

(1896) 07 PRI CK 0004

Privy Council

Case No: None

Mathura Das and Another

APPELLANT

Vs

Raja Narindar Bahadur Pal and
others

RESPONDENT

Date of Decision: July 31, 1896

Citation: (1897) 19 ILRPC 39 : (1896) 23 IndApp 138

Hon'ble Judges: Watson, Hobhouse, Richard Couch, JJ.

Judgement

Richard Couch, J.

1. By the deed dated February 17, 1880, Rajah Bhawani Ghulam Pal, the defendant, now represented by the respondents (the first of whom alone defends this appeal), mortgaged and hypothecated a certain mouzah to Cheddi Lal, the predecessor in title of the plaintiffs, who are now appellants, to secure the principal sum of Rs. 19,157. The deed then proceeded thus: "And I covenant and record that I shall pay off without any objection the said amount in full, principal and interest, at the rate of Rs. 1.6. per cent, per mensem, within a year, without raising any objection whatever. If I fail to pay off the amount within the fixed term, the said bankers shall be competent to realize the amount by any means possible, from my person and the properties mortgaged, and from other properties belonging to me, and I or my heirs neither have nor shall we have any objection whatever to it. Until the payment in full of this amount, principal and interest, I shall not transfer, either directly or indirectly, the mortgaged property to any one else, and if I do, such a transfer should be deemed to be false and inadmissible. The amounts paid by me should be first credited to the payment of interest, and the balance should be credited to that of the principal, and I shall have them entered on the back of the document."

2. No payment having been made, the plaintiffs instituted this suit on June 19, 1888, for the usual mortgage decree. The Subordinate Judge of Gorakhpur passed a decree in the usual form for the sum of Rs. 22,313, being the principal of the loan with one year's interest, and a further sum for costs. The rest of the claim he dismissed. He

held, on the authority of a decision of the High Court in a similar case, that the mortgage deed does not provide for interest after the first year. Being then pressed to give damages by way of interest, he held that such a claim being compensation for breach of a contract was barred by Articles 115 and 116 of the Limitation Act.

3. The plaintiffs appealed to the High Court, who affirmed the decision of the Subordinate Judge on both points, and so dismissed the appeal, though without costs. From that decree the present appeal is brought. Supposing the construction put by the Courts below on the deed to be correct, the appellants still ask why they should not recover six years' arrears of interest by way of damages. It is very difficult to see why. The principal debt was not time-barred, and it was not paid. Every day that it remained unpaid there was a breach of contract, and the bar of time applies only to breaches occurring six years before suit.

4. But it is not necessary to dwell further on this point, because their Lordships think that the Courts below have misconstrued the deed. Indeed, they do not find in the judgments any attempt to arrive at the meaning of the deed by an examination of its terms. Both Courts appear to have followed decisions in other cases, according to which it would seem that in the High Court of Allahabad a fixed rule of construction has been laid down for transactions of this kind without much regard to what the parties have actually said.

5. The latest case of the kind was decided as late as June, 1895, *Narindra Bahadur Pal v. Khadim Husain and Ors.* Ind. L. R. 17 Allah. 581, after the decision of the case now under appeal; But it proceeded on the same judicial lines, and as it was referred to a Full Bench because of a discrepancy between the Allahabad and the Calcutta High Courts, it may be taken as the most authoritative statement of the views of the Allahabad Court.

6. The instrument to be construed resembled very closely that on which this Board is now engaged. The mortgagor covenanted to pay the principal loan with interest within one year. He then hypothecated land to secure "the said sum of money," and covenanted not to transfer "the land " until I pay in full the whole of the amount of principal and interest.".... "If I fail to pay the money with interest," the mortgagee was to recover "the said sum of money with interest" from the property. And there was a provision that payments by the mortgagor should be credited, first to interest and afterwards to principal.

7. Upon that instrument the Court delivered the following judgment:

In our opinion the construction of the mortgage deed admits of no doubt. The term was one year from the 28th of April, 1879. The mortgagees could on the expiration of that year sue for and recover the principal moneys remaining due at the expiration of that year; in certain events the mortgagees could before the expiration of that year sue for and recover the principal and interest due at the date of their suit. On the other hand, the mortgagor could, by payment to the mortgagees or into

the Treasury of the Court of the principal and interest due, redeem the mortgage even before the expiration of the year. The payment of post diem interest was not provided for by the mortgage deed, and, certainly, according to the ordinary construction of such deeds in these provinces, which we believe to be correct, was not contemplated by the mortgagor. The conditions in the mortgage deed binding the mortgagor not to transfer the mortgaged property, and giving the mortgagee power to recover the principal money with interest if the mortgagor failed to pay the principal with interest on the due date, are ordinary conditions commonly inserted in mortgage deeds in these provinces, whether it is intended that interest shall run only to the due date or shall run not only to the due date but after due date and until the principal sum shall have been paid. Such conditions are never construed in this Court as indicating that interest shall continue to run after the due date.

8. Now there is not, as the learned judges seem to imply, any different mode of construing language in the North-West Provinces from that which prevails elsewhere. Conditions in mortgage deeds must not be disregarded because they happen to be common ones. If it be true that covenants not to transfer till principal and interest be paid are sometimes inserted, when the intention is only to secure interest for a single year, such intention must be gathered from other parts of the deed itself. If such a covenant, not being controlled by other parts of the deed, does not mean that interest is to run till payment, it is very difficult to say what it does mean. The covenant to pay within a year ties up the hands of the mortgagee for that year and protects the mortgagor; but it rarely happens, and is rarely contemplated, that the mortgagor should actually pay by that time. The provision for applying payments to reduction of interest points strongly to the expectation of the parties that the transaction will not be closed when the fixed day of payment arrives. The construction of the High Court ascribes to the parties an intention that, however payment may be delayed beyond the fixed day, the debt shall carry no interest, that the creditor shall have no remedy provided by contract, but shall be driven to treat the contract as broken, and to seek for damages, which lie in the discretion of a jury or a court, and are subject to a different law of prescription. It appears to their Lordships that though contracts are not unfrequently found to be of that imperfect nature, it is more reasonable to ascribe to the parties the intention of making a perfect contract, especially when such a contract is of a very common kind, and suitable to the ordinary expectations of persons entering into a mortgage transaction.

9. To their Lordships' understanding the meaning of the contract before them is plain enough. The mortgagee cannot, except in certain events, enforce payment for a year. The mortgagor may pay at any time, and is bound to pay in a year's time, "the said amount" (i.e., Rs. 19,157, the only amount yet mentioned) "principal and interest," i.e., whatever interest may be due at the time of payment, whether for a year or a less time. If he fails the mortgagee may proceed to realize "the amount," the obvious meaning of which is, principal and interest to the time of realization.

Then comes the covenant not to transfer until payment "of this amount" (i.e. the amount to be realized) "principal and interest." And then the proviso that payments shall be applied first in reduction of interest, and entered on the back of the document. The strictest construction of the words is in accordance with the usual intentions of the parties to a simple mortgage. Why they should be wrested from that construction in favour of an unusual and most improbable intention is not explained.

10. Their Lordships hold that the plaintiffs are entitled to recover their principal debt with interest at the rate mentioned in the mortgage deed up to the date of the Subordinate Judge's decree, and thereafter at the rate of 6 per cent, per annum. The decree of the High Court should be discharged.

11. The respondents ought to pay the whole costs of suit in both the Courts below. The case should be remitted to the Subordinate Judge to take the proper accounts, and give further directions.

12. Their Lordships will humbly advise Her Majesty to this effect.

13. The respondents must pay the costs of this appeal.