M. Manickchand and Others

Vs

Elias Saleh Mohamed Sait & Another

Civil Appeal No. 440 of 1965

(J. M. Shelat, V. Bhargava JJ)

03.12.1968

JUDGMENT

BHARGAVA, J. –

1. This appeal arises out of original Suit No. 19 of 1943, instituted in the court of the District Judge, Civil Station, Bangalore, by four plaintiffs. The first two plaintiffs were Elias Saleh Mohamed Sait (Respondent No. 1) and Mohamed Saleh Mohamed Sait (Respondent No. 2), sons of Saleh Mohamed Sait who died in or about the year, 1917, leaving behind his widow, Rahamatbai, three minor sons, and three daughters. The eldest of the minor sons was Ahmed Saleh Mohamed Sait, who also died before the institution of the suit, the other two being respondents 1 and 2. At the time when inheritance opened on the death of Saleh Mohamed Sait, admittedly the family was governed by Hindu Law in the matter of succession and inheritance, so that the daughters did not acquire any right in the property left by their father. The principal relief claimed in the suit was for accounts under Section 76 of the Transfer of Property Act No. 4 of 1882 (hereinafter referred to as 'the T.P.Act'), in respect of a mortgage deed, dated 14th July, 1933 (Ext.C), executed by Ahmed Saleh Mohamed Sait, the two respondents in this appeal, and their mother Rahamatbai, for a sum of Rs. 50,000 mortgaging premises No. 6, South Parade, Civil and Military Station, Bangalore, in favour of Khanmull who was defendant in the suit and who is now represented by the appellants as his legal representatives. Before the institution of the suit, the mortgagors' rights in the mortgaged property had been transferred to Khan Saheb Abdul Gani Saheb and Khan Saheb Abdul Shakoor Saheb who also joined in the suit as plaintiffs 3 and 4. The eldest son Ahmed Saleh Mohamed Sait became a major in or about the year, 1927 and, till that time, Rahamatbai was managing the property. Until the year, 1930, it appears that no debts were taken by the members of this family. The first loan that was taken was on the basis of a simple mortgage deed, dated 20th May, 1930, executed by the eldest son Ahmed Saleh Mohamed Sait, as well as by Rahamatbai as guardian of respondents 1 and 2 who were minors at that time. Thereafter, a number of loans were taken, details of which need not be mentioned. One of these loans was on the basis of a usufructuary mortgage executed in favour of one J. Krishnalal; but both the courts below have held that Krishnalal was a Benamidar for the defendant Khanmull, so that the various loans taken were all from Khanmull. On 14th July, 1933, the three brothers and their mother executed a mortgage deed Ext.-C for a sum of Rs. 50,000 working out the consideration on the basis of the amounts due under earlier loans, and adding to it the amount of cash paid at the time of execution of this mortgage deed. Ahmed Saleh Mohamed Sait died in the year, 1939 and his mother Rahamatbai also died in the same year. On 21st January, 1943, the two respondents and their sisters deposited a sum of Rs. 50,000 under Section 83 of the T.P. Act to discharge the debt under the mortgage deed, Ext. C, dated 14th July, 1933, but the defendant did not accept that money with the result that the petition under Section 83 of the T.P. Act failed. It was on 22nd January, 1943 that the two respondents sold the mortgaged property to

plaintiffs 3 and 4 for a sum of Rs. 75,000/-. Thereafter, plaintiff No. 3 filed Original Petition No. 11 of 1943, in the court of the District Judge, Civil Station, Bangalore, under Section 83 of the T.P. Act and deposited a sum of Rs. 66,463-15-6 to be paid over to the mortgagee. Khanmull, the mortgagee, accepted the amount deposited as correct, delivered possession of the mortgaged property and the necessary documents, and obtained payment of the amount. A joint memo, dated 15th March, 1943, was filed evidencing this transaction and the court passed an order on the same date recording it. Thereafter, on 3rd November, 1943, the four plaintiffs, mentioned above, instituted the Original Suit No. 19 of 1943 and, as mentioned earlier, the main prayer was that the defendant be directed to render an account of his administration of the mortgaged property from 14th July, 1933 to 12th March, 1943, and to pay to the plaintiffs the amount that may be found due to the plaintiffs after adjusting interest that may be found due to the defendant at a reasonable rate and after deducting amounts not paid and interest charged from out of the principal of Rs. 50,000 said to be due on the mortgage of 14th July, 1933. The second and the third reliefs in the suit related to matters which are not the subject-matter of this appeal in this court and consequently, need not be mentioned. The fourth and the fifth reliefs were in respect of the claim for interest at the rate of 6 per cent. per annum on the amount found due under the first relief, and for costs.

