

## Nandoo Singh vs Ganga Saran And Ors. on 12 September, 1950

**Equivalent citations: AIR1951ALL340, AIR 1951 ALLAHABAD 340**

### JUDGMENT

Bind Basni Prasad, J.

1. This is a judgment-debtor's appeal arising out of a proceeding under Section 8, U. P. Debt Redemption Act, 1940, for the amendment of a decree so as to reduce the interest under it.

2. The material facts are as follows:

3. Nandoo Singh appellant pays less than Rs. 250 as land revenue. He executed a deed of simple mortgage in favour of the predecessors of respondents 1 to 6 on the basis of which a final decree for sale was obtained by them. He alleges that he fell into evil ways and Khazan Singh, who was a co-applicant with him in the application under Section 8, got a fictitious simple money bond executed by him in order to save him from ruin. Subsequently, Khazan Singh obtained a decree on the foot of that bond and in its execution purchased the property which had been mortgaged to respondents 1 to 6, Later, Khazan Singh sold that property to Amin Chand who is alleged to be a relation of the appellant. Amin Chand has now executed a deed of surrender in favour of the appellant. The appellant's contention was that all the transactions beginning with the simple money bond in favour of Khazan Singh and ending up with the deed of surrender in favour of the appellant were collusive, and as such null and void, the whole idea being to save the property from the clutches of the creditors. It was contended that the aforesaid transactions should be taken as non-existent and the question whether or not the advance made by defendants 1 to 6 is a loan should be considered without any regard to these fictitious transfers.

4. Learned Civil Judge held that the auction sale of the mortgaged property in favour of Khazan Singh and the sale of the same by the latter to Amin Chand were real and not farzi. Learned counsel for the appellant contends that even upon this finding the appellant is entitled to the benefit of Section 8 because at the time of the advance by respondents 1 to 6 he was an agriculturist and today also he is an agriculturist. Further it is argued that on a true interpretation of the definition of the word "loan" as contained in Sub-section (9) of Section 2, Debt Redemption Act, the advance has not ceased to be a loan. The relevant part of the definition of the word "loan" is as follows:

'Loan' means an advance in cash or kind made before the first day of June 1940, recoverable from an agriculturist ..... or from the property of an agriculturist ..... but does not include an advance the liability for the repayment of which has, by a contract with the borrower or his heir or successor or by sale in execution of a decree, been transferred to another person ....."

5. Now according to the finding arrived at by the learned Civil Judge the liability for the repayment of the mortgage debt was, in the present case, transferred by a sale in execution of a decree. It is clear that after the auction sale the advance ceased to be a 'loan'. The question is whether the advance regained the character of a loan' when the property came back to the appellant and the liability for the mortgage debt was retransferred to him. We are of opinion that if an advance once ceased to be a loan it cannot retake the character of a loan.

6. Once the liability for the repayment of a loan is transferred either in execution by sale or by a contract entered into by the borrower it ceases to be a loan. This is the view which was taken by a learned Single Judge of this Court in Banwari Lal v. Ajudhiya Prasad, 1944 A. L. W. 4 and we agree with it.

7. There is another aspect of the case. If Khazan Singh had ceased to have any interest with this mortgage debt then why did he join Nandoo Singh in the application under Section 8. Learned counsel for the appellant has not been able to give any plausible explanation for this.

8. The appeal fails and it is hereby dismissed with costs.