

Ram Charan vs Bhagwan Dei And Ors. on 29 October, 1951

Equivalent citations: AIR1955ALL339, AIR 1955 ALLAHABAD 339

JUDGMENT

P.L. Bhargava, J.

1. This is an appeal, which arises out of a suit for redemption. The suit was instituted by Ram Charan Lal against Mahadeo Prasad (defendant 1) Hakim Dwarka Prasad (defendant 2), Jhan-noo Lal (defendant 3) and Hakim Ram Charan Lal (defendant 4). The property in dispute which consists of a house and a shop, belonged to one Sheo Charan, who died sometime before the year 1904 leaving a widow, Janasa, and two sons, Chheda (major) and Mahadeo (minor). On 1-5-1904, Chheda and Janasa on her own behalf and on behalf of her minor son, Mahadeo, executed a usufructuary mortgage deed with a condition of foreclosure hypothecating the property aforesaid to Hakim Dwarka Prasad (Ex. 1). The mortgage was for a period of ten years and no redemption was permitted within the said period.

The amount borrowed under the mortgage was Rs. 300/- carrying interest at Rs. 2/- per cent.

per mensem compoimdable annually. The mortgaged property, which was a 'kham' structure, needed repairs. The mortgagee was permitted, under the terms of the mortgage deed, to utilise the usufruct of the property in repairing the house and the shop without any liability to render accounts at the time of redemption, and to reconstruct the same or any portion thereof at a cost of Rs. 200/-, which amount was to be treated as part of the mortgage money and to carry interest at the aforesaid rate. The mortgagee, Hakim Dwarka Prasad, obtained possession under the mortgage and reconstructed a portion of the house and the shop, it is alleged, at a cost of Rs. 700/- or Rs. 800/-. No foreclosure proceedings were ever taken.

2. On 13-12-1904, Hakim Dwarka Prasad sub-mortgaged his mortgagee rights, under the mortgage deed of 1-5-1904, to Gangadin, who is now dead and is represented by his son, Jhannoo Lal (defendant 2) (Ex. 2). There was a simple money decree against Hakim Dwarka Prasad and, in execution thereof, on 27-8-1908, his mortgagee rights under the mortgage deed of 1-5-1904, were sold at an auction-sale and purchased by Pan-cham. On 5-12-1908, Jhannoo Lal instituted a suit on the basis of the mortgage deed dated 13-12-1904 (Ex. 3). A preliminary decree for sale of the mortgagee rights was passed in favour of Jhannoo Lal on 31-3-1909, (Ex. 4). That decree was made absolute on 17-3-1910 (Ex. 5). The decree absolute for sale of mortgagee rights under the mortgage deed of 1-5-1904, was put into execution and the said mortgagee rights were sold and purchased by Jhannoo Lal himself on 3-4-1911. In the sale certificate, which was issued to Jhannoo Lal, the auction-purchaser, instead of the mortgagee rights in the property, i.e. the house and the shop, the property itself was described as the property sold. Jhannoo Lal obtained possession over the property purchased on 25-8-1911 (Ex. D. 2).

3. According to the statement of Jhannoo Lal Hakim Ram Charan the present appellant, was occupying the house and the shop at the time when he obtained possession thereon. After he (Jhannoo Lal) had obtained possession Hakim Ram Charan executed a 'Kirayanama' in his favour and then the latter offered to purchase the house and the shop. On 9-9-1912, Jhannoo Lal executed a sale-deed of the house and the shop in favour of Hakim Ram Charan aforesaid. The appellant's case is that full proprietary rights in the house and the shop were transferred under this sale deed, while the contesting respondents, Ram Charan Lal, asserts that only the mortgagee rights were conveyed thereunder.

4. Chheda and Janasa, two of the original mortgagors, are dead. On 6-7-1942, Mahadeo (defendant 1), the sole surviving mortgagor, sold the equity of redemption under the mortgage of 1-5-1904, to Ram Charan Lal, who is the retired Munsarim of the Civil and Sessions Judge's Court, Kheri. This Ram Charan Lal filed the suit for redemption on 30-8-1942, seeking to redeem the mortgage deed of 1-5-1904, with (sic) payment of anything on the allegation that the entire mortgage money had been paid up out of the usufruct of the mortgaged property.

5. The suit was contested by defendant 4, Hakim Ram Charan Lal, who had held posses-

sion over the house and the shop and reconstructed and made them one of the big buildings in the town of Gola. The defences raised by him, which are relevant for the purposes of this appeal, were that the suit was barred by limitation under Article 134, Limitation Act (9 of 1908), that even if the suit was held to be within time he was a 'bona fide' transferee for value without notice and as such he was protected under Section 41, T. P. Act; and that, in any case, as he had reconstructed the house believing in good faith that he was absolutely entitled thereto he was entitled to be reimbursed under Section 51, T. P. Act.

6. The issues material for the purposes of this appeal are issues 3 to G, which are as follows:

"3. Is the suit barred by time as contended in para. 25 of the written statement of defendant 4?

4 Is defendant 1 a 'bona fide' transferee for value within the meaning of Section 41, T. P. Act? If so, its effect?

5. (a) Has defendant 4 reconstructed the mortgaged property considering himself to be its owner

(b) If so, how much did he spend and is he entitled to be reimbursed under Section 51, T. P. Act?

6. To what relief, if any, is the plaintiff entitled and on payment of what amount?"

7. The learned Munsif of Kheri, the trial Court, held that the suit was barred by limitation under Article 134, Limitation Act; and that Section 41, T. P. Act, had no application. He did not decide the

question of the applicability of Section 51, T. P. Act, and, in view of his finding on the point of limitation, he dismissed the suit.

8. The plaintiff, Ram Charan Lal, preferred an appeal in the Court of the Civil Judge, Kheri, and the learned Civil Judge held that the suit was not barred by limitation as Articles 134 and 144, Limitation Act, were inapplicable and Article 148 of the Act governed the suit; that Section 41, T. P. Act, had no application to the present suit; and that as the contesting defendant did not make proper enquiry into the title of his transferor he was not entitled to be reimbursed under Section 51, T P. Act. On the question of reconstruction of the house and the shop and the costs incurred in connection therewith the learned Civil Judge pointed out that, on the basis of the evidence produced, it was not possible to determine the costs of reconstructions, nor was it necessary to do so. In the end the learned Civil Judge considered the stipulation in the mortgage deed relating to interest and was of opinion that "having regard to the present market value of the property in suit on annual profits of Rs. 240/- per year at 20 years purchase value under the present conditions the effect of covenant of interest at 2 p. c., p. m. compound-able yearly was to render redemption practically impossible."

