(1949) 01 AHC CK 0004

Allahabad High Court

Case No: None

Brij Behari Lal		APPELLANT
	Vs	
Mt. Amirunnissa and Others		RESPONDENT

Date of Decision: Jan. 7, 1949

Citation: AIR 1949 All 615

Hon'ble Judges: Kidwai, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Kidwai, J.

On 7th August 1912, Chaudhri Husain Ahmad mortgaged a 4-pies share in mahal Amirunnisa, village Bangarmau, in the district of Unnao to the applicant in lieu of a sum of Rs. 1000 at 9 per cent. per annum. Interest on this deed was paid regularly but the principal sum due under the loan remained outstanding and on 16th February 1929, a fresh mortgage deed was executed by Chaudhri Husain Ahmad in respect of the same sum of Rs. 1,000. The interest stipulated in the new deed was also 9 per cent. per annum.

2. Chaudhri Husain Ahmad died leaving the opposite parties 1 to 3 as his heirs. The said opposite parties applied u/s 12, U.P. Agriculturists'' Relief Act alleging that the entire mortgage debt had been satisfied. They claimed the benefit of Section 9, Debt Redemption Act. The trial Court calculated the amount due on the mortgage deed allowing interest at the rate of 41/2 per cent. per annum and it found that nothing remained due. It accordingly allowed redemption without any payment.

3. The mortgagee appealed and the learned District Judge of Unnao agreed with the findings of the trial Court and dismissed the appeal. The mortgagee has now come up in revision and his learned advocate has contended that the procedure adopted by the Courts below has in fact amounted to ordering a refund of the amount

already realised by the mortgagee as interest. The contention is that the money paid by Chaudhri Husain Ahmad and his heirs was paid as interest and was taken by the mortgagee as such. The method of accounting adopted by the lower Courts has resulted in effect in taking back this money and crediting it towards the principal. It is contended that in view of Sub-section (4) of Section 9, U.P. Debt Redemption. Act this was not permissible. In support of this contention reliance is placed upon Patnala Ramalakshmi and Others Vs. Dowlatabad Gopalakrishnarao, .

4. Before we come to consider the provisions of Section 9 (4), U.P. Debt Redemption Act, the provisions of Section 9 (1) have to be considered. This sub-section orders the opening up of the entire account, in spite of any contract to the contrary and in spite of any contract purporting to close previous transactions. It further directs that all sums paid by the debtor must be taken into account. Sub-section (2) then directs that the amount found due, which would mean the amount due as principal and interest, shall not exceed the amount that would have been due if the rate of interest had, in the case of a secured loan, been 41/2 per cent. Thus what these two subsections contemplate is that an entire account is to be prepared calculating interest only at 4 1/2 per cent and crediting all sums paid by a debtor whether for principal or interest. A decree cant only be passed for the balance remaining due. Then comes Clause (4) which directs that the debtor shall not be entitled to any refund and all that this clause means is that, if on an accounting it is found that the creditor has been overpaid, he shall not be liable to refund anything to the debtor. It does not mean that the money appropriated towards interest should not be reappropriated by the Court partly towards interest and partly towards the principal, If that interpretation were to be placed upon the provisions of Sub-section (4), then there would be a clear conflict between Sub-section (4) and Sub-section (1) and such a conflict is to be avoided if it is possible to do so Further, in the case of those debtors, who have been making regular payments it would mean that they are not to get the benefit of the Act and it is only the defaulting debtors who would be able to derive any benefit from the provisions of Section 9. This cannot have been the intention of the Legislature.

5. With regard to the Madras case that was based upon a different law and from the quotation which has been given in the report it appears that according to the Madras law, it was only the interest remaining due at the date of the suit which could be scaled down: the principal could not be touched and there was not to be any general re-opening of the accounting. The position, in that case, therefore, was entirely different to the position in the present case and that case is no-authority on the interpretation of the provisions of Section 9, U.P. Debt Redemption Act.

6. The decision of the lower appellate Court must be maintained and this application fails and is dismissed with costs.