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 BISSESWAR
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affect existing rights under the old Code. It has been urged before us that this view would involve hardship, that rights would be imperilled, if not confiscated; but this overlooks the provision which prescribed that, though the Code was passed in March 1908, it should not come into operation until January 1909. That provision afforded ample opportunity to all persons having rights under the old Code to enforce them before the new Code came into operation.

In my opinion the decision of the District Judge is erroneous, and I think his order must be reversed, and the application for sale set aside as barred by section 48 of the Code of Civil Procedure.

The respondent must pay the appellant's costs.

MULLICK J. I agree.

S. M.

Appeal allowed.

ORIGINAL CIVIL.

Before Fletcher J.

NANDA LAL ROY

v.

DHIRENDRA NATH CHAKRAVARTI.*

Damdapat, rule of—Decree in mortgage-suit between Hindus—Interest accruing after date fixed for redemption, whether rule applicable to.

The rule of *damdapat* applies to Hindus only so long as the relation between the parties is contractual, and ceases to apply when the matter has passed from the realm of contract into that of judgment. Where a decree has been passed on a mortgage, the rule does not apply to the interest accruing after the date fixed for redemption.

* Original Civil Suit No. 935 of 1908.

In the matter of Hari Lall Mullick (1) followed.

Ram Kanye Audhicary v. Cally Churn Dey (2) not followed.

Sundar Koer v. Sham Krishen (3) referred to.

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APPLICATION.

By an indenture of mortgage dated the 6th August, 1901, one Nitye Chand Chakravarti mortgaged the premises No. 43, Machua Bazar Street, in Calcutta, to the plaintiffs, in consideration of the sum of Rs. 13,000 lent and advanced by the plaintiffs, the loan to bear interest at a certain rate. The parties to the mortgage were all Hindus.

Nitye Chand Chakravarti died, and thereupon litigation ensued between his heirs and legal representatives, and on the 29th August, 1904, Mr. S. M. Bose, an advocate, was appointed Receiver of the estate and entered into possession.

On the 12th September, 1908, this suit was instituted by the plaintiffs against the heirs of Nitye Chand Chakravarti and the Receiver for a decree on their mortgage.

By a decree made on the 26th April, 1909, it was, *inter alia*, referred to the Registrar to take an account and to take into consideration the rule of *damdupat*, if the same should be applicable, and to report the amount found due to the plaintiffs upon the taking of the accounts, and there was an order for the sale of the mortgaged property in case of default to pay the reported amount. It was further ordered and decreed that in default of the defendants paying into Court what should be reported to be due to the plaintiffs for principal and interest, together with costs and interest thereon at the rate of 6 per cent. per annum from the date of taxation until realization, within six months from the date on which the

(1) (1906) I. L. R. 33 Calc. 1269. (3) (1906) I. L. R. 34 Calc. 150 ;

(2) (1894) I. L. R. 21 Calc. 840. L. R. 34 I. A. 9.

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interest a creditor can recover against his debtor shall not exceed the amount of principal. The present application arises in a mortgage suit, and arises under these circumstances. The question is, does this rule of *damdupat* apply to cases where default is made by the mortgagor in payment of the principal, interest and costs after the day appointed for payment by the Court. The decisions in this Court on that point are contradictory. The first decision that has been referred to is that of Mr. Justice Sale in *Ram Kaniye Audhicary v. Cally Churn Dey* (1). A decision to the contrary effect was given by Mr. Justice Woodroffe in an Insolvency case in the matter of *Hari Lal Mullick* (2). In my opinion, so far as the general principle applies, the decision of Mr. Justice Woodroffe seems to me to be correct in principle. This rule of *damdupat* applies as a matter of contract when Hindus are contracting with one another. It has nothing to do with the decrees of the Courts after the matter has passed from the realm of contract into that of judgment. It seems to me, on the decision of the Privy Council (which did not turn on the matter of *damdupat*, but on the question of rate of interest) in *Sundar Koer v. Sham Krishen* (3), that matter is not open to doubt. The only question in the present case is, what does this decree say? Is this interest to be computed and allowed, if the mortgager makes default in repayment on the day fixed, subject to the rule of *damdupat*, or not? It seems to me quite clear on the wording of the decree that the rule of *damdupat* is only to be observed until the rights of parties pass from contract into that of judgment. I cannot in this decree read the words "subject to rule of *damdupat* if the same should be applicable" in the portion

(1) (1894) I. L. R. 21 Calc. 840. (2) (1906) I. L. R. 23 Calc. 1269.

(3) (1906) I. L. R. 34 Calc. 150; L. R. 34 I. A. 9.

of the decree, as having application to the interest other than the interest due at the end of six months from the date on which the certificate should be signed. It seems to me quite clear what the decree says: "thereafter the principal and interest are to become an aggregate amount, and interest is to be computed on the aggregate amount at the rate of six per cent. per annum, such aggregate amount with interest computed and allowed as aforesaid being hereinafter mentioned as the amount payable to the plaintiff under the decree." It cannot be that the words "computed and allowed as aforesaid subject to the rule of *damdupat*" are to apply to this decree after the date fixed for repayment. Moreover, it is to be noticed that these words, on which much reliance has been placed, appear in parenthesis in a definition clause as to what is thereafter referred to as "the amount payable to the plaintiff." It is quite impossible on a definition clause like that to say that the Court was going to make the rule of *damdupat* applicable under this decree to interest payable, not by virtue of the contract, but by virtue of the decree itself. I think that the application by the plaintiff in this case to have the balance order, and to recover the amount of interest asked for, must go. The defendants must pay to the plaintiffs their costs of this application. The balance order will be for Rs. 2,799-15-6.

Application allowed.

Attorney for the plaintiffs: *M. L. Seal.*

Attorneys for the defendants: *B. N. Basu & Co.,
A. N. Ghose.*

J. C.

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