Consequently, following a decision of the late Court of the Judicial Commissioner of Oudh in -- 'Muham-mad Ali v. Ramzan Ali', AIR 1917 Oudh 106 (A), the learned Judge held that the equities of the case would be met if the mortgagors were relieved of the harshness of compound rate of the interest. Accordingly, he allowed simple interest at Rs. 2/- p. c. per mensem on Rs. 300/-, the principal sum secured under the mortgage as well as on Rs. 200/-, the costs of reconstruction from the date of the mortgage until six months after the date of the decree and thereafter at Rs. 3/- per cent, per annum on the aggregate amount till satisfaction of the decree. Accordingly he decreed the suit for redemption on payment of the said amount. This appeal has been filed by Hakim Ram Charan Lal (defendant 4).

9. Learned counsel for the appellant has contended that the present suit is governed by Article 134, Limitation Act or, in the alternative, by Article 144 of the same Act and that the learned Civil Judge was wrong in holding that it was governed by Article 143 of the Act. Learned counsel has invited our attention to the history of Article 134 of the same Act. It appears that in the Limitation Act (14 of 1859) the corresponding provision wa-s contained in Section 5 of that Act and it provided:

"In suits for the recovery from the purchaser or any person claiming under him of any property purchased 'bona fide' and for valuable consideration from a trustee, depositary, pawnee, or mortgagee, the cause of action shall be deemed to have arisen at the date of the purchase. Provided that, in the case of purchase from a depositary, pawnee or mortgagee, no such suit shall be maintained unless brought) within the time limited by Clause 15, Section 1."

10. In the Limitation Act, 9 of 1871 the corresponding provision was Article 134, which was in these terms:

"To recover possession of immoveable property conveyed in trust or mortgaged and afterwards purchased from the trustee or mortgagee in good faith and for value -- 12 years -- the date of purchase."

11. In the Limitation Act 15 of 1877 there was a slight change made in Article 134 and it ran as follows:

"To recover possession of immovable property conveyed or bequeathed in trust or mortgaged and afterwards purchased from the trustee or mortgagee for a valuable consideration -- 12 years -- the date of the purchase."

12. The present Limitation Act, 9 of 1908, also introduced a slight change in Article 134, which now reads as follows:

"To recover possession of immovable property conveyed or bequeathed in trust or mortgaged and afterwards transferred by the trustee or mortgagee for a valuable consideration -- 12 years -- the date of the transfer."

The starting point of limitation under Article 134 of the present Act which was "the date of purchase" was by Act I of 1929 changed to "when the transfer becomes known to the plaintiff."

13. The learned Civil Judge held Article 134, Limitation Act, to be inapplicable to the present suit on three grounds: (1) that the rights of Hakim Dwarka Prasad were transferred by a forced sale and not by any voluntary alienation as required by the said Article; (2) that the transfer by Jhannoo Lal had taken place within the term fixed under the mortgage deed for redemption; and (3) that Jhannoo Lal was not a mortgagee within the meaning of that term in the said Article.

14. Learned counsel for the appellant has assailed all the three grounds mentioned by the learned Civil Judge. In regard to the first ground the learned counsel for the appellant did not contest the proposition of law that where, in execution of a money decree, immoveable property of a judgment-debtor in which his real interest is only that of a mortgagee, is attached and brought to sale, the auction purchaser is not a purchaser from the mortgagee within the meaning of Article 134 of Schedule II, Limitation Act, even though the property was sold as the property of the judgment-debtor without any limitation of his interest therein and that Article 134 only applies to cases in which the mortgagee disposes of the property voluntarily. In fact he cited, on this point the latest decision of their Lordships of the Privy Council in -- 'Sudarsan Das v. Ram Kirpal Das', AIR 1950 PC 44 (B), wherein the above proposition of law, which was laid down in -- 'Ahmed Kutti v. Raman Nam-budri', 25 Mad 99 (FB) (C), was affirmed.

15. Learned counsel, however, contended that he did not rely upon the auction-sale but upon the voluntary alienation that is the sale which took place on 9-9-1912, by Jhannoo Lal in favour of Hakim Bam Charan Lal.

16. The appellant has relied upon the auction sale only in order to show that his transferor, Jhannoo Lal, was the assignee of the rights of the original mortgagee. The sequence of events leading to the auction-sale has been set-out in the opening part of this judgment. We have seen that Hakim Dwarka Prasad had executed a sub-mortgage of his mortgagee rights in favour of Ganga Din, father of Jhannoo Lal and that in execution of the decree obtained on the basis of that mortgage, the mortgagee rights of Hakim Dwarka Prasad were sold and purchased by Jhannoo Lal. Whether by virtue of the auction-sale Jhannoo Lal became an assignee of the rights of the original mortgagee or not will be dealt with while discussing the third ground mentioned by the learned Civil Judge, We find no force in the first ground mentioned by the learned Civil Judge for holding that Article 134, Limitation Act, did not govern the present suit.

17. The next ground, as we have already seen, is that as the transfer in favour of Jhannoo Lal had taken place within the term fixed for redemption of the mortgage deed, Article 134 was inapplicable. In this connection the learned Judge has referred to the contention put forward before him, viz., that "all the transfers took place before the term of 10 years and the right of redemption had not accrued to the mortgagor so that on authority of -- 'Seeti Kutti v. Kunhi Puthumma', AIR 1919 Mad 972 (FB) at p. 984 (D) fol-

lowed in -- 'Krishnaswami Ayyar v. Subaratnam Chetti', AIR 1938 Mad 394 (E), the benefit of Article 134 could not be availed of and because defendant 4 was aware of such weak-

ness he raised the false plea of relinquishment of equity of redemption by Chheda forming the subject-matter of issue 2 and the finding thereon against him is not challenged".

We have examined the case reported in AIR 1919 Mad 972 (FB) (D). In that case the following questions were referred to the Pull Bench for opinion:

"(1) Does Article 134, Limitation Act, apply to a transfer from the trustee or mortgagees under which possession is not taken by the transferee?

(2) Where possession is taken under the transfer but at some time after the date of the transaction purporting to transfer the right to take possession, does time begin to run from the date when possession is taken or from the date of the transaction?

(3) Where the mortgage is usufructuary and the mortgagor has no right to obtain possession from the mortgagee at the time of the transfer, does time run against the mortgagor under Article 134,

(a) from the time of the transfer or

(b) from the time when the mortgagor's right to sue for possession accrues, under the original mortgage or

(c) from the time when the transferee enters into possession or

(d) from the time when the transferee enters into possession and asserts an adverse title to the knowledge of the mortgagee."

