

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Jawahir
Singh v. Someshar Dat and others, from the
Court of the Judicial Commissioner of Oudh ;
delivered the 28th November 1905.*

Present :

LORD DAVEY.

SIR FORD NORTH.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Lord Davey.*]

In this case there has been a good deal of litigation in the Courts below, but Mr. Bonnerjee, in opening the Appeal, has very fairly narrowed the points which he thought he could properly bring to the attention of the Board.

The Appellant is the representative of a mortgagor who executed a mortgage so far back as the 27th October 1888, and the suit was brought to redeem a portion of the mortgaged property in which the Appellant is interested. The provisions of the mortgage deed are somewhat peculiar. It is a compound of an ordinary mortgage and a usufructuary mortgage. The mortgage is for three years (Clause 2); the interest is to be at the rate of 1 rupee 3 annas per cent. *per mensem* (Clause 3), and Clause 4 is as follows:—

“ In the event of non-payment of interest yearly, the mort-
“ gagee will have power either to realize the principal with
“ interest through a Court or get a new deed charging the
“ property executed in lieu of interest. If, as a mark of
“ favour, the mortgagor lets the interest remain unrealized,
“ then in such case the interest shall be added to the principal
“ from the date of its becoming due and interest at the said

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“ rate will run on it, as if its original formed part of the
 “ principal and within the term or after it till the date of
 “ realization, this rate of interest and compound interest shall
 “ continue.”

That provision very clearly makes the principal money payable with compound interest. Clause 6 then provides as follows:—

“ After taking possession the mortgagee will be entitled to
 “ receive the net profits after paying the Government revenue
 “ and village expenses, &c., in lieu of interest and during the
 “ time of her possession the interest and profits shall be
 “ deemed equal.”

If that clause stood alone it might possibly be construed as an ordinary usufructuary mortgage in which a mortgagee entering into possession accepts the profits in satisfaction of the interest. But that clause does not stand alone. There is a further clause (Clause 11) which appears to their Lordships to qualify the *prima facie* meaning which might be attached to it. Clause 11 (so far as material for the present purpose) is to this effect:—

“ If during the period of possession of the mortgagee,
 “ after depositing the Government revenue and defraying the
 “ village expenses, &c., the profits do not cover the amount of
 “ interest, we, the mortgagors, will make good the deficiency
 “ from our pockets in accordance with the accounts prepared
 “ by the Agents of the mortgagee. If we cannot make good
 “ the deficiency we will pay it with interest at the rate men-
 “ tioned above at the time of redemption.”

The first point taken is that that clause is inconsistent with Clause 6. Their Lordships agree with the Court below in their inability to find anything inconsistent between the two clauses. Clause 11 no doubt qualifies what would be the *prima facie* meaning of Clause 6; but they are perfectly capable of being read together.

The second point is that the deficiency of the interest which the mortgagor undertook to pay by Clause 11 does not carry compound interest. There again their Lordships agree with the Court of the Judicial Commissioner. Reading the whole deed together there can be no doubt

that compound interest should be paid. In the first place this deficiency of interest is precisely such interest as is mentioned in Clause 4, where it says:—"If, as a mark of favour, the mortgagor lets the interest remain unrealized." There is nothing in Clause 11 to take away the express provision contained in Clause 4 with regard to interest which remains unrealized, and the words "We will pay it with interest at the rate mentioned above at the time of redemption," must, in their Lordships' opinion, be taken to be only a concise way of bringing in the application of Clause 6 to the interest which the profits are insufficient to pay. This is made clearer by Clause 7, which provides that the villages are to be redeemed when "the whole of the principal, interest, compound interest, and all dues against the tenants are paid in a lump sum."

Their Lordships see no reason, therefore, for differing from the conclusions at which the learned Judges in the Court of the Judicial Commissioner have arrived, or from the reasons which are expressed in their Judgment. They will, therefore, humbly advise His Majesty that the Appeal should be dismissed.

The Appellant will pay the costs of those Respondents who appeared in the Appeal.