2. A preliminary decree was passed by the trial court on 4th February, 1948, directing that accounts be taken pursuant to Section 76 of the T.P. Act on the foot of the mortgage deed, Ext. C, dated 14th July, 1933, for the period beginning with the date of that deed, and directing the defendant to file his full statement of accounts in that behalf in the manner of a verified pleading. It was further directed that, after the plaintiffs filed their statement by way of a similar pleading, issues arising thereon for determination between the parties will be settled and then enquiries will be held by way of evidence, if necessary, or by way of arguments of counsel, and the suit will be proceeded with for the purposes of passing a final decree. The costs on and incidental to this part of the decree were left to be adjudged on the result of the enquiry. There was also a direction specifically reserving for consideration at the time of the final decree proceedings all questions relating to accounting as well as reliefs claimed under the Usurious Loans Act, No. 10 of 1918 (hereinafter referred to as "the Act").

3. Both parties appealed against this preliminary decree in the High Court of Mysore. The appeal of the plaintiffs was confined to reliefs Nos. 2 and 3 in the suit which had been refused by the trial court and, consequently, we are not concerned with the decision of the High Court in that appeal. The defendant in his appeal challenged the decree for accounting. The validity of the decree was assailed mainly on two grounds. One was that, in view of the unconditional tender of the mortgage money on two occasions, under Section 83 of the T.P. Act, the plaintiffs were estopped from instituting the suit for accounting; and the other was that the mortgage in question fell within the scope of Section 77 of the T.P. Act, so that accounting could not be claimed under Section 76 of the T.P. Act. This appeal was decided by a Full Bench of the High Court which held that the proceedings under Section 83 of the T.P. Act did not operate so as to conclude the rights of the mortgagors in all respects, and that a mortgagor, who had applied to the court and made a deposit under Section 83 of the T.P. Act was not estopped, merely by reason of the deposit and payment to the mortgagee of the amount so deposited, from demanding an account of the income of the mortgaged property under Section 76 of the T.P. Act by a separate suit. The Full Bench noticed that the trial court had directed an account to be taken under Section 76 of the T.P. Act, but had not gone into the question whether the mortgaged deed fell within Section 77 of the T.P. Act or not, so that the High Court refrained from saying anything further about the incidence of Sections 76 and 77 to the transactions in suit.

4. Thereafter, the case was taken up by the trial court which held that Section 76 of the T.P. Act was applicable to the mortgage deed in question and that the mortgagee under the deed was entitled to get interest @ Rs. 700 per month only and was liable to account in respect of his collections from the mortgaged property. Another issue raised was whether the mortgage deed, dated 14th July, 1933, was not supported by consideration. The trial court held that this question was no longer open for reconsideration at the stage of the final decree and rejected the plea of the plaintiffs in that behalf. The court further rejected the claim of the plaintiffs for relief under the Act, and the Mysore Money Lenders Act 13 of 1939. A further finding recorded was that the mortgage in question was not valid and binding against respondent No. 2, who was plaintiff No. 2 in the suit. As a result of these findings, the court worked out the accounts and directed the defendant to pay a sum of Rs. 33,447-5-10 with current interest @ 6 per cent. per annum from the date of the suit to the second plaintiff, and to pay a sum of Rs. 13,342-1-6 with current interest @ 6 per cent. per annum to the first plaintiff from the same date. It was further held that plaintiffs 3 and 4 were not entitled to any relief in the suit. Plaintiffs 1 and 2 were directed to make up the deficiency in court-fee on the amounts awarded to them, and the defendant to pay proportionate costs to plaintiffs 1 and 2.

5. Against this final decree, the defendant filed an appeal in the Mysore High Court, impleading plaintiffs 1 and 2 only as respondents, while these two plaintiffs filed cross-objections. Plaintiffs 3 and 4 were not impleaded as parties in the appeal. The appeal and the cross-objections were heard by the High Court which partially modified the decree passed by the trial court. The separate decree for a larger amount in favour of plaintiff No. 2 was set aside and the decree for the amount in favour of plaintiff No. 1 was varied in two respects. It was made a joint decree in favour of plaintiffs 1 and 2. The second variation was that plaintiffs 1 and 2 were held to be entitled to the benefit of the Act and a direction was made for accounting on the basis of the applicability of the Act. This order was made by the High Court on the 19th September, 1958. In pursuance of the direction made in that order, parties gave an agreed calculation indicating that the principal amount advanced as the original loan under Ext. C was Rs. 36,750. Interest due at the rate 12 per cent. per annum on the principal amount up to the date of execution of the mortgage deed, Ext. C was Rs. 5,919. The moneys spent by the mortgagee for taxes and repairs were Rs. 9,178.34. The total rent collected by the mortgagee was Rs. 1,00,342.09 and the amount received in original Petition No. 11 of 1943, under Section 83 of the T.P. Act was Rs. 66,463.97. On the basis of these figures and after deciding various points disputed before it, the High Court passed a decree for a sum of Rs. 99,603.61 out of which Rs. 13,342.09 was to carry interest @ 6 per cent. per annum from 3rd November, 1943, the date of the suit and the balance of Rs. 86,261.51 was to carry interest at the same rate from 4th February, 1948 the date of the preliminary decree passed by the trial court, up to the date of realisation. The plaintiffs were awarded costs against the legal representatives of the defendant on the sum of Rs. 13,342.09 in both the courts. Time was granted to the appellants to make payment till 19th March, 1959. It was further laid down that the appellants were liable under the decree to the extent of the assets left by the deceased defendant Khanmull which might be in their hands and to the extent of the assets of the joint family, because the original defendant had died. It is against this decree passed by the High Court that the appellants have come up to this court in this appeal under certificate granted by the High Court.