The question considered in the above case and relevant for the purposes of this appeal is the third question. Wallis, C. J., Coutts. Trotter, Seshagiri Ayyar and Srinivasa Ayyangar JJ. did not deal with the third question or express their opinion thereon, Only Abdur Rahim J. dealt with the third question. The learned Judge observed at p. 980:

"Article 134, as has been pointed out in more than one decision, does not apply to cases where a trustee or a mortgagee makes the transfer in pursuance of the power vested in him; in such cases the transferee becomes merely an assignee of the trust or mortgage and cannot claim any higher position.....It applies only to transferor's powers. New a mortgagee in possession is prohibited from doing any act which is destructive or permanently injurious to the property mortgaged (see Section 70, T. P. Act.). If he therefore purports, for instance, to sell the property to a third person the mortgagor would be entitled, although the terms of the mortgage may not have expired to protect his own interests by a proper suit.....It is not, however, necessary to answer the third question."

It follows, therefore, that the decision in AIR 1919 Mad 972 (FB) (D), does not support the contention put forward before the learned Civil Judge or his decision thereon; and, in fact, the observations of Abdur Rahim J. do not support the said contention or the view of the learned Civil Judge.

18. In the other case AIR 1938 Mad 394 (E), Abdur Rahman J. observed at page 395:

"A close perusal of Article 134 would show that it was brought into existence "with the object of filing suits for possession of the properties primarily mortgaged and subsequently transferred by the mortgagee, etc., in excess of their rights: -- 'J. R. Skinner v. Naunihal Singh', AIR 1929 PC 158 at p. 161 (F). If a mortgagee did not exceed his rights, he would be assigning his mortgagee's interest alone and in that case obviously Article 148 and not Article 134 would be held to be applicable. If on the other hand the mortgagee exceeded his rights and transferred the entire property as an owner he must be held undoubtedly to have exceeded his rights as a mortgagee. In that case if it is necessary to institute a suit for possession either by a mortgagor or his alienees (as provided in Col. 1 of Article 134 and which must be read along with what appears in Col. 3 of that Article), it must be presumed that the mortgagee had possession and delivered it to his alienee. This would imply, in my opinion, that the word "transfer" used in Col. 3 of Article 134 must necessarily refer to a transfer of possession and not merely to a conveyance of title."

19. We have not been referred to any passage in the case under consideration which might support the contention or the view expressed by the learned Civil Judge.

20. On behalf of the respondents no serious attempt was made to support this ground stated by the learned Civil Judge for holding that Article 134 did not govern the present suit.

21. It is true that the mortgagor was in terms of the mortgage, precluded from redeeming the mortgage so long as the mortgagee considered himself bound by the terms of the mortgage and did not act in any manner prejudicial to his (mortgagor's) interest. In terms of a mortgage, a mortgagee acquires the limited interest of a mortgagee; and in that capacity, in view of the provisions contained in Section 76, T. P. Act, while in possession of the mortgaged property, he is prohibited from doing an act which is destructive or permanently injurious to the property mortgaged. If in defiance of his contractual and statutory liability, the mortgagee repudiates the mortgage, the mortgagor cannot be bound by the terms of the mortgage; and he cannot be expected to wait for the expiry of the term before he can seek his remedy against a person, who asserts title adverse to him. In the present case the remaining term was only two years, but in other cases there may be a longer term yet to expire -- say more than 12 years. In the latter class of cases the mortgagor cannot be left to his fate during that time and run the risk of losing the property altogether. Apart from it, the cause of action for a suit for redemption may arise after the expiry of the term fixed in the mortgage; but there appears, to be no reason to tack on that cause of action to an entirely different cause of action when a transfer prejudicial to his interest is made by the mortgagee and prevent him from enforcing the latter cause of action.

22. The third ground namely that Jhannoo Lal was not a mortgagee within the meaning of that term in Article 134, Limitation Act, has, however, been the subject of long arguments on behalf of the appellant as well as the respondents. Learned counsel for the appellant has strenuously argued that by virtue of the auction-sale held on 3-4-1941, Jhannoo Lal became the assignee of the rights of the original mortgagee; while on the other hand, the respondents' learned counsel has contended that by virtue of the said sale Jhannoo Lal did not become a mortgagee within the meaning of that term in Article 134. It appears worthwhile to repeat the circumstances leading to the auction sale held on 3-4-1911. On 13-12-1904, Hakim Dwarka Prasad sub-mortgaged his mortgagee rights under the deed in suit to Ganga Din, father of Jhannoo Lal. In execution of a simple money decree against Hakim Dwarka Prasad on 27-8-1908, the mortgagee rights under the deed in suit were sold at a court auction and purchased by Pancham, which means that Pancham became the owner of the equity of redemption of the mortgagee rights of the deed in suit. Jhannoo Lal then instituted a suit on the mortgage deed in favour of his father and in due course obtained a decree absolute for sale of the mortgaged property, namely the mortgagee rights of the deed in suit and purchased them himself. The sub-mortgage having been thus extinguished the sale of the equity of redemption to Pancham also became ineffective. Jhannoo Lal thus became the owner of the mortgagee rights of the deed in suit and thereby stepped into the shoes of Hakim Dwarka Prasad, the original mortgagee.

23. On the basis of the facts just stated it has been pointed out on behalf of the appellant that Jhannoo Lal became the mortgagee within the meaning of that term in Article 134 which includes the heirs, legal representatives and assignees of the mortgagee.

24. In support of his contention learned counsel for the appellant has invited our attention to a recent Full Bench decision of this Court in -- 'Mt. Chunai v. Bam Prasad', AIR 1951 All 167 (FB) (G).

In that case his Lordship the Chief Justice thus explained the points of difference between Articles 134 and 148:

"(1) Article 148 relates to a suit against a mortgagee, and Article 134 to a suit against a person to whom the immovable property has been transferred by the mortgagee for a valuable consideration and (2) Article 148 relates to a suit to recover possession or to redeem, while Article 134 mentions only a suit to recover possession."

The observations of his Lordship the Chief Justice, which are relevant to the question under consideration, are thus summed up at page 171:

"The result, therefore, is that, to my mind, Article 148 applies to a suit for possession or for redemption against a mortgagee, against the heirs of the mortgagee, against persons to whom the mortgagee's interest only has been transferred, against persons who have purported to purchase the property without paying valuable consideration therefor and against persons who have purchased the property with notice of the mortgage & are thus estopped from denying the title of the mortgagor. The burden of proving that the transferee had notice of the mortgage & that he was estopped from denying the mortgagor's title, must be on the plaintiff. To all other suit for possession of immoveable property, where property was transferred by a mortgagee in possession to a transferee for valuable consideration, Article 134 is applicable and in such a suit it is not necessary for the defendant transferee to prove that he is a transferee in good faith."

