

## **Gopal vs Jagdish Singh And Ors. on 9 August, 1950**

**Equivalent citations: AIR1951ALL413, AIR 1951 ALLAHABAD 413**

### **JUDGMENT**

P.L. Bhargava, J.

1. This appeal arises out of a suit, instituted by Jagdish Singh and his brother, Vijay Bahadur Singh, the plaintiffs-respondents, to redeem certain ornaments, which had been pawned by their father, Deep Chand, with the appellant Gopal alias Gopla (defendant 1), who will hereafter be referred to as the defendant, to secure a loan through Behari (defendant 2). The plaintiffs' case was that their father had pawned three ornaments; but the defendant admitted the pawning of only two ornaments. The Courts below have found that, in fact, only two ornaments were pawned.

2. The plaintiffs alleged that the defendant had failed to allow redemption of the ornaments in spite of notice and the offer to repay the loan. They further alleged that they and their father, Deep Chand, have always been agriculturists and the defendant was a creditor by profession; consequently, they were entitled to relief under the U. P. Agriculturists' Relief Act, 1934.

3. The case put forward on behalf of the defendant was that when the plaintiff's father was unable to repay the loan, the ornaments pawned with him were sold with his consent and the sale proceeds were appropriated towards the satisfaction of the loan. He denied the plaintiff's allegation that they were agriculturists and contended that they were not entitled to any relief under the Agriculturists Relief Act.

4. The Courts below found that the defendant had failed to prove the alleged consent or the actual sale of the ornament pawned; that the plaintiffs and their father were agriculturists while the defendant was a "creditor" and that the plaintiffs were entitled to relief under the Agriculturists' Relief Act. The trial Court, however, dismissed the suit on the ground that the ornaments were no longer available and the plaintiffs having failed to prove the rate of gold at the date of the institution of the suit it was not possible to find out whether anything would be due to them or the defendant.

5. The lower appellate Court, however, came to the conclusion that the suit ought to have been decreed. The Court reduced the rate of interest and, as the defendant had not complied with the provisions of Section 32, Agriculturists' Relief Act, also disallowed interest after 31-3-1935, in view of the provisions of Section 34 of the Act. Accordingly, the Court passed a preliminary decree for redemption declaring the amount due from the plaintiffs and allowing them six months' time for payment. The decree contains a direction that on payment by the plaintiffs of the amount found due minus the costs of the suit, the defendant shall deliver the ornaments pawned; and that, in the event of default, the plaintiffs shall get their value calculated at the rate of gold on the date of payment in the execution department.

6. The defendant has preferred this appeal; and the main contention put forward on his behalf is that Section 34, Agriculturists' Relief Act, in terms did not apply and the lower Court had no jurisdiction to disallow any portion of the interest, payable on the loan. It has been argued that the penalty provided in Section 34 of the Act can be imposed only 'in any suit or proceeding relating to a loan against an agriculturist' while this was a suit by an agriculturist debtor against a creditor.

7. Admittedly, the present suit was not one against an agriculturist; it had been instituted by an agriculturist. And, Section 34, Agriculturists' Relief Act, clearly lays down that the penalty provided therein is to be imposed only in a suit or proceeding relating to a loan against an agriculturist.

8. Learned counsel for the respondents has, however, urged that, in interpreting the relevant provision, we have to bear in mind that the Agriculturists' Relief Act was enacted with the object of providing relief to agriculturists; and that in order to give relief the provisions ought to be interpreted liberally. He has pointed out that the provisions of Section 32 of the Act are mandatory and impose a duty upon the creditor to maintain and furnish accounts to the agriculturist debtor; and if, in the event of his failure to comply with these mandatory provisions, the debtor becomes entitled to any relief, it ought not to be denied to him. He has also urged that having regard to the entire scheme of the Act the legislature intended to give relief to an agriculturist in every case relating to a loan. He has further urged that a narrow interpretation may lead to absurd results and defeat the very object of the enactment.

9. In interpreting a provision of law, we have to see what intention is conveyed, expressly or impliedly, by the language used. The language used in Clause (a) of Section 34 of the Act is plain and simple; and it expressly refers to a suit or proceeding against an agriculturist. Learned counsel had to confess that the language could not be interpreted to refer to a suit or proceeding by an agriculturist unless we interpolated the word "outstanding" between "loan" and "against". The language being plain, there appears to be no justification for adding anything to the wordings used by the legislature; and it would be against the ordinary rules of interpretation. Consequently, the relevant provision of law cannot be interpreted so as to refer to every suit on the basis of a loan.

10. The provision under consideration imposed a penalty on the creditor for non-compliance with certain provisions of the Act. If a creditor complies with those provisions, the agriculturist debtor would not get any relief under this provision. Therefore, the provision cannot be treated as one providing for relief to which an agriculturist is entitled as of right or as a matter of course. A penal provision has to be interpreted strictly, and if it is so interpreted it is not likely to defeat the object of the enactment or to lead to undesirable results. The various provisions providing relief would remain unaffected and the agriculturist would be entitled to the benefits of those provisions.

11. We are, therefore, of opinion that, in the present case, the lower appellate Court had no jurisdiction to disallow any portion of the interest, under Section 34, Agriculturists' Relief Act, and that the amount so disallowed be now added to the amount payable by the plaintiffs.

12. Another contention put forward on behalf of the appellant is that the decree passed by the lower appellate Court is not in conformity with the provisions of Order 20, Rule 10, Civil P. C. That rule

provides :

"Where the suit is for moveable property, and the decree is tot the delivery of such property, the decree shall also state the amount of money to be paid as an alternative if delivery cannot be had."

13. The plaintiffs had sued for redemption of the ornaments pawned; and the decree passed by the lower Court directs the return of those ornaments, if and when the amount of loan is repaid. The decree, however, does not state the amount to be paid as an alternative if the ornaments are not returned. The Court did not determine the value of the ornaments and gave a direction in the decree that the same may be calculated in the execution department at the rate of gold on the date of payment. The value of the ornaments on the date of the institution of the suit should have been determined in the present suit and entered in the decree. The case will, therefore, have to be sent back for determination of the value of the ornaments and for the passing of a decree in accordance with law.

14. The appeal is, accordingly, allowed and the decree by the lower appellate Court is set aside. The case is remanded to the lower Court with a direction that, after determining the value of the ornaments, a decree in proper form be passed in favour of the plaintiffs. The parties will be allowed to lead any evidence which they wish to produce to prove the value of the ornaments. The value of the ornaments shall be determined as on the date of the institution of the suit. In calculating the amount payable by the plaintiffs the amount of interest which has been disallowed, that is, the interest from 1-4-1935, to the date of the decree will be added. The defendant-appellant will get the costs of this appeal from the plaintiffs-respondents, who will bear their own costs. An order about the costs of the Courts below will be made by the lower Court while passing the decree.