6. Mr. Govinda Rao, counsel for the appellants in this appeal raised the following four points before us :-

> (1) that the suit for accounts should be held to be non-maintainable in view of the proceedings under Section 83 of the T.P. Act which preceded the suit and under which the mortgagee received the sum of Rs. 66,463.97 in discharge of the mortgage,

delivered the necessary documents to the mortgagors and also gave possession of the mortgaged property;

(2) that the mortgage transaction evidenced by the deed, Ext. C, dated 14th July, 1933, was governed by Section 77 of the T.P. Act and was, consequently, outside the purview of Section 76 of the T.P. Act;

(3) that the plaintiffs were not entitled to the relief under the Act which was not applicable to this mortgage which related to property situated in the Bangalore, Civil and Military Station and that, in any case, even if the provisions of the Act be applied, the transactions prior to the mortgage deed in suit could not be re-opened; and

(4) that the interest on the surplus amount found due from the appellants to the respondents, if any, should have been allowed only from the date of the decree of the High Court, viz., 19th September, 1958, and not from the date of suit, viz., 3rd November, 1943.

7. So far as the first point is concerned, it does not arise out of the appellate judgment passed by the High Court in the appeal brought up before it against the final decree in the suit. The question whether the proceedings under Section 83 of the T.P. Act debarred the plaintiffs from filing a suit for accounts and payment of surplus was decided by the trial court in the preliminary decree when the trial court held that, in spite of those proceedings, the suit was maintainable and proceeded to pass a preliminary decree for accounts. That decision of the trial court was confirmed by the High Court by its Full Bench judgment, dated 13th February, 1951. That judgment has become final and that decision, which finally decided the points arising in the preliminary decree, cannot now be challenged in this court in an appeal from the judgment at the stage of final decree. No doubt, the appellants had sought certificate from the High Court against that judgment, dated 13th February, 1951, in order to file an appeal in this court, but that application for certificate was rejected on two different grounds. The first ground was that the appeal in the High Court had been valued for purposes of court-fee and jurisdiction at Rs. 10,000 only, so that there was no right under Article 133 of the Constitution to obtain a certificate. The second ground was that the judgment of the High Court could not be deemed to be a final adjudication of the rights between the parties, because that court had, in effect, confirmed the decree of the trial court to take accounts and ascertain the sums that will be found due from the defendant to the plaintiffs. Thereafter, the appellants did not file any petition for special leave in this court seeking leave to appeal either against the judgment, dated 13th February, 1951, confirming the preliminary decree in the suit, or against the order, dated 7th September, 1951, by which the High Court dismissed the application for grant of certificate. The result is that the judgment of the High Court became final. Learned Counsel urged that the order of the High Court, dated 7th September, 1951, misled the appellants inasmuch as the High Court in that order held that its judgment, dated 13th February, 1951, was not a final adjudication of rights between the parties, so that the appellants were under the impression that they would be entitled to challenge the judgment of the High Court, dated 13th February, 1951, in an appeal filed against the final adjudication envisaged by the High Court at the stage of passing the final decree. It may be that the High Court was not right in taking the view that its judgment, dated 13th February, 1951, was not a final judgment but a mere interlocutory order and mentioned this ground incorrectly as one of the grounds for rejecting the application for certificate. Even if the High Court made such an incorrect order, the remedy of the appellants lay in seeking leave to appeal from this court against that order itself. In fact, the judgment, dated 13th February, 1951, was very clearly a final judgment

in respect of all the points which were decided in the preliminary decree passed by the trial court and confirmed by this judgment by the High Court. A preliminary decree in a suit for accounts cannot be said to be a mere interlocutory order. Such a decree finally decides the points which the court is required to decide at that stage or chooses to decide at that stage. The judgment of the High Court, dated 13th February, 1951, having become final, it is no longer open to the appellants to raise the ground of non-maintainability of this suit because of the earlier proceedings under Section 83 of the T.P. Act. The first point raised by learned counsel has, thus, no force.

