

## Shib Charan Lal vs Zalim Singh on 14 February, 1950

**Equivalent citations: AIR1950ALL530, AIR 1950 ALLAHABAD 530**

### JUDGMENT

Desai, J.

1. This is an appeal from a judgment of the Additional District Judge of Aligarh directing a decree passed in favour of the appellant and against the respondent to be amended Under Section 9, Debt Redemption Act. The facts are as follows: In 1913 Mathura Prasad and others executed a mortgage of the whole of village Chandua in favour of Ganesh Singh (father of the respondent judgment debtors). In 1922 Dwarka, who belonged to the family of Mathura Prasad and was probably one of his heirs, executed a mortgage in favour of the appellant decree-holder Sheo Charan Lal in respect of a one-fourth share in the village and some other property with which we are not concerned. In 1925 Ganesh Singh put his mortgage into suit but without impleading Sheo Charan Lal as the puisne mortgagee, got a decree, put it into execution, got the entire village put to auction, himself purchased it in 1929, and obtained formal delivery of possession in the same year. On 29th April 1932, the appellant sued on the foot of his mortgage; the suit was instituted against Ganesh Singh as successor-in-interest of the original mortgagor Dwarka. The parties came to terms and on 5th November 1932 a preliminary compromise decree was passed against Ganesh Singh. Under its terms Ganesh Singh was to pay the decretal amount to the appellant within six months, on his failure to do so the appellant was to have the right to redeem the mortgage of Ganesh Singh within the next six months and then put the entire village to auction free from Ganesh Singh's mortgage in execution of his decree, and on his failure to do that he was given the right to put only a one-fourth share in the village to auction in execution of the decree. Ganesh Singh defaulted in paying the decretal amount to the appellant and the appellant also defaulted in redeeming Ganesh Singh's mortgage. The appellant obtained a final decree for sale of the one-fourth share in the village and applied for its execution. Ganesh Singh being dead, his son, the respondent, filed an objection to the execution on several grounds. The only objection with which we are concerned is that he claimed amendment of the decree, Under Section 9, Debt Redemption Act by reduction of interest. The appellant contested his objection, contending that the advance made by him to Dwarka had ceased to be a 'loan' because of the transfer of the property to Ganesh Singh in execution of his decree. The trial Court agreed with the appellant, and, holding that the advance had ceased to be a 'loan' on account of the transfer of the liability in execution of the decree rejected the respondent's prayer for an amendment of the decree. The lower appellate Court, on appeal, held that the liability to repay the advance of the appellant was not transferred to Ganesh Singh in execution of a decree and ordered the trial Court to amend the decree. This is the order challenged before us by the decree-holder.

2. The only question, therefore, which we have to determine is whether the debt evidenced by the decree passed on the second mortgage dated 13th October 1922, was a 'loan' or it has ceased to be a

'loan' within the meaning of Section 2 (9), U. P. Debt Redemption Act. In the Courts below it was contended on behalf of the decree-holder that the debt had ceased to be a 'loan' on two independent grounds, the first being that the liability had been transferred to another person by contract with the 'successor' of the borrower under the compromise, dated 15th November 1932, that successor being the first mortgagee-auction-purchaser, namely Ganesh Singh and the second being that the liability had been so transferred as a result of the auction sale of the 20 biswa zamindari share in 1929 in execution of the decree passed on the first mortgage. It is obvious that, if on either of the two grounds the liability can be held to have been transferred to a third person, the debt will certainly be held to have ceased to be a 'loan.' So far as the first basis of the contention of the decree holder was concerned, we are not prepared to accept it. The word 'successor' in the said section has reference to a successor by inheritance and not by transfer or by purchase at an auction. So far as the second basis of the claim, however, was concerned, we think that the case of the decree-bolder stands on an indisputable ground and, indeed, the arguments of his learned counsel in this Court have been confined only to that basis.

