interest at 7 annas per cent. per mensem, from the date of the suit to date of realization, and not up to 18th March 1897 only. The defendant's contention that future interest should be allowed up to 18th March 1897 only is groundless and is disallowed."

On appeal the case was transferred to the Judicial Commissioner's Court, and the Additional Judicial Commissioner

(1) (1899) I. L. R. 21 All. 361.

(4) (1896) I. L. R. 19 All. 174.

(2) (1898) I. L. R. 26 Calc. 39;
L. R. 25 I. A. 179.

(5) (1898) I. L. R. 20 All. 397.

(6) (1894) I. L. R. 16 All. 270.

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

L. R. 28 I. A. 35.

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(MR. H. J. STANYON) who heard the appeal, after reviewing the decisions on sections 86 and 88, Transfer of Property Act, said :

“ It seems to me upon the proper construction of the Privy Council judgment in *Maharajah of Bharatpur v. Kanno Dei*(1) that it does not wholly overrule the case of *Amolak Ram v. Lachmi Narain*(2). It seems to me to accept that the interpretation of section 88 (read with section 86) as to power to award interest after the *dies datus* not being given by the section was correct as ruled in that case; but their Lordships dissented from the further dictum that because the power was not given it was denied; and they held the power to exist *dehors* the section; and to this extent only they accepted the case of *Bakar Sajjad v. Udit Narain Singh*(3) as the more correct.”

After reading the conditional decree and finding that there was no ambiguity in its terms and that there was nothing to show that the Judge contemplated affairs beyond 18th March 1897, or meant to give future interest after that date, and holding that even if any ambiguity existed it was cleared up by the terms of the decree absolute the Additional Judicial Commissioner concluded :—

“ It seems to me clear that had the future interest been intended to continue beyond 18th March 1897 it would have been made clear here. But sale is ordered to pay what is due to the plaintiffs, and not what on the date of payment may have become due. What is due is stated in the order absolute as already shown.

“ I therefore hold that upon a proper construction of the decree as framed no interest after the 18th March 1897 runs on the decretal sum or any part thereof.”

On this appeal, which was heard *ex parte*,

C. W. Arathoon, for the appellants, contended that the Appellate Court had put a wrong construction on the decree, and had misunderstood and misapplied the decision of the Judicial Committee in the case of *Maharajah of Bharatpur v. Kanno Dei*(1) in accordance with which ruling he should have decided in the appellants' favour; and that both on principle and authority there was no good reason why the mortgagees should not have interest on their money so long as the debt remained unpaid after the date fixed for redemption; and as to this the case of *Sundar Koer v. Rai Sham Krishen*(4) was cited. The appellants, it was submitted,

(1) (1900) I. L. R. 28 All. 181;
 I. R. 28 I. A. 35.

(2) (1896) I. L. R. 19 All. 174.

(3) (1899) I. L. R. 21 All. 361.

(4) (1906) I. L. R. 34 Calc. 150; L. R. 34 I. A. 9.

were on the above decisions entitled to interest at the rate mentioned in the decree up to the date of realization. The judgment of the first Court was correct and should be restored.

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The judgment of their Lordships was delivered by

LORD ROBERTSON. Their Lordships have examined the decisions of this Board relied upon by the appellants, *Maharajah of Bharatpur v. Kanno Dei*(1), *Sundar Koer v. Rai Sham Krishen*(2), and find that they fully sustain the contention of the appellants. They will therefore humbly advise His Majesty that the appeal ought to be allowed, the judgment of the Additional Judicial Commissioner reversed with costs and the order of the Civil Judge restored.

Nov. 19.

The respondent will pay the costs of the appeal.

Solicitors for the appellants: *T. L. Wilson & Co.*

J. V. W.

(1) (1900) I. L. R. 23 All. 181;
 L. R. 28 I. A. 85.

(2) (1906) I. L. R. 34 Calc. 150;
 L. R. 34 I. A. 9.