8. As regards the second point relating to the applicability of Section 77 of the T.P. Act, it appears to us that the preliminary decree passed by the trial court and confirmed by the High Court would also stand in the way of the appellants, raising such a ground at the stage of appeal from the final decree. The preliminary decree definitely directed taking of accounts which could only be on the basis that Section 76 of the T.P. Act applied to the mortgage in question. If it was held that Section 77 of the T.P. Act applied, there could be no decree for the accounts at all. However, it appears that, in the preliminary decree itself, both the trial court and the High Court took the extraordinary step of including a direction that the question as to the applicability of Section 77 of the T.P. Act would be considered at the stage of enquiry for purposes of passing the final decree. In these circumstances, we have allowed learned counsel for the appellants to argue this point on merits on the basis that the judgment of the High Court confirming the preliminary decree had specifically left this question open for decision at the stage of final decree.

9. On merits, however, we think that the High Court was perfectly right in recording its finding that the mortgage in suit is governed by Section 76 of the T.P. Act and does not fall within the scope of Section 77 of the T.P. Act. This is very clear from the terms of the mortgage deed itself. The mortgage deed clearly lays down that the mortgagee is entitled to a sum of Rs. 700 per mensem in lieu of interest on the mortgage money. This term by itself indicates that the entire receipts from the mortgaged property were not be taken by the mortgagee in lieu of interest on the principal money. The mortgagee was entitled to appropriate a sum of Rs. 700 per mensem only towards the interest. Then there are other terms in the mortgage deed which clarify this position. There is a condition that the mortgagors were to pay interest on the principal sum of Rs. 50,000 only to the mortgagee @ 1 1/2 per cent. per mensem during the period the said mortgaged property remained vacant or during the period the mortgagee was unable to realise the rents of the mortgaged premises. This makes it clear that, if there were no receipts from the mortgaged property during any period either due to vacancy or due to the inability of the mortgagee to realise the rents, the mortgagee became entitled to interest @ 1 1/2 per cent. per mensem, which would work out at Rs. 750 per mensem. This right of the mortgagee to receive interest clarifies the fact that, under the deed the mortgagee's right was not confined to receipts from the mortgaged property being taken in lieu of interest on the principal money. The mortgagee was entitled to interest in spite of there being no receipts from the mortgaged property. The mortgage deed further gave the right to the mortgagee to enhance the rent or to eject the existing lessee and let out the premises on enhanced rent; but the deed did not confer on the mortgagee the right to appropriate the entire amount of enhanced rent towards the interest. The right to appropriate rent towards interest was confined to the sum of Rs. 700 per mensem only. All these terms of the mortgage deed clearly show that it was not of the character mentioned in Section 77 of the T.P. Act and, consequently, Section 77 did not apply. Section 76 was clearly applicable, as the mortgagee had taken possession of the mortgaged property and was liable to render accounts of administration of the property. The decision of the High Court on this point must also, therefore, be upheld.

10. The third point raised on behalf of the appellants, however, appears to us to have considerable

force. In this connection, we may first indicate the position as to the applicability of various laws in the Bangalore Civil and Military Station at various relevant times which is necessary because this area was comprised in the State of Mysore and not in British India. The position was examined by the Privy Council in Gajambal Ramalingam and others v. Rukn-ul-Mulk Syed Abdul Wajid and others. (AIR 1950 PC 64) When the Privy Council had to determine the jurisdiction of the Court of the District Judge in this area. It was noted that :

> "In the year, 1881, the rendition of the State of Mysore to its hereditary ruler was effected by the installation of the Maharaja under a proclamation of the Viceroy and Governor-General of India and at the same time an Instrument of Transfer was executed whereby it was inter alia, by Article 9, provided that the Maharaja would not object to the maintenance and establishment of British cantonments in the said territory whenever and wherever the Governor-General in Council might consider such cantonments necessary and would grant free of all charge such land as might be required for such cantonments and would renounce all jurisdiction within the lands so granted. Shortly thereafter the Maharaja, pursuant to the said 9th Article, assigned free of charge to the exclusive management of the British Government for the purposes stated in that article the lands described therein which were in effect the area forming the Bangalore Civil and Military Station and renounced all jurisdiction in the lands so assigned. The Instrument of Transfer of 1881 was superseded by a Treaty concluded between the British Government and the Maharaja on 26th November, 1913, but no material change was effected so far as the exercise of jurisdiction was concerned. The area comprised in the Civil and Military Station of Bangalore remained part of the territory of Mysore."

In this decision, their Lordships of the Privy Council held that the area comprised in the Civil and Military Station of Bangalore remained part of the territory of Mysore by approving the decision of the Madras High Court in re Hayes, (ILR 12 Mad 39) As a consequence, the Bangalore Civil and Military Station came under the administration of the British Government, but it did not form part of British India. It remained a part of the territory of Mysore.