3. In every sale in execution of a decree if the property sought to be sold is charged with a debt, the same must be mentioned in the sale proclamation under the provisions of Order 21, Rule 66 (9) (c), Civil P. C. It was not suggested in the present case that Ganesh Singh had purchased the property in execution of his decree on the first mortgage free of the charge evidenced by the second mortgage in favour of the present appellant. The result, therefore, was that the entire 20 biswa share was sold at auction to Ganesh Singh subject to the charge created by the latter mortgage just mentioned. The short question arising in this appeal is, whether or not this implied necessarily a transfer of the debt created by this second mortgage also to the auction purchaser Ganesh Singh, along with his purchase of the entire 20 biswa share. In our opinion it did, and Ganesh Singh by purchasing the property encumbered with the later debt did also become liable to satisfy that debt, so that the same inevitably ceased to be a 'Joan' within the meaning of Section 2 (9), U. P. Debt Redemption Act.

4. The question we are considering has arisen, though in many cases not in a direct form, in a number of cases decided by this Court and also by the Avadh Chief Court before the amalgamation. In *Banwari Lal v. Ajodhiya Prasad*, 1941 A. L. W. 4, it was held that an auction sale of property charged with a debt implied a transfer of liability in respect of the debt to the auction-purchaser, and that the same then ceased to be a 'loan' within the meaning of the said Act. This was a clear case on the point. Learned counsel for the respondent invited our attention to two later decisions of this Court, one the Full Bench case of *Saran Singh v. Mithan Lal*, A. I. R. (33) 1946 ALL. 174 : (I.L.R. (1947) ALL. 449 (F.B.)) and the other the Pull Bench case of *Mahmud Hasan Khan v. Narain*, A.I.R. (36) 1949 ALL. 210 : (I.L.R. 1949 ALL. 502 (F.B.)). In the former, it was only held that a transfer of the whole, or part of the equity of redemption with a stipulation that the transferee would pay the entire amount due on a previous mortgage involved a transfer of liability and it had the effect of taking the debt out of the category of a 'loan.' This case, by no means, affects the contention of the appellant, In the latter case, it was held that, where a property encumbered with a debt was sold free of that debt, the vendor remaining liable for the same, the liability was not transferred to the vendee. There were two separate encumbrances on the property in this case, subject to one of which only it was sold, it being clearly recited by the vendor that there was no other charge on the property, although, in fast, there was a second charge. The liability to clear the second Charge having, in fact,

never been transferred to the vendee, he was not held to have become liable to discharge the same. This case, therefore, is also clearly distinguishable from the present one. There is still a later case of this Court in Gauri Shankar Lal v. Tulsi Singh, 1950 A. L. J. 89 : (A.I.R. (37) 1950 ALL. 47) where it was held that transfer of only a part of a property encumbered with a debt did not involve any transfer of liability to a third person. We are referring to this case, as a previous decision of the Avadh Chief Court in Lalji Singh v. Lakshmi Narain, A. I. R. (33) 1946 Oudh 47 : (20 Luck. 545) was noticed by the Bench with approval at page 91 of the report. In this latter case, the observations made by the learned Judges fully support the contention of the appellant on the point we are considering. We may just quote the following passage from their judgment:

"It is clear, however, from the language used that by the expression, 'the liability for re-payment of it ..... has been transferred to another person' the legislature intended to refer to the liability of the purchaser at an execution sale of a property burdened with an encumbrance to satisfy that encumbrance. It can have no reference, though the language might possibly suggest a different Inference, to any personal liability of the purchaser of the property burdened with a debt at a Court auction held in execution of a decree. It Is the same with regard to either of the two classes of oases covered by the exception. No distinction can be drawn between a case where liability for re payment has been transferred to another person by a contract and a case where the transfer of liability results from a sale in execution of a decree."

5. We do not consider it necessary in this position of the law to pursue the point any further, and we hold that the appellant's contention that the liability had been transferred as a result of the purchase at the auction sale in execution of the first mortgage by Ganesh Singh is well-founded and must be accepted.

6. We, therefore, allow this appeal, set aside the decree of the lower appellate Court, restore that of the Court of first instance, and send the case back to the latter Court to enable it to proceed with the execution of the decree according to law. The appellant will be entitled to his costs throughout.