It would thus appear that the term "mortgagee" used in Article 148 includes the heirs of the mortgagee, the persons to whom the mortgagee's interest only has been transferred, the persons who have purported to purchase the property but without paying the valuable consideration therefor and the persons who have purchased the property with notice of the mortgage and are thus estopped from denying the title of the mortgagor. There appears to be no reason why the term "mortgagee" used in Article 134 should be confined to the original mortgagee or his heirs alone. In our opinion, such a limited interpretation of the term "mortgagee" used in Article 134 would lead to anomalous results.

25. Learned counsel for the respondents has contended, firstly that a person who purchases mortgagee rights at an auction sale does not step into the shoes of the original, mortgagee, and cannot be regarded as a mortgagee within the meaning of that term in Article 134, Limitation Act. He has attempted to support his contention by citing the following decisions. -- 'Kali Das v. Kanhya Lal', 11 Ind App 218 at p. 229 (PC) (H);

-- 'Sheo Nath Singh v. Mahipal Singh', 2 All LJ 234 at p. 236 (I); -- 'Paras Ram v. Lalman', 7 Ind Cas 570 (All) at p. 571 (J); -- 'Munawar Ali v. Jagmilan Ram', AIR 1927 All 177 (K);

-- 'Chhoti Begam v. Ram Prasad', AIR 1917 Oudh 290 at p. 291 (L); -- 'Mahomed Mohsin v.

Mahomed Abid', AIR 1919 Oudh 150 at p. 151 (M); 25 Mad 99 (FB) at p. 102 (C); and -- 'Mahomed Moosa v. Kazi Fatehullah', AIR 1925 Sind 167 CN).

26. The passage at page 229 of 11 Ind App 218 (H) to which reference has been made is as follows:

"Their Lordships intimated in the course of the argument that the purchase at the sale in execution of the rights and interests of Ruttonmoni, could not, as between the purchaser and Roma Sundari, be considered to fall under this article."

In our opinion, the above observations of their Lordships of the Privy Council only affirmed the principle that a transfer by execution sale is not a transfer within the meaning of that expression in Article 134, Limitation Act, and we can find nothing in that case which might support the contention that a purchaser of the mortgagee rights at an auction sale does not step into the shoes of the mortgagee and cannot be regarded as a mortgagee within the meaning of that term in Article 134.

27. In 2 All LJ 234 at page 236 (I) a similar view was expressed. At page 236 the following passage appears:

"It is true that in the present instance the property itself was sold by auction in execution of Mustaid Hussain's decree in 1884, but the purchaser at the auction sale was not a purchaser from the mortgagee. Article 134 clearly applies to a case in which the mortgagee has himself voluntarily sold the property, and does not apply to the case of a forced sale in execution of a decree."

In support of this view reference was made to the Full Bench decision of the Madras High Court in 25 Mad 99 (C), which has already been noticed by us.

28. The decision reported in 7 Ind Cas 570 (All) (J), is based upon 2 All LJ 234 (I) and lays down the same rule of law.

29. The single Judge decision in AIR 1927 All 177 (K), no doubt, contains the following observations:

"That article (Art. 134), in my opinion, cannot protect persons who are not transferees from the mortgagee but are transferees from persons other than the mortgagees or their heirs. The mortgagor is ordinarily allowed a period of 60 years to redeem a mortgage by Article 148 of the First Schedule to the Limitation Act, and any person who seeks the protection of Article 134 must strictly bring his case within that article. If one were to extend the operation of Article 134 to cases of transfers by sub-mortgagees one would have to read into the article, words to the effect; 'property transferred by the mortgagee or by a transferee from the mortgagee' words which are not to be found in Article 134."

The learned Judge relied upon a decision of the late Court of the Judicial Commissioner of Oudh in AIR 1917 Oudh 290 (L).

30. In the case reported in AIR 1927 All 177 (K), it was an admitted fact that the defendants were in possession of the property sought to be redeemed from a time long before the institution of the suit, and it was alleged by the plaintiff that the defendants were in possession as sub-mortgagee and that the original mortgagee having been satisfied the defendants were not entitled to resist the suit for redemption. That is not the position here and it must be conceded that the position of a sub-mortgagee is entirely different. Here the appellant had obtained a transfer of the full mortgagee rights. The decision in AIR 1927 All 177 (K), was not followed by the Division Bench in -- 'Suleman Bahadur v Fida Husain', AIR 1945 Oudh 258 (O) where it was observed that there was nothing in Article 134 to show that it was intended to apply only to a transfer made by the original mortgagee and not to a person who was a transferee of the very rights held by the original mortgagee. If we may say so with respect, we entirely agree with this view. Jhannoo Lal, in the present case, is a transferee of the very rights held by the original mortgagee, Dwarka Prasad.

31. The facts of the case in AIR 1917 Oudh 290 (L), were also different and the relevant passage relied upon in that case is to the effect that a purchaser in execution of a mortgage-decree does not become a mortgagee of the property within the meaning of Article 134. That is quite obvious because as soon as a decree is passed the mortgage is extinguished and as a result of a sale in execution of that decree there remains no question of the purchaser stepping into the shoes of any mortgagee.

32. In AIR 1919 Oudh 150 at p. 151 (M) it was observed by Daniels A. J. C. that there was considerable authority for the view that a purchaser at an auction sale is not entitled to the benefit of Article 134 even though the sale purports to transfer not merely the mortgagee rights which the judgment-debtor really possessed but full proprietary rights. That proposition of law is not contested on behalf of the appellant. (33) The case reported in 25 Mad 99 (FB) (C), has already been noticed above and it lays down a proposition of law which is not being disputed in this case.

34. The case in AIR 1925 Sind 167 (N), lays down the same proposition of law and does not support the argument of the respondents' learned counsel.

35. We may also notice three other cases, which have been relied upon by the learned Civil Judge, viz., -- 'Thiruvikrama Ayyar v. Vyapuri Naicken', AIR 1927 Mad 1028 (P); -- 'Sri Ram v. Najibullah', AIR 1926 Oudh 547 (FB) (Q); and AIR 1929 PC 158 (F). In the first case, it was pointed out that Article 134, Limitation Act cannot possibly apply to a transfer in invitum or by operation of law or in execution, because the article specifically speaks of the transfer made afterwards by the trustees or mortgagee for valuable consideration. This or any other observation in the judgment does not touch the point under consideration.