11. On the 11th June, 1902, the Governor-General in Council in India, in exercise of the power conferred on him issued Indian (Foreign Jurisdiction) Order in Council, one of the clauses of which laid down that the Governor-General in Council may make such rules and orders as may seem expedient for carrying the order into effect, and, in particular, for determining the law and procedure to be observed, whether by applying with or without modifications all or any of the provisions of any enactment in force elsewhere, or otherwise. It is the admitted case of the parties that the Act, when enacted, was not followed by any order under the order in Council, dated 11th June, 1902, applying it with or without any modifications to the Bangalore Civil and Military Station. The Act, therefore, did not apply in this area when enacted. The order in Council, dated 11th June, 1902, was amended by the Civil and Military Station of Bangalore (Application of Laws) Order, 1937, and it was under this order that the provisions of the Act were applied to this area with a very minor modification of omitting sub-section (2) of Section 1.

12. Then on 18th July, 1947, the Indian Independence Act, 1947, received the Royal Assent. In pursuance of the provisions of that Act a notification was issued on 26th July, 1947, by the Crown Representative under the authority of the Indian (Foreign Jurisdiction) Order in Council, 1937. By this notification which recited that the jurisdiction theretofore exercised by the Crown Representative in the area known as the Civil and Military Station Bangalore, would, with effect

from 26th day of July, 1947, be restored to His Highness, the Maharaja of Mysore save for that portion thereinafter described as the Military and Railway areas contained in the boundaries set out in schedules thereto annexed, the Crown Representative was pleased to direct that with effect from the said 26th day of July, 1947, all notifications issued under the Indian (Foreign Jurisdiction) Order in Council, 1902, or under the Indian (Foreign Jurisdiction) Order in Council, 1937, whereby specific provision was made for the said area whether for the making of laws for or administration of laws for or the application of laws to the said area or for the administration of justice therein or otherwise should be cancelled save in so far as the said military and railway areas were concerned. The result of this notification was that, with effect from 26th July, 1947, the laws in force in British India, which had been applied to the Bangalore Civil and Military Station which included the area where the property now in suit is situated, ceased to operate. The jurisdiction over this area having passed back to His Highness, the Maharaja of Mysore, the Maharaja, on 4th August, 1947, promulgated the Retrocession (Application of Laws) Act No. 23 of 1947. Under Section 3(a) of this Act, all laws which were in force in the Civil and Military Station immediately prior to the date of retrocession, were to continue from that date to have effect and be operative in the retroceded area. It may be mentioned that the date of retrocession in respect of the Bangalore Civil and Military Station was the 26th July, 1947. The result of this Act was that the laws previously applicable in this area upto 26th July, 1947, were continued retrospectively in force, so that the Act also continued in force. Thereafter, the Maharaja of Mysore promulgated the Retroceded Area (Application of Laws) Act No. 57 of 1948 on the 5th day of August, 1948. Under Section 3 of this Act, the laws, which were in force in the Retroceded Area immediately before the 15th August, 1948, were to cease to be effective or operative in the Retroceded Area, while all laws in force in the State of Mysore were to apply to the Retroceded Area. Consequently, with effect from 15th August, 1948, the Act ceased to be operative in this area and, instead, the Usurious Loans Act, 1923 (Mysore Act 9 of 1923), became operative in it. Subsequently however, the State of Mysore acceded to India after the Constitution and, from the date of accession, the Act again became applicable, because this area became a part of India. This was the legal position in this area during the various periods with which we may be concerned.

13. The question of the applicability of the provisions of the Act to the present suit depends on the interpretation of Section 2(3) of the Act which is follows :

> "Suit to which this Act applies" means any suit -
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> (a) for the recovery of a loan made after the commencement of this Act; or
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> (b) for the enforcement of any security taken or any agreement whether by way of settlement of account or otherwise, made, after the commencement of this Act, in respect of any loan made either before or after the commencement of this Act; or
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> (c) for the redemption of any security given after the commencement of this Act in respect of any loan made either before or after the commencement of this Act."

14. The High Court has held that the Act applies in view of clause (c) cited above and has, thus, accepted the submission made on behalf of the respondents that the present suit is a suit for redemption of a security given after the commencement of the Act in respect of a loan made after the commencement of the Act. This decision of the High Court is challenged on two grounds on behalf of the appellants. One is that the suit is not a suit for redemption of a security, and the second is that, even if it be held to be a suit for redemption of a security, that security was not given after

the commencement of the Act, so that the High Court was incorrect in holding that the Act applies to the present suit. In view of this challenge, Mr. C. B. Aggarwala, counsel for the respondents, also relied, in the alternative, on clause (b) and urged that we should hold this suit to be one for the enforcement of an agreement made after the commencement of the Act in respect of a loan made either before or after the commencement of the Act. The questions raised before us, therefore, resolve themselves into two different points. The first point is whether the present suit is a suit either for redemption of a security or for enforcement of an agreement in respect of a loan made ether before or after the commencement of the Act. The second point is whether, if either of these two conditions is satisfied, it can be held that the agreement, for the enforcement of which this suit has been filed, was made after the commencement of the Act, or the security, for the redemption of which the suit has been filed, was given after the commencement of the Act.

