Gur Prasad vs Habib Hasan And Anr. on 24 March, 1950

Equivalent citations: AIR1952ALL323, AIR 1952 ALLAHABAD 323

JUDGMENT

Chandiramani, J.

1. This is the defendant's second appeal against the appellate decree of Mr. Shiam Manohar Tewari, Civil Judge, Faizabad, dated 12-4-1945.

2. It appears that one Haji Sheikh Fazal executed a mortgage on 21-3-1912 for Rs. 500 in respect of a kachcha house in favour of one Jawahar Lal. The two plaintiffs are the sons of the mortgagor and the defendant. Gur Prasad, is the son of the mortgagee. Under the terms of the mortgage, the mortgagee was allowed to remain in possession of the house in lieu of interest on Rs. 250 and aa regards the remaining sum of Rs. 250 it was provided that interest thereon shall be chargeable at 2 per cent. per month oom-poundable annually. It was also provided that the mortgagee would have the right to repair the property and recover the money from the mortgagor. It was also provided that the mortgagee could, if he thought it necessary, rebuild the house and whatever expenditure was incurred by him it would be recoverable from the mortgagor at 12 per cent. per annum simple. It was said that the debt would be payable after 53 years. It was also provided that in case the mortgage money with interest were not paid, the mortgagee would be at liberty to obtain a decree for foreclosure from Court and take the property for himself. The present suit was filed by the plaintiffs under Section 7, Debt Redemption Act for redemption of the mortgage. They stated that their father was an agriculturist at the time of the mortgage in 1912 and they too were agriculturists at the date of suit. They stated that under the provisions of the Debt Redemption Act they were liable to pay interest only at 4 1/2 per cent. and that from the usufruct of the property the entire mortgage money, inclusive of interest, had been satisfied in full.

3. The defendant contested the suit on various grounds. One of the defence was that neither the plaintiffs nor their father were agriculturists within the meaning of the Debt Redemption Act. Another defence raised was that Rs. 500 had been spent on repairs and Rs. 5994 had been spent on the constructions. It was also said that the suit was premature.

4. The trial Court held that both the plaintiffs and their father were agriculturists within the meaning of the Debt Redemption Act. It held that Rs. 1374 had been spent on new constructions. It held that the defendant was entitled to recover Rs. 6 per year on account of repairs. On account being taken it found that Rs. 330-8-0 were due to the defendant. A decree was passed accordingly for redemption. The appeal of the defendant was unsuccessful and all the findings of the trial Court were confirmed.

5. Only two points are raised in this appeal. It is said that the father of the plaintiffs was not an agriculturist within the meaning of the Debt Redemption Act. The facts on this point are that the Municipal Board, Tanda, granted a lease to the plaintiffs' father some time in 1899 at the rent of Rs. 2 and he was tenant during his lifetime. The land was originally the land of a grove. It has been found that in fact this land was used for agricultural purposes. It has also been found as a fact that this land is situated within the municipal limits of Tanda. On these grounds, it has been urged by the learned Counsel for the appellant that the plaintiffs' father was not an agriculturist within the meaning of the Debt Redemption Act. This contention of the learned counsel must prevail.

6. It has been held in Pran Dei v. Ganga Prsad, 1947 ALL. L. J. 230, that where the debtor is a tenant of land in a notified area he is not a tenant as contemplated in Section 2 (3), Debt Redemption Act, and is consequently not an agriculturist as defined in the Debt Redemption Act. In Hari Mohan v. Bishwanath, 1949 ALL. W. R. 65, a Bench of this Court has held that :

> "A fixed-rate tenant of plots situated within the limits of a municipality cannot claim to be an agriculturist for the purposes of the Debt Redemption Act. The definition of land in Section 2 (8) clearly excludes land situated within the limits of any municipality."
>
> It is, therefore, clear that the father of the plaintiffs cannot be said to be an agriculturist on the date of the mortgage in 1912.