36. The question which was referred for the opinion of the Full Bench in AIR 1926 Oudh 547 (Q), was whether the suit was governed by Article 134, Limitation Act and it was held in that case that a suit by a mortgagor to recover property from a transferee of absolute title from mortgagee was governed by Article 134 and not by article 148 and that under article 134 the transferee without notice and the transferee with notice stood on the same footing. It would thus appear that this case does not deal with or decide the point under consideration.

37. The case reported in AIR 1929 PC 158 (F), also does not cover the point under consideration. There it was pointed out that the transfer of property mortgaged contemplated by Article 134 was something other than an express transfer of the original mortgage and that Article 134 contemplates a transfer by a mortgagee purporting to transfer a larger interest than that given by the mortgage or at any rate an interest unencumbered by a mortgage.

38. After a review of the case-law cited at the bar we are led to the conclusion that a person who purchases the mortgagee rights at an auction sale steps into the shoes of the original mortgagee and the person who thus acquires the mortgagee rights can be treated as a mortgagee within the meaning of that term in Article 134, Limitation Act. We, therefore, do not find any force in the third ground also, which has been mentioned by the learned Civil Judge for holding that the present suit was not governed by Article 134, Limitation Act.

39. Article 134, Limitation Act relates to suits to recover possession of immoveable property conveyed or bequeathed in trust or mortgaged and otherwise transferred by the trustee or mortgagee for a valuable consideration. It is not disputed that the transfer by the trustee or mortgagee for a valuable consideration contemplated by the article refers to an absolute transfer. On behalf of the respondents it has been contended that Jhannoo Lal had only transferred the mortgagee rights possessed by him and he had not transferred any rights higher than the rights possessed by him. This argument is based on the following circumstances; (1) On behalf of the appellant, the position that the full proprietary rights in the house and the shop were sold and purchased by Jhannoo Lal at the auction-sale on 3-4-1911, has not been pressed. Consequently it must be held that only mortgagee rights were sold and purchased; (2) Jhannoo Lal being the son of the sub-mortgagee and having obtained a decree on the basis of the sub-mortgage and being the auction-purchaser in execution of his own decree was fully aware of the fact that the mortgagee rights only were sold and purchased; (3) before the auction-sale the necessary preliminaries must have been taken and Hakim Ram Charan must have been aware of the entire situation and about the property that was actually put to sale, and Jhannoo Lal's statement shows that he had shown all the relevant papers to Hakim Ram Charan; and (4) having regard to the terms of the sale deed it is not possible to hold that proprietary rights and not only the mortgagee rights were sold.

40. Learned counsel for the appellant pointed out that he still maintained that at the auction-sale the proprietary rights were put up for sale and purchased by Jhannoo Lal and that he never gave up that position. He invited our attention to the sale certificate which clearly indicated that the house and the shop and not only the mortgagee rights therein had been sold. It is, therefore, not possible to say that it was admitted that only the mortgagee rights were put up for sale or actually sold at the auction sale of 1911.

41. Jhannoo Lal was, no doubt, the son of the sub-mortgagee and he had obtained a decree on the basis of the sub-mortgage and was the auction-purchaser at the auction-sale held in execution of the decree obtained on the basis of the sub-mortgage. There is nothing on the record to show that he treated himself as only the owner of the mortgagee rights. In fact we find that he considered himself to be the absolute owner of the property purchased by him. That is made clear by the fact that he invested a considerable amount in rebuilding the house and the shop and gave them the form of one

of the big buildings in the town where they were situate.

42. The sale proclamation or any other document relating to the auction-sale of 1911 has not been produced in this case and we do not know whether only the mortgagee rights were put up for sale. Undoubtedly, in the sale certificate the proprietary and not only the mortgagee rights therein have been mentioned and we do not know what was shown in the sale proclamation etc. Hakim Ram Charan might have relied upon the sale certificate, which was admittedly shown to him, and he might not have been aware of the actual position. Jhannoo Lal has, no doubt, stated that he had shown the papers relating to the litigation to Hakim Ram Charan Lal; but this fact has been denied by Hakim Ram Charan Lal. There being oath against oath, the question is whether Jhannoo Lal or Hakim Ram Charan should be believed on this point. It appears difficult to believe the statement of Jhannoo Lal because we find that he has not spoken the whole truth on certain material points, for example, he would have us believe that he had told the scribe of the sale deed executed by him that only the mortgagee rights were being sold. If he had told the scribe that fact must have found place in the sale deed itself; but we do not find any mention thereof in the deed. In his cross-examination he admitted that after seeing the sale certificate Hakim Ram Charan did not ask him to show any other paper. This statement indirectly supports the statement of Hakim Ram Charan that he had been shown only the sale certificate. Jhannoo Lal was unable to give the details of the papers alleged to have been shown to him to Hakim Ram Charan. Jhannoo Lal also attempted to conceal the fact that he had made Pancham a party to his suit. No reliance can, therefore, be placed upon the statement of Jhannoo Lal.

43. Now coming to the sale deed of 9-9-1912, it makes it absolutely clear that the proprietary rights in the house and the shop and not only the mortgagee rights therein were sold. The deed begins with a recital that under the sale certificate relating to the sale of 3-4-1911, the vendor Jhannoo Lal had become the owner and was in possession of the house and the shop. Further on he stated that he was the exclusive owner of the house" and the shop and possessed all the rights therein. While describing the property transferred under the deed Jhannoo Lal stated that he was transferring the house and the shop without the exception of anything, which could be the subject of ownership, for a sum of Rs. 1,000/-. Then the deed proceed to say that the vendor had put the vendee into possession of the house and the shop as an owner like himself and that the vendee had thereby acquired all the rights of ownership like the vendor. The vendor further agreed that if for any reason the vendee was deprived or the property on account of any claim or otherwise, he would be responsible for the same. The deed, read as a whole leaves no room for doubt that absolute proprietary rights were conveyed by the vendor to the vendee.

44. We, therefore, see no force in the contention that Jhannoo Lal had not sold absolute proprietary rights in the property but had only transferred the mortgagee rights or that the parties did not contemplate a sale of the proprietary rights. Consequently, on this ground also it cannot be urged that Article 134, Limitation Act had no application to the present suit.

45. Another argument put forward on behalf of the respondents was that it was incumbent upon the defendant-appellant to prove all the ingredients which were necessary to bring the suit within the purview of Article 134, Limitation Act. In this connection reliance was placed upon the observations

of their Lordships of the Privy Council in -- 'Radhanath v. Gisborne & Co.', 14 Moo Ind App 1 at p. 15 (R). That case was based upon the corresponding provisions of Act 14 of 1859 and their Lordships pointed out at p. 15 that "in order to claim the benefit of Section 5 of that Act a defendant must show three things: First, that he is a purchaser according to the proper meaning of that term; second, that he is a 'bona fide' purchaser; and third, that he is a purchaser for valuable consideration."