15. We first take up the question whether it is a suit for redemption of a security at all. The nature of a suit for redemption of security in India is laid down in Section 60 of the T.P. Act. The principal clause of this section recognises the right of a mortgagor, on payment or tender, at a proper time and place, of the mortgage money, to require the mortgagee (a) to deliver to the mortgagor the mortgage deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee, (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished. A subsequent clause in this section is to the effect that the right conferred by this section is called a right to redeem, and a suit to enforce it is called a suit for redemption. A suit for redemption is thus defined by this section as a suit for enforcement of a right to redeem, and that right to redeem consists of the three reliefs which the mortgagor is entitled to under clauses (a), (b) and (c) mentioned above, on payment or tender, at a proper time and place, of the mortgage money. Consequently, a suit can be said to be a suit for redemption if the three rights enumerated in this section as constituting the right to redeem are claimed in the suit. It may even be possible to hold a suit to be a suit redemption if even one of those three rights is claimed in the suit. This law in India is based primarily on the law prevailing in England and the nature of a suit for redemption in England has been held to be very similar. Reference may be made to Halsbury's Laws of England, 3rd Edn., Vol. 27, Paragraph 834 at p. 424 which shows :

> "The common form order for redemption directs an account of what is due to the mortgagee under and by virtue of the mortgage, and for his taxed costs of the redemption action, and directs that, upon the mortgagor paying to the mortgagee the amount certified to be due within six months after the date of the master's certificate, at a time and place to be appointed by such certificate, the mortgagee shall surrender or give a statutory receipt, and deliver up the title deeds; and it further directs that if the mortgagor makes default in such payment his action is to stand dismissed with costs. If one of two mortgagees has disappeared, the costs of obtaining a vesting order to get his interest must be borne, in the absence of misconduct by the other mortgagee, by the mortgagor. If the mortgagee has been in possession, the order directs as against the mortgagee an account of the rents and profits of the mortgaged property on the footing of wilful default; and if the mortgagor alleges that nothing is due on the mortgagee, a direction is added for surrender within twenty-one days after the date of the certificate, if on taking the accounts it appears that nothing is in fact due."

In the present suit, none of the prayers envisaged as reliefs to be granted in a suit for redemption finds a place. There is no prayer that the mortgagee be required to deliver the mortgage-deed and other documents relating to the mortgaged property and, though the mortgagee had been in possession under the mortgage, there was no prayer for delivery of possession of the property to the mortgagors, nor was there any request for re-transfer of the mortgaged property to the mortgagors. The reason why no such prayer was included in the suit is obvious. The transferee of the original mortgagors had filed an application under Section 83 of the T.P. Act after making a deposit. That deposit had been accepted by the mortgagee, whereupon the necessary documents had already been delivered to the mortgagors together with the possession of the mortgaged property. The reliefs, which could have been claimed in a suit for redemption envisages by Section 60 of the T.P. Act, had thus been obtained under Section 83 of the Act even prior to the institution of the suit. There was, therefore, no occasion for claiming any of these reliefs. In these circumstances, we must hold that the High Court was not right in proceeding on the basis that this suit was a suit for redemption of a security as mentioned in Section 2(3)(c) of the Act.

16. In this connection, Mr. Aggarwala, drew our attention to the fact that, in a suit for redemption, accounts have to be taken from a usufructuary mortgagee in respect of a mortgage to which Section 76 of the T.P. Act applies as laid down in Order 34, Rule 7 of the Code of Civil Procedure. In fact, a preliminary decree has to be passed for taking of accounts. This liability of a mortgagee to render accounts is also recognised in England as is clear from the passage from Halsbury's Laws of England cited by us above. Further, under Order 34, Rule 9, C.P.C., the court is directed to pass a decree directing the defendant to pay to the plaintiff the amount which may be found due to him if it appears, upon taking the account referred to in Rule 7, that the mortgagee has been over-paid. It was urged that, since the taking of accounts and the passing of a decree in favour of the mortgagor in respect of a surplus remaining in the hands of the mortgagee are reliefs which can be granted in a suit for redemption, the present suit should be held to be a suit for redemption, because, in the present suit, these are precisely the two prayers sought by the respondents. We are unable to accept the submission that a suit, which is purely for accounting and a decree for surplus, is a suit for redemption. The circumstance that, in a suit for redemption, apart from the prayers which form part of the enforcement of the right to redeem, certain other prayers can also be granted cannot lead to be conclusion that a suit, which is solely for those other incidental reliefs, must be a suit for redemption. The right to redeem, in fact, had already been enforced in respect of this mortgage of 1933 by the proceedings under Section 83 of the T.P. Act and this subsequent suit could not, therefore, be for the enforcement of that right. The suit for the enforcement of the incidental rights, which could have been claimed if a suit for redemption had been brought under Section 60 of the T.P. Act instead of obtaining all those reliefs under Section 83, cannot, therefore, be held to be a suit for redemption.