7. It is, however, urged on behalf of the respondents that even if this be so, it does not affect the right of the plaintiffs to get the benefit of the Debt Redemption Act because in this case it is only the property of the agriculturists which is liable for the mortgage debt. The terms of the mortgage clearly show that the entire liability for the recovery of the money was put on the property itself and the mortgagee was given the right to get a decree for foreclosure in the event of the money due under the mortgage not being paid to the mortgagee. In Section 2(9), Debt Redemption Act, the word "loan" has been defined. That sub-section deals with an agriculturist who is either personally responsible for payment of the debt, or with an agriculturist whose property is liable for the payment of the debt and it deals also with other classes of persons with which we are not concerned at present. The proviso to the sub-section lays down that when an advance is recoverable from an agriculturist then unless the advance was made to an agriculturist it shall not be deemed to be a loan for the purposes of the Act. It is clear in the present case that the advance was not recoverable either from the plaintiffs' father personally nor is it recoverable from the plaintiffs personally. It is the property which alone is liable for the debt and so the proviso in Sub-section (9) of Section 3 does not apply. In Mt. Ketki Kunwar v. L. Ram Saroop, A. I. R. (29) 1942 ALL. 890, Full Bench of the Allahabad High Court has held :

> "The meaning of Section 2(9) is that in cases where advance is recoverable both from the person and the property of an agriculturist in order to take benefit of Section 8 of the Act it must be shown that the claimant was an agriculturist both at the time when the advance was recoverable and when the advance was made. Bat in a case of a workman or in a case where the advance is recoverable only from the property of an

> agriculturist or workman, it is not necessary that the advance should have been else made to a workman or to an agriculturist. The policy behind the statute is that in case where the advance is recoverable from property alone and where the property is liable to be sold it is sufficient if the claimant possesses the status of an agriculturist or workman on the date when the advance is recoverable although at the time when the advance was made it was not made to an agriculturist or a workman."

This authority was followed in Raj Ballam v. Chandi Prasad, A. I. R. (32) 1945 ALL. 59, where it was held that :

> "The words 'the property of an agriculturist' in Section 2 (9) mean the property of a person who is an agriculturist on the date of the suit and do not mean the estate of a deceased agriculturist. Accordingly where money is sought to he recovered from the property of a deceased agriculturist in the hands of his son who is not an agriculturist, the son cannot claim the benefits of the Act."

There cannot be the least doubt in view of the Full Bench authority already referred to that even though the plaintiffs' father, the mortgagor was not an agriculturist within the meaning of the Debt Redemption Act at the time of the date of mortgage yet the plaintiffs being agriculturists at the date of suit are entitled to the benefits of the Act when the property, which is burdened with the debt, is the property of the agriculturists. In view of this, the Courts below were right in holding that the plaintiffs were entitled to the benefits of the Debt Redemption Act.

8. An examination of the account appended to the decree of the trial Court shows that somehow the trial Court actually reduced the interest from the contractual rate to 4 1/2 per cent, provided by statute with effect from the date of the mortgage, that is, 21-3-1912, instead of from 1-1-1917. The learned counsel for the respondents says that there is this obvious error and he has no objection to the rectification of it.

9. Accordingly the decree prepared by the trial Court and confirmed by the lower appellate Court will have to be ccrrected. The defendant is entitled to receive his interest on the sum of Rs. 250 from 21-3-1912, upto 31-12-1916 at the rate of 24 per cent. per year compoundable annually. On the sum of Rs. 1,374 he shall receive interest from 21-3-1912 upto 31-12-1916 at the rate of 12 per cent. per annum simple. In this way shall be found the total amount which was payable to the defendant on 31-12-1916. This sum should include the sum of Rs. 250 in lieu of which the defendant remained in possession of the house. After the total amount due on 31 12-1916, has been determined, interest shall be calculated upon this sum at the rate of 4 1/2 per cent. as provided under the Debt Redemption Act. The net profits of the defendant shall be Rs. 120 per year and shall be deducted annually from the amounts payable by plaintiffs. The account shall be worked out in this way and the defendant shall be entitled to receive only such amount as is found payable to him on 31-5-1944. In addition to this, the defendant shall also receive Rs. 192 on account of repairs during the long period of his occupation of the house. The total amount so due shall carry interest at 3 per cent, per annum from 31-5-1944, till the date of payment. Six months' time shall be given to the plaintiffs to pay up the money due. I am informed that the plaintiffs have already obtained possession.

10. In the circumstances of this case I direct that parties shall bear their own costs in all the Court.