

Privy Council Appeal No. 25 of 1941
Allahabad Appeal No. 24 of 1938

Musammat Rajdei Bibi - - - - - *Appellant*
v.
Radhika Prasad - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 24TH MARCH, 1943

Present at the Hearing :

LORD ATKIN
LORD THANKERTON
LORD CLAUSON
SIR GEORGE RANKIN
SIR MADHAVAN NAIR

[*Delivered by* SIR GEORGE RANKIN]

In this case the respondent was not represented at the hearing, but Mr. Rewcastle for the appellant was at pains to call the attention of the Board to the facts in considerable detail, and their Lordships have the further advantage of a clear and thorough judgment delivered in the High Court at Allahabad.

Between 1917 and 1930 the appellant and her husband Babu Kashi Prasad Kapoor made a considerable number of advances upon promissory notes to the respondent's uncle Sat Narain Prasad. All the notes were payable on demand and carried interest at either 10 or 12 annas per cent. per month. They began with a promissory note dated 5th November, 1917, for Rs.10,000 and have ended with the note for Rs.32,000 of 14th February, 1930, upon which the appellant now sues and which carries interest at 12 annas per cent. per month, or 9 per cent. per annum. Until 1927 the notes and receipts were signed by Sat Narain without anything being stated to show that he was purporting to bind the other members of his family or was borrowing for legal necessity. But in a note for Rs.7,000 dated 28th April, 1927, and in the note of 14th February, 1930, now in suit, as also in the corresponding receipts of the same dates, Sat Narain purported to sign for himself and also as guardian of his four sons and of his nephew Radhika Prasad, the sole respondent to this appeal. None of the notes or receipts makes mention of any enquiry having been made by the lender into the question of legal necessity.

The respondent's family since the time of his grandfather Bindeshari Prasad have been possessed of very considerable zemindari properties. Of Bindeshari Prasad's three sons, Sat Narain was the eldest. Another son, Govind Narain Prasad, died in 1905, and the respondent's father, Sheo Narain Prasad, died in 1918. Until 1932, the family was joint and Sat Narain was *karta*.

The amount of the note in suit, Rs.32,000, is stated in the receipt of the same date (14th February, 1930) to be made up of the sums due upon four previous notes together with a fresh advance of Rs. 2,820 made for

the purpose of paying Government revenue. Particulars of the previous notes are given as follows:—

Date.	Advance.	Interest in annas per month.	Due in Feb., 1930.
(1) 28th April, 1927	Rs.7,000	12	7,332
(2) 14th May, 1927	7,000	12	7,332
(3) 21st July, 1929	10,350	10	10,325
(4) 4th August, 1929	4,000	12	4,190
			29,180
	Fresh advance		2,820
			32,000

The appellant brought her suit in the Court of the Subordinate Judge at Allahabad on 10th November, 1932. She impleaded Sat Narain, his sons (now five in number) and the respondent. She claimed the full amount due upon the note with interest to date of suit, but gave credit for Rs.3,042 as having been paid on account of interest. The trial Judge on 27th April, 1934, decreed her suit in full as against Sat Narain and his sons but gave no decree for interest after the date of the suit. He dismissed the suit as against the respondent on the ground that he was a nephew and not a son of Sat Narain, but omitted to notice that as *karta* Sat Narain would have authority to bind the interest of the respondent for legal necessity. The High Court by its judgment of 26th January, 1938, considered whether and to what extent such necessity had been proved. They held that the fresh advance of Rs.2,820 made at the time of the note sued upon (14th February, 1930) was for legal necessity, being taken to pay Government revenue. As regards the first of the four notes above mentioned—that dated 28th April, 1927, for Rs.7,000—they held that Rs.6,052.8.0—the amount borrowed in 1927 to buy back property compulsorily taken by the Improvement Trust—was also for legal necessity and for the benefit of the family. They held the respondent liable accordingly for these two sums—Rs.2,820 and Rs.6,052.8.0—amounting, apart from interest, to Rs.8,872.8.0.