17. Learned counsel, while arguing this point, drew our attention to the application filed under Section 83 of the T.P. Act, wherein, while tendering the money, the mortgagor had specifically reserved to himself and to his purchasers-in-title the right to dispute whether the mortgagee was entitled to the entire amount deposited or not. Reference was made to a decision of the court of appeal in Greenwood v. Sutcliffe, ((1892) 1 Chancery Div 1) where it was held that an unconditional tender of the money by the mortgagor is a good tender even if the mortgagor did not admit the correctness of the mortgagee's accounts and indicated that he intended to take steps to dispute them and to have the costs taxed. That case, in our opinion, is not at all relevant to the point with which we are concerned. In the present suit, there in no dispute that the tender of the money by the mortgagor at the time of presentation of the application under Section 83 of the T.P. Act was a valid tender. The question which we are called upon to decide is whether, after such a valid tender

had been made and the mortgagor had obtained all the reliefs which he could obtain when seeking redemption of a mortgage, he could still institute a suit for redemption. His right, of course, to dispute the accounts and to claim a decree for surplus may not have been taken away; but it is clear that no right could continue to exist to claim enforcement of the right of redemption as the various reliefs constituting the bundle of the right to redeem had already been obtained under Section 83 of the T.P. Act. We must, therefore, reject the submission made on behalf of the respondents that this was a suit for redemption falling within Section 2(3)(c) of the Act.

18. The alternative claim that it should be held to be a suit for the enforcement of an agreement in respect of a loan also does not appeal to us. The language of Section 2(3)(b) of the Act makes it clear that it envisages the institution of a suit by a creditor against his debtor on the basis of the agreement and that is why the nature of the agreement is indicated by saying that it should be by way of settlement of account or otherwise. It does not cover a suit for accounting brought by a mortgagor in exercise of his right under Section 76 of the T.P. Act taken together with the provisions of Order 34, Rule 9, C.P.C. The right to claim a decree for surplus in accordance with these provisions cannot be said to be a right to enforce an agreement, so that the present suit cannot be covered by Section 2(3)(b) of the Act either.

19. There is, further, the requirement under both clauses (b) and (c) of Section 2(3) of the Act that the agreement should have been made or the security given before the commencement of the Act. We have already indicated earlier the position as to the applicability of the Act in the Bangalore Civil and Military Station at various times. In the year, 1933, when the mortgage was executed, the Act was not applicable in this area. It was made applicable for the first time with effect from 1st April, 1937, by the Civil and Military Station of Bangalore (Application of Laws) Order, 1937. The question is whether it can be said that the mortgage of 1933, sought to be treated as the agreement under clause (b) or security under clause (c), was executed after the commencement of the Act when, in fact, the Act was applied to this area only subsequently with effect from 1st April, 1937.

20. The High Court has expressed the opinion that the mortgage of 1933 must be held to have been executed after the commencement of the Act, because the Act was passed in 1918 when it came into operation. This view, however, ignores the significance of the expression "commencement of the Act" used in clauses (b) and (c) of sub-section (3) of Section 2 of the Act. The Act, when originally passed in 1918, extended to British India. At that time, the Bangalore Civil and Military Station was not a part of British India. This fact is clear from the decision of the Madras High Court in re Hayes (supra) (ILR 12 Mad 39) which was approved by the Privy Council in the case of Gajambal Ramalingam and Others (supra) (AIR 1950 PC 64) as already mentioned by us earlier. The Bangalore Civil and Military Station continued to be a part of the territory of Mysore and was foreign territory and not a part of British India. The Act, when it came into operation in 1918 under Section 5 of the General Clauses Act, did not, therefore, become applicable in the Bangalore Civil and Military Station. In deciding the question of applicability of the Act to the present suit, what we are concerned with is not when the Act came into operation under Section 5 of the General Clauses Act, but whether it can be held that the commencement of the Act was earlier than the date of execution of the mortgage deed of 1933. "Commencement" is defined in Section 3(13) of the General Clauses Act as follow :

> "Commencement", used with reference to an Act or Regulation, shall mean the day on which the Act or Regulation comes into force."