Learned counsel for the respondent has argued that in addition to these three points in the present case it was incumbent upon the defendant-appellant to establish that the plaintiff had knowledge of the transfer and that the burden of issue in this case was thrown upon him; but he had failed to discharge that onus, which was thrown upon him and was accepted by him. In a suit for recovery of possession of immoveable property governed by Article 134, Limitation Act, 1908 it must be shown that the immoveable property which was the subject-matter of the suit was mortgaged and afterwards it was transferred by the mortgagee for a valuable consideration. That fact has been clearly established in this case. Under the article as it stood before the amendment in the year 1929 the limitation of 12 years was to run from the date of transfer and the date of transfer being admitted, it was not necessary to prove the date of transfer. The transfer in question was executed on 9-9-1912. The suit to recover possession of immovable property transferred by the mortgagee should have been brought within 12 years from that date. No suit having been instituted within the period of 12 years prescribed by Article 134, in view of the provisions contained in Section 28, Limitation Act, the remedy of the person entitled to recover possession was barred.

46. It has been contended on behalf of the appellant that the remedy having become barred by virtue of Section 28, Limitation Act the amendment of the year 1929 could not affect the vested rights or revive the rights which had been extinguished. Consequently, Article 134 as it stood before the amendment of the year 1829 and not the article as it stood after the amendment was applicable to the present case. In our opinion, there is force in this argument and it must be accepted. The suit being governed by Article 134 as it stood before the amendment of the year 1929, it was not necessary for the defendant-appellant to establish that the plaintiff had knowledge of the transfer more than 12 years before the institution of the suit.

47. Apart from it we find that the defendant had proved the circumstances which go to show that the original mortgagee Chheeda, had notice of the transfer soon after it was made. We have it from Hakim Ram Charan Lal that Cheda worked as a labourer and he had engaged him to reconstruct the house and the shop in dispute and he never raised any objection on the basis of the equity of redemption which vested in him. There is no evidence in rebuttal and, in view of the circumstances pointed out above, we see no reason to hold that the original mortgagors had no notice of the transfer of absolute rights in the property to Hakim Ram Charan Lal.

48. In the present case, the auction-sale held on 3-4-1911 is not being relied upon for the purpose of bringing the case within the purview of Article 134, Limitation Act and it is the sale by Jhannoo Lal in favour of the defendant-appellant, Hakim Ram Charan Lal, which is being relied upon. It is not disputed that the auction sale, which was held in execution of a decree for sale of mortgagee rights, is not a transfer within the meaning of that term in Article 134; but it is contended that the appellant can ignore the auction sale and contend that the starting point of limitation should be taken as the

date of the voluntary alienation made on 9-9-1912. In a suit governed by Article 134 relief by way of recovery of possession is claimed against the person in possession; and in this case the person in actual possession is the transferee under the sale deed, dated 9-9-1912; consequently, we have to take into consideration, for the purposes of Article 134, the transfer dated 9-9-1912.

48a. The main distinction between the suits falling under Article 134 and those governed by Article 148 is that the former classes of suits are those which are filed 'against the transferees' for valuable consideration from the mortgagee; while the latter classes of suits are those which are filed against the mortgagee. In other words, if a suit is against a person other than the mortgagee it will fall within the purview of Article 134 and if the suit is against a mortgagee it will be governed by Article 148.

49. The point whether the term "mortgagee" in Articles 134 and 148 includes only the original mortgagee or the heirs, legal representatives and assignees from the original mortgagee has already been discussed earlier in this judgment. As far as the term "mortgagee" used in Article 148 is concerned, the point is concluded by the authority of the Full Bench decision in AIR 1951 All 167 (G). It is not disputed on behalf of the plaintiff-respondent that the term "mortgagee" used in Article 134 is not confined to the original mortgagee and it includes the heirs of the mortgagee; and in AIR 1945 Oudh 258 (O) it was pointed out by a Division Bench of the Avadh Chief Court that there was nothing in Article 134 to show that it was intended to apply only to a transfer made by the original mortgagee and not to a person who is a transferee of the very rights held by the original mortgagee. So, the term 'mortgagee' also includes a transferee of the mortgagee rights as well; and, as already pointed out, we see no reason why the term should not include the persons covered by the same term in Article 143, according to the Full Bench decision in AIR 1951 All 167 (G).

50. It remains for us to consider one more argument in this connection, namely, that the defendant-appellant Hakim Ram Charan, who lived in the house and occupied the shop in dispute, had notice of the actual nature of the title possessed in the property by his transferor, Jhannoo Lal. It was attempted to be shown that Hakim Ram Charan Lal occupied the house and the shop soon after the mortgage was executed in favour of Hakim Dwarka Prasad in the year 1904; but there is no evidence on the record to prove that fact. On the other hand, Hakim Ram Charan Lal as D. W. 1 has stated on oath that he came to live in the town of Gola in the year 1911; and if that statement is accepted he could not have occupied the house or the shop in or about the year 1904. The statement of Jhannoo Lal, upon which reliance was placed by the respondent's learned counsel, does not take us previous to the year 1911. Jhannoo Lal obtained possession over the property, on 25-8-1912. under the sale certificate which was shown to Hakim Ram Charan Lal and which, as we have already seen, showed that Jhannoo Lal was the full owner of the property. The plea of estoppel based upon the fact that Hakim Ram Charan Lal had notice of the actual nature of the title possessed by his transferor was never raised in the pleadings nor was any issue framed on this point; we do not find sufficient materials on the record to show that he had such notice. This point has assumed importance in view of the recent Full Bench decision in AIR 1951 All 167 (G). We have already stated that it is not possible to accept the statement of Jhannoo Lal at its face value. Consequently, we are not prepared to hold that the defendant-appellant, Hakim Ram Charan Lal had any notice of the fact that Jhannoo Lal was only a mortgagee of the property and. that he was therefore estopped from

challenging the rights of the mortgagor or his transferee.

51. The defendant-appellant, Hakim Ram Charan Lal is a transferee from Jhannoo Lal, who was undisputably a transferee of the mortgagee rights under the deed in suit. In our opinion, therefore, the suit was clearly governed by Article 134, Limitation Act and as such the suit which was filed long after the expiry of the period of limitation prescribed by the said Article was barred by the time, and it should have been dismissed on that ground.

