

Ganga Ram and others - - - - - *Appellants*

v.

Natha Singh and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT LAHORE.

JUDGMENT OF THE LORDS OF JUDICIAL COMMITTEE OF THE PRIVY
COUNCIL, DELIVERED THE 13TH MAY, 1924.

Present at the Hearing :

LORD DUNEDIN.

LORD PHILLIMORE.

LORD CARSON.

SIR JOHN EDGE.

[*Delivered by* LORD DUNEDIN.]

In this case the plaintiffs sue for redemption of five mortgages. Two of those mortgages, the earlier two in date, were usufructory mortgages: the other mortgages were not usufructory, but with regard to the next two— for as to the fifth one there is no question at all—there is a recital that interest is to be paid upon the sum borrowed.

Now, the whole point of the case is whether that interest in this third and fourth mortgage does or does not form a charge upon the property. The learned trial Judge held that it did form a charge on the property, and therefore granted redemption only upon terms of paying the principal sums and the interest. That decree was reversed upon appeal, and the High Court allowed redemption upon payment of the principal loan only. Their Lordships find that in the judgment of the learned Judges in the High Court they state with perfect correctness what their Lordships apprehend is undoubted law. They say: “The general rule is that the mortgagee in the absence of any contract to the contrary

is entitled to treat the interest due under the mortgage as a charge on the estate.”

Their Lordships have been entirely unable to find anything in the deeds which would serve to displace that general rule. The learned Judges seem to have gone particularly upon the case of *Alia Khan v. Kanshi Ram* (1913, Punjab Record, Civil Judgments, p. 176). It is, perhaps, a little difficult to follow that case, as the material parts of the deed in question are only printed in the vernacular; but it is perfectly clear from the Report even as it stands that there were various mentions of the sum to be redeemed in different parts of the deed, and that consequently the deed itself formed, so to speak, a glossary for the particular meaning of the word that was used when you came to the repayment clause. Nothing of this sort is here. The mortgages are expressed with great brevity, and, indeed, if there is anything at all, it rather seems, such as it is, to point the other way, because especially in the fourth mortgage there is this expression: “I shall without objection pay the additional mortgage money with interest in the following instalments.” That certainly points much more in favour of the general rule than against it, but it is quite enough to say that there is nothing to be found here which disturbs the general rule, which, it is most important, should not be shaken in any particular.

It is impossible to restore in terms the decree of the trial Judge, because it was discovered in the course of the hearing before the High Court that the plaintiffs were not in right in the whole of the mortgages, and accordingly the judgment of the High Court ran: “We give the plaintiffs a decree for redemption of whatever share in the mortgaged land is still owed by them on payment of a proportionate share of the principal debt.”

There ought, therefore, to be a declaration that it is not only a share of the principal debt, but also interest that must be paid before redemption, and the case will have to go back in order that the decree may be worked out on those terms.

Their Lordships therefore think that the appeal must be allowed, with costs here and below, and they will humbly advise His Majesty accordingly.



In the Privy Council.

GANGA RAM AND OTHERS

v.

NATHA SINGH AND OTHERS.

DELIVERED BY LORD DUNEDIN.

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