Obviously, an Act can only commence in a particular area on the date on which that Act comes into

force in that area. The mere fact that it was in operation in other areas will not result in the Act having commenced in the area where it had not yet been applied. In this connection, notice may be taken of the language of sub-section (3) of Section 5 of the General Clauses Act where it is laid down that "unless the contrary is expressed, a Central Act or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement." This sub-section clearly indicates that there is a distinction between an Act coming into operation, and the commencement of the Act. The date of coming into operation is not necessarily the date of commencement. In interpreting Section 2(3)(b) and (c) of the Act, we are concerned with the expression "commencement" of the Act" and not with "coming into operation of the Act". In view of the definition of 'commencement' given in Section 3(13) of the General Clauses Act which applies to this expression as used in the Act, it has to be held that the commencement of the Act for the purposes of the present suit must be held to be the date on which the Act came into force in Bangalore Civil and Military Station, and, consequently, only 1st April, 1937, and not earlier. The document of 1933, treated either as an agreement or a security for purposes of clauses (b) and (c) of sub-section (3) of Section 2 of the Act, was made or given before the commencement of the Act and, consequently, the present suit is not a suit to which the Act can be held to be applicable under either of those clauses.

21. Mr. Aggarwala on this point drew our attention to the provisions of sub-section (3) of Section 3 of the Act under which it is laid down that "this section shall apply to any suit, whatever its form may be, if such suit is substantially one for the recovery of a loan or for the enforcement of any agreement or security in respect of a loan or for the redemption of any such security". He relied on a decision of the Punjab High Court in Vishnu Dass and others v. Thakur Dass (ILR (1954) 7 Punj 1), where the court interpreted Section 3(3) of the Act as laying down that the other provisions of Section 3 will apply to a suit for the recovery of a loan or for the enforcement of any agreement or security in respect of a loan or for the redemption of any such security, irrespective of the fact whether the loan or the agreement was made before or after the commencement of the Act, or the security was given before or after the commencement of the Act. We are unable to accept this interpretation. Sub-section (3) of Section 3 is not intended to take away the limitations laid down in Section 2(3) (a),(b) and (c) of the Act. Its only purpose is to meet the contingency that a suit, to which the provisions of the Act are sought to be applied, may not be in the form of a suit for recovery of a loan or for the enforcement of any agreement or security in respect of a loan for the redemption of any such security. In such a case, these expressions used in Section 2(3) of the Act are to be held to be covered even if the suit is substantially of such a nature. This sub-section (3) of Section 3 of the Act is thus intended to be in the nature of an explanation for the purpose of interpreting what is a suit for recovery of a loan or for the enforcement of an agreement or security in respect of a loan or for the redemption of any such security used in sub-section (3) of Section 2 of the Act in cases where the suit may not have been framed in such form as to indicate plainly that it is a suit of such a nature. Even if the form be different, but the suit is substantially of that nature, it has to be held that the requirements of Section 2(3) of the Act are satisfied. Consequently, it cannot be held that this provision was intended to take away the requirement that, for the applicability of the Act, the loan mentioned in clause (a) and the agreement mentioned in clause (b) of Section 2(3) must have been made after the commencement of the Act and the security mentioned in clause (c) must have been given after the commencement of the Act. In the present case, the mortgage deed, on the basis of which accounting and decree for surplus were claimed by respondents, was not executed after the commencement of the Act, and clearly, therefore, the Act cannot be applied to the present suit. The decree of the High Court to the extent of relief granted to the respondents on the basis of the applicability of the Act must be set aside.

22. Learned counsel for parties were asked to indicate to us the amount for which the suit would have to be decreed, applying Section 76 of the T.P. Act and ignoring the provisions of the Act, and they gave us the agreed figure that this amount will be Rs. 13,342.09. This is the amount which has been found by the High Court as due, if the provisions of the Act are not applicable. Consequently, the decree passed by the High Court has to be reduced to this amount.

23. The High Court, when decreeing the suit, granted interest to the respondents on this amount with effect from 3rd November, 1943, which was the date on which the suit was instituted. Learned counsel for the appellants desired that interest should be granted only with effect from the date of the decree passed by the High Court in the appeal against decree in the suit. We can see no basis behind this submission. The amount, for which the suit is being decreed, was clearly payable by the appellants at the time when the suit was instituted and we cannot, therefore, hold that any error was committed by the High Court in granting interest on this amount from the date of the suit.

24. The appeal is partly allowed and the decree passed by the High Court is set aside. The suit will be decreed for a sum of Rs. 13,342.09 with interest at the rate of 6 per cent. per annum with effect from 3rd November, 1943. In view of the partial success of the appeal, we direct parties to bear their own costs.

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