Supreme Court of India
Sardar Samsher Singh vs Raja Sardar Narain And Others on 5 August, 1960
Equivalent citations: 1960 AIR 1249
Author: K D Gupta
Bench: Das, S.K., Hidayatullah, M., Gupta, K.C. Das, Shah, J.C., Ayyangar, N. Rajagopala

PETITIONER:
SARDAR SAMSHER SINGH

Vs.

RESPONDENT:
RAJA SARDAR NARAIN AND OTHERS.

DATE OF JUDGMENT:
05/08/1960

BENCH:
GUPTA, K.C. DAS
BENCH:
GUPTA, K.C. DAS
DAS, S.K.
HIDAYATULLAH, M.
SHAH, J.C.
AYYANGAR, N. RAJAGOPALA

CITATION:
1960 AIR 1249

ACT:
Debt Relief--Decree on mortgage--Reduction of interest--Statute prohibiting allowing of interest exceeding principal sum due--Application of--Relevant date--U. P. Encumbered Estates Act, 1934 (U. P.KXV of 1934), s. 14(4)(a).

HEADNOTE:
N borrowed rupees one lakh from D on mortgage of a house and Zamindari interest on March 1, 1924. Interest was 8% per annum compoundable with six monthly rests. In 1932 the mortgagee filed a suit on the mortgage and a decree was passed for the recovery of Rs. 1,83,781/5/9 principal and interest upto the date of the suit and Rs. 49,280/ 2/6 interest from date of the suit upto the date fixed for payment, with future interest at 6% per annum simple on the principal sum. On the failure of the mortgagor to pay by the date fixed a final decree was passed on May 9, 1935 for sale of the property for recovery of a sum of Rs. 2,37,503/5/6 which had become due. On October 26, 1936, N made an application under s. 4 of the U. P. Encumbered

Estates Act, 1934, requesting that the-provisions of the Act be applied to him. Section 14(4)(a) of the Act provided that " the amount of interest held to be due on the date of application shall not exceed that portion of the principal which may still be found to be due on the date of the application ". N contended that in view of S. 14(4)(a), D was not entitled to recover any sum as interest in excess of the principal sum of rupees one lakh. D contended that it was not necessary to reopen the decree as the principle of s. 14(4)(a) had not been violated in passing the decree.
Held, that the proper decree that should have been passed on the application was for rupees two lakhs for the principal and interest plus costs and interest pendente lite and future interest at 4% per annum. The words " on the date of the application " in s. 14(4)(a) of the Act had been deliberately used to benefit the applicant by reducing the interest to the amount of the principal found still due on the date of the application, whatever amount of interest may be due under the contract. The fact that there had been a decree did not make any difference in giving the benefit of the section to the applicant.
Pandit Ramsagar Prasad v. Mst. Shayama, A.I.R. 1939 Oudh 75, disapproved.
Rukun-uddin v. Lachhmi Narain, I.L.R. 1945 All. 307, referred to.
119

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 216 of 1954. Appeal from the judgment and decree dated September 26,1946, of the former Chief Court of Avadh at Lucknow, in First Appeal No. 7 of 1940.

Naunit Lal, for the appellant.

S. N. Andley, Rameshwar Nath, J. B. Dadachanji and P. L. Vohra, for respondent No. 1.

1960. August 5. The Judgment of the Court was delivered by DAS GUPTA J.-This appeal raises the question of interpretation of s. 15 of the United Provinces Encumbered Estates Act, 1934. On March 1, 1924, Sardar Nihal Singh, the predecessor of the appellant before us, borrowed a sum of rupees one lakh from Raja Durga Narain Singh, predecessor of the respondents, on mortgage of a house in Butlergunj, Lucknow and also the entire Zamindari interest in a village Parsera. Interest was 8 per cent. per annum compound with six monthly rests. In 1932 Raja Durga Narain Singh brought a suit for recovery of Rs. 1,83,791-5-9 on account of principal and interest due on the mortgage, by sale of the mortgaged property. In this suit the Subordinate Judge, Lucknow, made a preliminary decree declaring the amount due to the plaintiff on the mortgage calculated up to March 29, 1935, to be Rs. 1,83,791-5-9 up to the date of the suit, Rs. 49,280-2-6 as the amount due on account of interest