52. In view of the conclusion at which we have arrived on the question of limitation it is not necessary to discuss the other points which have been raised on behalf of the appellant; but as certain points have been raised and discussed before us we would like to express our views thereon.

53. It has been contended that if it be held that Art, 134 does not apply and Article 148 is also inapplicable the residuary Article 144 must be held to be applicable to the present suit. The learned Civil Judge, as has already been pointed out above, held that the present suit was not governed by Article 134, but it was governed by Article 148, Limitation Act. It seems to have been pressed before him that if the suit was not governed by Article 134, it was governed by Article 144, Limitation Act. This contention on behalf of the defendant-appellant was answered by the learned Judge in the following summary way:

"I do not see how the residuary Article 144 is made applicable to this case. It is difficult to conceive that different articles would apply, viz., Article 148 as against defendant 2 and Article 144 as against defendant 4."

54. For the reasons already stated it is not possible to hold that the present suit was as against a mortgagee or against any of the persons referred to in AIR 1951 All 167 (FB) (G). The suit was against a transferee from an assignee of the mortgagee rights and as such it was not a suit of the nature contemplated by Article 148, Limitation Act. In this connection learned counsel for the appellant has invited our attention to a Full Bench decision of the Avadh Chief Court in AIR 1926 Oudh 547 (Q) to which reference has already been made above. There it was held that a suit by a mortgagor to recover property from a transferee of absolute title from the mortgagee is governed by Article 134 and not by Article 148.

55. We are, therefore, of opinion that the present suit was not governed by Article 148, Limitation Act. The suit not being governed by Article 134 or 148, Limitation Act, such a suit would obviously be governed by the residuary Article 144.

56. Learned counsel for the respondents has, however, pointed out that the defendant-appellant never pleaded in the trial Court that the present suit was barred by the provisions of Article 144, Limitation Act. That contention is undoubtedly correct, because issue 3 clearly shows that the plea of limitation was based upon the allegations contained in para. 25 of the written statement of the defendant-appellant. Para. 25 of the written statement was as follows:

"From the time of purchasing it, the defendant No. 4 is continually in possession of the property as a proprietor in the knowledge and information of Chheda aforesaid. The suit of the plaintiff is beyond limitation and this suit is barred by Article 134, Limitation Act. All the rights of the mortgagor, whether of Chheda or of Janasa, or of Mahadeo, if there were any, have extinguished."

57. In order to establish that the suit was barred by limitation under Article 144, Limitation Act it was necessary for the defendant-appellant to establish that he had established adverse possession for a period of 12 years. In para 25 of his written statement, the defendant-appellant merely alleged that he had been in possession of the property since the date of the purchase as a proprietor within the knowledge of Chheda, one of the original mortgagors. As an assignee of the mortgagee rights also the defendant-appellant would have held continuous possession over the property until the date of redemption. Consequently, the mere allegation or proof of the fact of continuous possession was not sufficient in the circumstances of the present case to establish adverse possession. No other hostile acts to establish adverse possession were alleged and as such the plaintiff-respondent had no occasion to rebut any case of adverse possession. In these circumstances, it is difficult to allow at this stage the defendant-appellant to raise the plea of adverse possession, which is a mixed question of law and fact.

58. In this connection on behalf of the respondent it has been contended that there was no question of adverse possession against the rights and interests of the mortgagor so long as the mortgage deed subsists and in support of their contention they have invited our attention to the following cases: -- (1) 'Salig Ram v. Gauri Shankar Tandon', AIR 1935 All 542 at p. 543 (S); (2) 'Mst. Durga Devi v. Girwar Singh', AIR 1923 All 11 (2) (T); (3) 'Muhammad Husain v. Mul Chand', 27 All 395 at p. 396 (U) and (4) 'Zinda v. Mt. Roshnai', AIR 1928 Lah 250 at p. 255 (V).

59. In the first case, it was pointed out that the mortgagor's right to sue for possession accrues for the first time when after redemption he is unable to take possession of part of the mortgaged property, which he finds to be in possession of a trespasser, who denies his title to it. He becomes entitled to sue the trespasser when he redeems the property and is opposed by the trespasser. It is clear that the period of limitation for his suit is 12 years to be reckoned from the date of redemption, and the trespasser's possession would not become adverse to him till after redemption.

60. In the second case, the defendants, successors of the mortgagee, who had somehow obtained possession of the mortgaged plot under a usufructuary mortgage, got their names entered in the revenue papers, as if they were occupancy tenants of the disputed land and set up their title by adverse possession. It was held that no such possession, short of the statutory period of sixty years, would be a bar or defence to a suit for redemption, if the parties were otherwise entitled to redeem.

61. The head-note of the third case is as follows:

"Possession of mortgaged property obtained by ouster of a mortgagee in possession is not necessarily adverse to the mortgagor also, for the reason that such possession, so far as the mortgagor is concerned, cannot become adverse until the mortgagor

becomes entitled to immediate possession."

62. The view expressed in the fourth case is expressed in the following passage:

"Where a mortgagee is let into possession, his position is to some extent that of a trustee and that he is bound to protect the interests of the mortgagor and to prevent any invasion of his rights by a stranger. If the mortgagee by neglect or collusion allowed any person to come into possession of the property, there will be no invasion of the rights of the mortgagor, and when the time for redemption comes, he will be entitled to treat the stranger as a trespasser and the stranger's right by adverse possession against the mortgagor will not commence unless and until the mortgagor had sought to exercise his right of redemption and redeemed the property."

63. The cases just cited lay down that a person may acquire adverse rights against the mortgagee, but he cannot acquire those rights against the mortgagor; but, in our opinion, the question of adverse possession or the bar of limitation under Article 144, Limitation Act not having been specially pleaded by the defendant-appellant in the trial Court it cannot be allowed to be raised here at this stage.

64. The next question which was raised on behalf of the defendant-appellant in the Courts below was that the defendant-appellant was a 'bona fide' transferee for value without notice and as such he was protected under Section 41, Transfer of Property Act; but that plea was abandoned by the learned counsel for the defendant-appellant in this Court. Consequently, we do not enter into the discussion of that question.

65. The third question which was raised by the learned counsel for the appellant related to the applicability of the provisions of Section 51, Transfer of Property Act. The defendant-appellant alleged "that he had reconstructed the house and the shop at a cost of Rs. 10,000/- to Rs. 12,000/-and he was entitled to be reimbursed or to the extent of the amount invested by him in the reconstruction of the house and the shop. In this connection the learned Civil Judge has held that the contesting defendant had failed to prove the amount actually invested by him in the reconstruction of the house and the shop and that the said defendant was not entitled to claim any reimbursement under Section 51, Transfer of Property Act, because he had failed to make the necessary inquiries into the title of his transferor. It is, however, not disputed that the defendant-appellant has made substantial improvements in the house and the shop is now one of the big buildings in the town of Gola.

