

Privy Council Appeal No. 31 of 1927.

Oudh Appeals Nos. 7 and 8 of 1924.

Munnu Singh and others - - - - - *Appellants*

v.

Hira Lal and others - - - - - *Respondents*

Same - - - - - *Appellants*

v.

Hira Lal and others - - - - - *Respondents*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF OUDH.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 12TH JUNE, 1928.

Present at the Hearing :

VISCOUNT SUMNER.

MR. AMEER ALI.

SIR JOHN WALLIS.

[*Delivered by MR. AMEER ALI.*]

These two consolidated appeals are from certain decrees and judgments of the Court of the Judicial Commissioner of Oudh, dated respectively the 7th of January, 1921, and the 20th of November, 1923. They arise from two suits brought by the plaintiffs in the Court of the Subordinate Judge of Hardoi on the 14th June, 1916, for the redemption of a two annas share in Mause Kirla situated in that district. The property belonged to one, Ganga Singh, who created in the years 1889, 1890 and 1891 certain mortgages in favour of two persons of the names of Naszat Ali and Fateh Ali. These were simple mortgages in the ordinary form, with clauses covenanting that should the mortgagor not pay the mortgage debt the mortgagees would be entitled to possession.

Default was made in the payment of the interest and the mortgagees brought two suits against the mortgagor for possession.

Both suits were compromised on the basis of certain agreements arrived at between the parties.

The mortgagor again defaulted in the payment of the amount specified in the compromise-decrees and the mortgagees accordingly took possession of the mortgaged property. The mortgagees assigned their interest to one, Lachman Prasad, who was one of the defendants in the suit before the Subordinate Judge ; he has since died.

Ganga Singh has also died and his widow (Musammat Deo Kunwar) on the 1st July, 1914, executed a mortgage of the equity of redemption in the property in question in favour of the plaintiffs in these suits, Hira Lal, Kali Lal, Ram Lal, who were the heirs of Kali Charan, the original mortgagee under the mortgage of the widow of Ganga Singh.

The suits came on for judgment before the Subordinate Judge on the 29th June, 1918, and he was of opinion that the mortgagees, Nasrat Ali and Fateh Ali and their assignee, Lachman Prasad, had failed to keep and produce proper accounts of their receipts and disbursements from the property in question.

After referring to the above facts the learned Subordinate Judge made a decree for the redemption of the property on the basis of the plaintiffs' claim. He directed that :—

“ in suit No. 46. the plaintiffs should pay to Lachman Prasad, defendant 1, the sum of Rs. 28,632.9.3, with interest from the 1st June, 1921, at 1 per cent. per month on the deed for Rs. 3,200 and the deed dated the 3rd June, 1890, for Rs. 1,500.”

“ And in suit No. 47, the plaintiffs should pay Rs. 23,129.9.2, with costs of the defendant 1 and interest from the 1st June, 1921, at 13 annas 4 pies per cent. per month. and at Rs. 1 per cent. per month on the deed dated the 13th April, 1801, to the defendant 1 Lachman Prasad.”

From these decrees there was an appeal to the court of the Judicial Commissioner. The learned Judges of the Appeal Court by their order dated the 7th of January, 1921, remanded the case for the purpose of giving the mortgagees an opportunity to produce the accounts. Certain accounts were produced by the mortgagees after the remand and the learned Subordinate Judge made a fresh decree.

The case was again appealed to the Judicial Commissioner's Court, the learned Judges examined *seriatim* the points at issue, and held in agreement with the Subordinate Judge that interest was rightly charged by the lower Court on the bond in which there was an express covenant for the payment of compound interest.

They further considered that the patwari's papers were the only materials forthcoming in the case and could be relied upon, and that the Commissioner had prepared the accounts on the materials available with great care.

They allowed simple interest in mortgage No. 2 and disallowed all interest on the deficit on the account prepared for

mortgage No. 1, and working on the Commissioner's report, they dismissed the defendants' appeal and made a decree in favour of the plaintiffs for Rs. 16,306.

Their Lordships have heard learned Counsel in detail but they are of opinion that the judgment finally passed by the Appeal Court is right under the circumstances of the case, and that this appeal should be dismissed, and they will humbly recommend to His Majesty accordingly.

In the Privy Council.

MUNNU SINGH AND OTHERS

v.

HIRA LAL AND OTHERS

SAME

v.

HIRA LAL AND OTHERS.

DELIVERED BY MR. AMEER ALI.

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