As regards the loans represented by the other three notes mentioned in the receipt of 14th February, 1930, the High Court has not treated any part of these as having been taken for legal necessity. The second one—dated 14th May, 1927—was a renewal of a note dated 16th May, 1924, which the appellant alleged to have been taken by Sat Narain for the marriage of his second daughter, but neither the trial Judge nor the High Court was satisfied as to the purpose of this loan, and their Lordships agree that the appellant fails upon this point. The fourth of the notes above mentioned—dated 4th August, 1929—was in part a renewal of a note for Rs.2,500 dated 6th August, 1926, which the appellant alleged to have been taken to pay Government revenue. The trial Judge had accepted her contention, finding that at the time of the note some revenue was owing and had shortly afterwards been paid; but the High Court were not satisfied on the evidence that Sat Narain needed to borrow money for this purpose in view of the practice of paying the collections from a certain part of the family properties into the *tahsil* directly to meet land revenue. Their Lordships accept the conclusion of the High Court.

It remains, therefore, to consider the third of the notes in the list above set forth—that for Rs.10,350 dated 21st July, 1929. This relates back to a note for Rs.10,000 dated 5th November, 1917, which was the first of the advances taken by Sat Narain from the appellant's husband's family and was signed by one Mutsaddi Lal as well as by Sat Narain. The lender was Beni Prasad Kapoor, the uncle of the appellant's husband. This note was renewed by notes of dates and amounts as follows:—

Rs.10,000	...	...	...	...	27th October, 1920
Rs.9,200	...	...	...	...	7th August, 1923
Rs.9,800	...	...	...	...	29th July, 1926
Rs.10,350	...	...	...	...	21st July, 1929

The appellant's case is that Rs.15,000 had been borrowed by Sat Narain and the respondent's father Sheo Narain on a promissory note dated 25th January, 1916, from a firm called Meg Raj Har Bilas for the marriage of the respondent's sister; that in 1917 the lenders were pressing for repayment; that Beni Prasad would only lend Rs.10,000 to Sat Narain and only upon having Mutsaddi Lal's signature as additional security; and that Rs.8,973 was in fact paid to Meg Raj Har Bilas on 21st January, 1918. The trial Judge appears to have accepted this case as proved. The High Court were satisfied that the two brothers had borrowed Rs.15,000 on their joint note in 1916 and that Rs.8,973 was repaid on 21st January, 1918, but they were not satisfied that the loan had been taken for the marriage of the respondent's sister though they held it proved that she had been married in 1916. They realised, however, that if both brothers were liable for the loan of Rs.15,000 their interest and the interest of their sons in the joint family property were available to the creditor by due process of law. To pay him off as far as possible by borrowing at a reasonable rate was a legal necessity and for the benefit of all the co-parceners and all the family. But the High Court were not satisfied that the loan of 1917 was taken to pay off the loan of 1916 or that there is anything to connect the payment of Rs.8,973 on 21st January, 1918, with the sum of Rs.10,000 borrowed on the note of 5th November, 1917. On this point, however, their Lordships think that the learned Judges have been unduly sceptical. The evidence of Kashi Prasad, the appellant's husband, of Bhaggan Lal, Radha Rawan and Sitla Sahai taken in the light of the facts accepted by the High Court is, their Lordships think, sufficient to establish that the debt of 1916, the loan of November, 1917, and the payment of January, 1918, were connected matters. Without undertaking to decide whether the sum of Rs.15,000 had been borrowed for the marriage of Sheo Narain's daughter, they think it proved that the existence of the joint debt was put forward as the reason for the loan and was verified by the lender. The payment in January, 1918, of Rs.8,973 seems to their Lordships, as it seemed to the trial Judge, to be directly connected with the loan of November, 1917. As it is not incumbent on the lender to see to the application of his money, their Lordships are of opinion that the full amount of Rs.10,000 was taken for legal necessity by Sat Narain so as to bind the interest of his brother Sheo Narain, who was then alive, and of the respondent.

The question of interest must now be considered as regards the sums of Rs.10,000 lent in November 1917 at 10 annas per month or $7\frac{1}{2}$ per cent. per annum and Rs.6,052 lent in April, 1927, at 12 annas or 9 per cent. No question arises on the sum of Rs.2,820 which carries interest at 9 per cent. from the date of the note in suit—10th February, 1930.