66. Section 51, Transfer of Property Act lays down:

"When the transferee of immovable property makes any improvement on the property, believing in good faith that he is absolutely entitled thereto, and he is subsequently evicted therefrom by any person having a better title, the transferee has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee, or to sell his interest in

the property to the transferee at the then market-value thereof, irrespective of the value of such improvement.

The amount to be paid or secured in respect of such improvement shall be the estimated value thereof at the time of the eviction.

....."

67. The defendant-appellant is undoubtedly a transferee of the immovable property sought to be redeemed and there can be little doubt that there were circumstances which might have led him to believe in good faith that he was absolutely entitled to the said property. The most important circumstance is evidenced by the sale certificate standing in the name of his transferor, Jhannoo Lal. The sale certificate shows that Jhannoo Lal had purchased the house and the shop and not only the mortgagee rights therein.

It has been admitted in this case by Jhannoo Lal that he had shown the sale certificate to the defendant-appellant and that after seeing the sale certificate he did not see any other document. A certificate of sale is an important piece of evidence relating to title and it cannot be lightly set aside.

68. Another circumstance which may be considered in this connection is that the defendant-appellant had invested a large sum of money in rebuilding the house and the shop. If the appellant did not honestly believe that he was the absolute owner of the property, he would not have invested such a huge amount in rebuilding the same. The mere fact that the appellant after seeing the sale certificate did not make any further inquiries into the title of his transferor cannot disentitle him to obtain reimbursement under the provisions of 6. 51, Transfer of Property Act. We have really to see whether there existed circumstances which might have led him to believe in good faith that he was absolutely entitled thereto. In the circumstances of the present case, he was certainly entitled to believe in good faith that he was absolutely entitled to the property in dispute. The defendant-appellant was, therefore, entitled to claim reimbursement and it was a different matter whether he had succeeded in proving the amount invested by him or not. In view of the finding on the question of limitation it is not necessary to discuss this matter any further.

69. The last point urged by the learned counsel for the appellant relates to the relief granted to the plaintiff-respondent by the learned Civil Judge. As we have already seen, he has disallowed the compound interest provided in the deed in suit and has allowed redemption on payment of the principal sum secured under the mortgage and the costs of constructions sanctioned under the deed together with simple interest at the rate provided in the deed.

70. It has been contended on behalf of the appellant that the learned Judge had no jurisdiction to disallow the compound interest provided in the deed when according to his own showing, "the rights and liabilities of the parties should be determined by the term of the contract in the deed". The learned Judge has observed:

"I do not think that the provision for no claim for profits from the mortgagee at the time of redemption operated as a clog or rendered redemption practically impossible by itself, but having regard to the present market value of the property in suit on annual profits of Rs. 240/- per year at 20 years purchase value under the present conditions the effect of covenant of interest at 2 per cent. per mensem compound-able yearly was to render redemption practically impossible".

Accordingly, on the authority of a decision of the late Court of the Judicial Commissioner in 'AIR 1917 Oudh 106 (A)', he considered that the equities of the case would be met if the mortgagors were relieved of compound interest.

71. It is not possible to say that a provision for, compound interest in any deed of mortgage by itself amounts to a clog on the equity of redemption. If the mortgagor continues to pay interest in terms of the mortgage deed, there would be no accumulation of interest or compound interest and that would not present any difficulty at the time of redemption. In the Case before us the deed itself provided for regular payment of interest; and if a huge amount of interest and compound interest has accumulated, the mortgagor himself is responsible for the same and it cannot be said to be the direct result of any of the terms of the deed itself. The learned Judge was unable to point out any condition in the deed which could amount to a clog on the equity of redemption. When it was conceded before the learned Judge that the provisions of the Usurious Loans Act, the Agriculturists' Belief Act and the Debt Redemption Act were inapplicable to the facts of the present case and the lights and liabilities of the parties were to be determined by the terms of the contract mentioned in the deed of mortgage, the Court would have been entitled to interfere with the terms of the contract only if it was shown that they were obtained by fraud or by the exercise of undue influence or amounted to a clog on the equity of redemption. The learned Judge seems to have been influenced by the total amount which would now be due in terms of the mortgage deed; but that consideration should not have weighed with him.

72. Learned Counsel for the respondents has contended before us that in exercise of its equitable jurisdiction the learned Civil Judge had the power to relieve the debtor from the liability to pay compound interest and that the learned Judge should be deemed to have exercised that jurisdiction. Learned counsel Was unable to cite any authority in support of his contention. He invited our attention to a decision of their Lordships of the Privy Council in -- 'Dhanipal Das and another v. Maheshwar Bakhsh', 28 All 570 at p. 583 (PC) (W). The passage on which the learned counsel relied is cited below:

"The Subordinate Judge was wrong in deciding the case in accordance with what he supposed to be English equitable doctrine. He ought to have considered the terms of the amended. Section 16 only. He also mistook the English law. Apart from a recent statute, an English Court of Equity could not give relief from a transaction or contract merely on the ground that it was a hard bargain, except perhaps where the extortion is so great as to be of itself evidence of fraud, which is not this case. In other cases there must be some other equity arising from the position of the parties or the particular circumstances of the case."

The facts of the present case are, however, entirely different, and we are not prepared to hold that the learned Civil Judge had any jurisdiction to reduce the contractual rate of interest as contended by the learned counsel.

73. The case reported in 'AIR 1917 Oudh 106 (A)', is clearly distinguishable. There the mortgage deed had been executed by a person of tender years and by a 'pardanashin' lady and the language of the document did not appear to have been thoroughly explained to the executants; while the terms were vague and ambiguous. In the circumstances of that case, it was held that if the effect of the covenant relating to interest was to render redemption practically impossible, relief should be given to the debtors. That is not the position here. Here the learned Judge has allowed interest at the rate provided in the deed, but consider the stipulation about compound interest as inequitable.

74. It is, therefore, not possible for us to uphold the finding of the learned Civil Judge on the question of compound interest. In our opinion, if the suit was held to be within time, redemption should have been allowed on payments of the amount due in terms of the mortgage deed in suit.

75. As the suit filed by the plaintiffs-respondents was barred by limitation, it ought to have been dismissed. Accordingly, we allow this appeal set aside the decision of the Court below and dismiss the plaintiff's suit with costs throughout.