thereupon from March 19, 1932, the date of the suit to March 29, 1935, the date fixed for payment. A sum of Rs. 4,314-2- 9 was awarded as the cost of the suit. The defendant was ordered to pay this total sum of Rs. 2,37,385-11-0 before the 29th day of March, 1935, with future interest at 6 per cent. per annum simple on the principal sum of rupees one lakh. The amount not having been paid on that date, the Court on an application made by the mortgagee-decree. holder made a final decree on May 9, 1935, directing sale of the- property for recovery of the sum of Rs. 2,37,503-5-6 with future interest as in the preliminary decree,(this sum being the total of Rs. 2,37,305-11-0 of the preliminary decree, Rs. 116-10-1 the interest from March 30, 1935, and rupee one the cost of the final decree). An application for revision under s. 115 of the Code of Civil Procedure in connection with this decree was rejected by the Chief Court of Oudh on April 20,1937. Before this, on October 26, 1936, an application had been made by Sardar Nihal Singh under s. 4 of the U. P. Encumbered Estates Act, requesting the provisions of the Act to be applied to him. After this application came before the Special Judge in accordance with the provisions of s. 6, the mortgagee- decreeholder Raja Durga Narain Singh filed a written state- ment of his claim on September 30,1937, and stated that the amount due to him on the basis of his decree was Rs. 2,51,904-8-6 including Rs. 14,300 as interest subsequent to the final decree till September 30, 1937, and a sum of Rs. 51-3-0 the decree for costs in his favour by the Oudh Chief Court when rejecting the mortgagor's application for revision. He prayed that a decree for Rs. 2,51,904-8-6 be passed in his favour against the applicant Sardar Nihal Singh and his property. The applicant contested this claim pleading that the principal amount borrowed from the claimant being rupees one lakh the claimant was not entitled to recover any sum as interest thereupon in excess of the principal amount under s. 14 of the Encumbered Estates Act. This plea was rejected by the Special Judge who held that the claimant was entitled to Rs. 2,37,503-5-6 for which the final decree was passed, and also Rs. 51-3-0 as costs in the matter of revision application and further to 6 per cent. per annum interest on rupees one lakh from May 29, 1935, the date of the final decree till the date of the application under the Encumbered Estates Act, i.e., October 26, 1936. Accordingly he gave the claimant a simple money decree for Rs. 2,46,338-8-6 with proportionate costs and future interest at the rate of 4 per cent. per annum simple from the date of application till realisation. On appeal, the Cheief Court of Oudh rejected the appellant's contention that the Special Judge was bound by s. 14 of the Act to limit the decree to a sum of rupees two lakhs only and held that in so far as the preliminary decree found Rs. 1,83,791-5-9 as the amount due on the mortgage on March 29, 1932, it was not inconsistent with s. 14 of the Encumbered Estates Act, and so the Special Judge was bound to accept this finding under s. 15. It held however that in so far as this decree allowed interest pendente lite on the above amount from March 19, 1932, to March 29, 1935, at 8% per annum, it was inconsistent with sub-s. 7 of s. 14. The Chief Court accordingly held that this interest pendente lite must be reduced to 4 1/4% simple. After saying that a sum of Rs. 4,314-2-9 would be added on account of costs, rupee one should be added on account of the costs of the final decree and Rs. 51-3-0 as costs of a revision application, the Court held that the principal amount of Rs. 1,00,000 shall carry interest from March 29, 1935, till the date of application under s. 4 of the Encumbered Estates Act, viz., October 26, 1936, and that the aggregate of these figures shall carry interest from October 27, 1936, till realisation at 4 per cent. per annum. It directed a decree for the sum thus found to be substi- tuted for that passed by the Subordinate Judge. An application for leave to appeal to the Privy Council against this decree was made on January 13, 1947. This application was disposed of on April 14, 1953. Holding that the valuation of the suit was well over Rs. 20,000 and the value of the appeal to the Supreme Court was