From the receipt accompanying the note of 4th August, 1929—the last of those renewed by the note in suit—it appears that it included Rs.484.12.0 due for interest on the note of 28th April, 1927, for Rs.7,000. Some six-sevenths of this—say, Rs.415—is thus attributable to the advance of Rs.6,052.8.0 made in 1927 for payment to the Improvement Trust.

From the receipts accompanying the renewal notes of 27th October, 1920, 7th August, 1923, 29th July, 1926, and 21st July, 1929, it appears that the loan of Rs.10,000 made on 5th November, 1917, stood in July, 1929, at the figure of Rs.10,334.13.6. It is true that Rs.947.8.0, part of the sum of Rs.7,000 borrowed on the note of 28th April, 1927, was for interest due on three notes of which that of 29th July, 1926, was one. But the figure of Rs.947.8.0 cannot on the evidence be analysed so as to show how much is referable to the note last mentioned, and this item must now be neglected. At the time of taking the note of 21st July, 1929, a small sum of Rs.15.2.6 was advanced in cash in order to bring the amount of the note of that date to the round figure of Rs.10,350. Of the proceeds of the note for Rs.4,000 dated 4th August, 1929, Rs.350 was applied to reduce the principal on the note of 21st July, 1929, to Rs.10,000. If the respondent is charged with no more than Rs.334 out of the Rs.350 he may be treated as chargeable for the principal sum of Rs.10,000 on the note of 21st July.

The High Court allowed interest on the two sums of Rs.6,052 lent in April, 1927, and Rs.2,820 lent on 14th February, 1930, from the latter date only—the date of the note in suit. They said:

“ It is admitted in the plaint that Rs.3,042 were realised before suit on account of interest, and counsel for the parties are agreed that interest on the sum decreed shall run from the date of the promissory note in suit. We accordingly direct that interest at the contractual rate shall be charged from the date of execution of the promissory note in suit up to the date of institution of the suit ”.

Their decree is for Rs.8,872.8.0 and Rs.2,189.4.8, being interest at 12 annas from 14th February, 1930, to 10th November, 1932—in all for Rs.11,061.12.8 together with interim interest and interest on decree at 6 per cent. per annum. The question of interest is not mentioned as a separate ground of complaint against the High Court's decree in the appellant's application for leave to appeal to His Majesty in Council or in the appellant's case, but paragraph 17 of the latter asks for the full amount of the claim as allowed against the other defendants.

Their Lordships have difficulty—great difficulty as regards the loan of 1917—in interpreting what is said as to the agreement of counsel so as to apply it to sums which were part of the principal of a previous note. They think that the respondent is chargeable in respect of the loan of 1927 for Rs.6,052 on the note of 28th April, 1927, and Rs.415 on that of 4th August, 1929—in all, Rs.6,467. For the loan of 1917, they think that he is liable for Rs.10,000 on the note of 21st July, 1929, and Rs.334 on that of 4th August, 1929—in all, Rs.10,334. Adding the fresh advance taken for Government revenue on 14th February, 1930, he is liable on the note in suit for

Rs.6,467	for the loan of	1927
10,334	“ “	1917
2,820	“ “	1930
Rs.19,621		

with interest thereon at 12 annas per cent. per month from 14th February, 1930, to 10th November, 1932. But in view of the agreement come to between counsel, their Lordships do not hold the respondent liable for any further sums, and disregard the interest outstanding on 14th February, 1930, upon previous notes. They think that instead of Rs.8,872.8.0 in the High Court's decree the figure Rs.19,621 should be substituted and that interest should be calculated thereon: otherwise the decree should stand, it being, however, made clear that the allowance of interim interest at 6 per cent. applies only to the principal sum. Their Lordships will humbly advise His Majesty that this appeal should be allowed and the decree of the High Court modified accordingly. The principle of proportionate costs is to be applied to the costs of both Courts in India upon the figures as now determined. The respondent must pay the appellant's costs of this appeal.



In the Privy Council

MUSAMMAT RAJDEI BIBI

v.

RADHIKA PRASAD

DELIVERED BY SIR GEORGE RANKIN

Printed by His Majesty's STATIONERY OFFICE PRESS,
DRURY LANE, W.C.2.

1943