Rs. 41,971-2-9 the Chief Court gave, in view of the modification made by it in the lower court's decree, a certificate that the case fulfils the requirements of s. 110 of the Code of Civil Procedure and that the applicant had a right to appeal to the Supreme Court. On the strength of that certificate the present appeal was filed When the appeal came up for hearing before a Bench of four judges of this Court Mr. Andley, on behalf of the respondents stated that in this case he was raising a constitutional point. Thereupon the Court directed that the matter be posted before the Constitution Bench. That is how the appeal has come up for hearing and final disposal before us.

Mr. Andley stated before us that the Constitutional point which he had wanted to raise was whether the judgment of the Chief Court was one of affirmance under Art. 133(1) of the Constitution but that be did not wish to pursue this point. As Mr. Andley does not press his constitutional point, no further discussion of this is necessary.

The real controversy in the case between the parties is, as already indicated, as regards the interpretation of s. 15 of the Encumbered Estates Act. The relevant portion of s. 15 is in these words:-

"In determining the amount due on the basis of a loan which has been the subject of a decree the Special Judge shall accept the findings of the Court which passed the decree except in so far as they are inconsistent with the provisions of s. 14."

A later amendment by which after the words and figures " s. 14 ", the words " or s. 4 of the U. P. Zamindars Debts Reduction Act, 1952 " were added is not relevant for our purpose. Section 14 runs as follows:

" 14. (1) The Special Judge shall, by an order in writing, fix a date for enquiring into the claims made in pursuance of the notice published in accordance with s. 9 and give notice of such date to all the claimants and the person who made the application under s. 4.

(2) The Special Judge shall examine each claim and after hearing such parties as desired to be heard and considering the evidence, if any, produced by them shall determine the amount, if any, due from the landlord to the claimant on the date of the application under s. 4.

(3) All evidence recorded in any suit or proceeding which is stayed under sub-section (1) of section 7 may be taken by the Special Judge as evidence recorded before himself. (4) In examining each claim the Special Judge shall have and exercise all the powers of the Court in which a suit for the recovery of the money due would lie and shall decide the questions in issue on the principles as those on which such court would decide them, subject to the following provisions, namely:-

(a) the amount of interest held to be due on the date of the application shall not exceed that portion of the principal which may still be found to be due on the date of the application:

(b) the provisions of the United Provinces Agriculturists Relief Act, 1934, shall not be applicable to proceedings tinder this Act.

(5) For the purpose of ascertaining the principal under clause (a) of subsection (4) the Special Judge shall treat as principal any accumulated interest which has been converted into principal at any statement or settlement of account or by any contract made in the course of the transaction on or before December 31, 1916. Explanation:-Interest which on or before December 31, 1916, became part of the principal under the express terms of original contract shall, for the purposes of this section, be deemed to be principal.

(6) For the purposes of ascertaining the principal under clause (a) of sub-section (4) the Special Judge shall not treat as principal any accumulated interest which has been converted into principal at any statement or settlement of accounts or by any contract made in the course of the transactions after December 31, 1916.

(7) If the Special Judge finds that any amount is due to the claimant he shall pass a simple money decree for such amount, together with any costs which he may allow in respect of proceedings in his court and of proceedings in any civil court stayed under the provisions of this Act, together with pendente lite and future interest at a rate not greater than the rate specified in section 27, and if he finds that no amount is due he may pass a decree for costs in favour of the landlord. Such decree shall be deemed to be a decree of a civil court of competent jurisdiction but no decree against the landlord shall be executable within Uttar Pradesh except under the provisions of the Act: Provided that no pendente lite interest shall be allowed in the case of any debt where the creditor was in possession of any portion of the debtor's property in lieu of interest payable on such debt."

Obviously there can be no question of any inconsistency in a finding of a court which has passed a decree on the basis of a loan, with the provisions mentioned in sub-ss. 1, 2 & 3 of s. 14; nor is there any question of any inconsistency with the provisions of sub-section 7 of s. 14, as those provisions apply only after the Special Judge has found the amount due to the claimant and the question of inconsistency of any finding in the decree with the provisions of s. 14 arise under s. 15 at the stage when the amount due is being determined. Sub-sections 4, 5 and 6 of s. 14 however require careful consideration of the Special Judge, when examining a decree of a Civil Court, to' find whether any of the findings of the court is inconsistent with those provisions. If they are inconsistent with any of those provisions he has to reject the findings to the extent of such inconsistency. Thus, if for example, the provisions of the Usurious Loans Act. 1918, would be beneficial to the applicant landlord and have not been taken into consideration by the court which passed the decree the Special Judge will have to give effect to s. 14(4)(b) of the Act to modify the finding of the Court as regards the amount due, after applying the provisions of the Usurious Loans Act. On the other hand, if the provisions of the U. P. Agriculturists Relief Act, 1934, have been applied by the Civil Court, the finding as regards the amount due in so far as the same was based on those provisions cannot, in view of its inconsistency with sub-s. 4(c) of s. 14 be accepted by the Civil Court and he will have to modify the same, leaving out the provisions of the U. P. Agriculturists Relief Act. Similarly if in arriving at the amount due, the Court which passed the decree has acted inconsistently with sub-ss. 5 and 6 of s. 14, the finding will have to be modified by the Special Judge by applying the provisions of sub-ss. 5 and 6. So, also if the finding of the Court which passed the decree is " inconsistent with " the provisions of sub-s. 4(a) of s. 14 of the Encumbered Estates Act the finding will have to be rejected in so far as it is inconsistent. The question that has arisen in this case and may as well arise

in other cases, is whether when in ascertaining the amount due on the basis of a loan, at the date of the suit, the Court which passed the decree did not allow interest exceeding the portion of the principal which was still due at the date of the suit, the finding as regards the amount due is inconsistent with s. 14(4) (a) because the consequence of that finding as regards the amount due, together with interest allowed thereupon, is that on the date of the application the amount of interest due exceeds the portion of the principal remaining unpaid on the date of the application. On behalf of the decree-holder-claimant it is contended that all that is necessary to save inconsistency with sub-s. 14(4)(a) is that the principle that the amount of interest shall not exceed the amount of the unpaid principal has been followed, in passing the decree and the fact that the result of the finding would be that on the date of the application u/s. 4 of the Act the interest due would exceed the portion of the principal unpaid on such date is of no consequence. This contention cannot in our opinion be accepted.

The requirement of sub-s. 4(a) of s. 14 is that " the amount of interest held to be due on the date of the application shall not exceed that portion of the principal which may still be found to be due on the date of the application." The words " on the date of the application " cannot be ignored. There can be no doubt that these words " on the date of the application " were deliberately used in the sub-section for the purpose of benefiting the landlord applicant to this extent that whatever interest due on the contract may amount to, it will be limited to the amount of the principal found still remaining due, on the date of the application. When the Legislature goes further and provides that if prior to the application a decree has been made on the basis of the loan the findings of the Court which passed the decree shall be accepted but forbids such acceptance if such finding is inconsistent with the provisions of s. 14, the intention clearly is that the fact that there has been a decree will not make any difference as regards the duty of the Special Judge to give the applicant the benefit of the provisions of s. 14. When the Court passed the decree, there was no application under the Encumbered Estates Act, and so, there could be no question of the Court then complying with the provisions of s. 14(4)(a). Even so, when the Special Judge has to reject such of the findings as are " inconsistent " with s. 14, he must find out the effect of the several findings of the court to ascertain whether there is such inconsistency. Where the consequence of the finding of the court which passed the decree is that the provisions of s. 14(4)(a) about the amount of interest due on the date of the application not exceeding the unpaid principal on that date are contravened, the finding should be held to be inconsistent with these provisions. In saying that if in the decree the court did not allow interest as on the date of the suit to exceed the principal then remaining due there is no inconsistency with s. 14(4)(a), the respondent's counsel is in effect asking us to read for the words " in so far as they are inconsistent with the provisions of s. 14 " the words " in so far as they would have been inconsistent with the provisions of s. 14, if the date of the institution of the suit be deemed to be the date of the application under s. 4." For this we cannot find any justification. Not only would this defeat the beneficial purpose of the legislation under s. 14(4)(a); but this will also not be the natural meaning of the words " in so far as they are inconsistent with the provisions of s. 14." The Chief Court's view that the Special Judge has merely to see whether the Civil Court that passed the decree could have passed the decree which it did pass if that court had had to apply the provisions of s. 14, treating the date of the institution of the suit as the date of the application cannot therefore be accepted as correct. The same view had been taken by the Chief Court of Oudh in an earlier decision, of Pandit Ramsagar Prasad v. Mst. Shayama (1). A Full Bench of the Allahabad High Court had in

Rukun-uddin v. Lachhmi Narain (2) to consider the question whether a finding in a decree made by a civil court that the creditor is entitled to interest only at the rates specified in U. P. Agriculturists Relief Act was inconsistent with the (1) A.I.R. 1939 Oudh 75.

(2) I.L.R. [1945] All. 307.

provisions of s. 14 of the U. P. Encumbered Estates Act and was therefore not binding on the Special Judge hearing an application under the U. P. Encumbered. Estates Act. They held that such a finding must be held to be inconsistent with the provisions of s. 14 and could therefore not be binding on the Special Judge. There can be no doubt about the correctness of this view, for, as has been pointed out above s. 14(4)(c) provides that the provisions of the U. P. Agriculturists Relief Act shall not be applicable to proceedings under the Encumbered Estates Act. One of the learned judges Mr. Justice Verma referred with approval in the course of his judgment to the view taken in Ramsagar Prasad's Case (1). For the reasons mentioned earlier how- ever we are of opinion that the view in Ramsagar Prasad's Case (1) which has been followed by the Chief Court in the present case is wrong.

Our conclusion therefore is that the Special Judge is even where there has been a decree by a civil court in respect of a loan bound to follow the provisions of s. 14(4)(a) of the Act so that the amount of interest which he can hold to be due on the date of the application must not exceed the portion of the principal found to be due on the date of the application. Accordingly in the present case the Special Judge should have held the amount of interest due oil the date of the application, i.e., October 26, 1936, to amount to rupees one lakh only, that being the principal which was still due on that date. Under the provisions of sub-s. 7 of s. 14 the Special Judge has to "pass a simple money decree for such amount, together with any costs which he may allow in respect of proceedings in his court and of proceedings in any civil court stayed under the provisions of this Act, together with pendente lite and future interest at a rate not greater than the rate specified in s. 27." It was in view of this provision that the special Judge and the High Court allowed interest at the rate of 4% per annum. The proper decree the Special Judge should have passed therefore was one for rupees two lakhs for the loan with permissible interest, plus Rs. 4,314-2-9, Rs. 51-3-0 and rupee (1) A.I.R. 1939 Oudh 75.

one on account of costs, that is, for a total sum of Rs. 2,04,366-5-9 with proportionate costs with interest pendente lite and future interest at the rate of 4 per cent per annum simple from the date of the application, i.e., October 26, 1936, till realisation.

Accordingly, we allow the appeal, set aside the decree passed by the courts below and order that in place of the decree made by the Trial Court be substituted a money decree in the terms as mentioned above.

The appellant will get his costs in the appeal.

Appeal allowed.