

was held and Muhammeda's relatives dragged in. I have carefully considered the evidence and am extremely suspicious of its correctness. The delay in the report is especially suspicious. The girl Mt. Rani was over 16 and I believe she went off with Muhammeda of her own accord. I do not believe the story of the attack, and I accept this appeal and setting aside the conviction and sentences direct that the appellants be released forthwith.

R.M./R.K.

*Appeal accepted.***A. I. R. 1918 Lahore 39**

SCOTT-SMITH AND LE ROSSIGNOL, JJ.

Salig Ram and others—Plaintiffs—Appellants.

v.

Sabghat Ullah and others—Defendants—Respondents.

First Appeal No. 189 of 1915, Decided on 25th February 1918, from decree of Dist. Judge, Delhi, D/- 7th December 1914.

Mortgage — Part payment of mortgage money, but no piecemeal redemption contemplated—Part payment tendered refused as entire amount became due—Tender is not valid—Rebate of interest cannot be claimed—Mortgagee is entitled to full amount with interest.

Plaintiffs sued to recover a certain amount of money, principal as well as interest, as a charge on property mortgaged to them by the predecessors-in-interest of the defendants. There was no provision in the mortgage deed for piecemeal redemption but it was contemplated that part payment of the principal mortgage money should be allowed. It appeared that a tender of a certain sum was made by some of the defendants on 14th August 1909, but the plaintiffs refused to take part payment as they had become entitled to the entire mortgage money and did not wish that part of the property should be redeemed. The defendants did nothing till October, 1913 when they again tendered the same sum. But on 28th January 1913 the plaintiffs had sent notices to all the mortgagors demanding payment of the full sum due under the mortgage:

Held : that under the circumstances no offer by any of the defendants subsequent to 25th January 1913 could be a valid tender so as to entitle them to claim rebate of interest on the sums tendered and the plaintiffs were, therefore, entitled to recover the full amount of principal as well as interest. [P 40 C 1]

*Moti Sagar—*for Appellants.*Muhammad Iqbal—*for Respondents.

Judgment.—In this suit the plaintiffs claimed Rs. 56,275-4-9, principal and interest, as a charge on the property mortgaged by a deed dated 9th August 1897. Defendants are the representatives of the original mortgagors and certain other per-

sons who have purchased portions of the property from them. The lower Court passed a decree for Rs. 55,578-10-0 together with future interest on the principal sum secured by the mortgage. From this order two appeals have been filed, one by three sets of defendants, namely, Sultan Singh and another, defendants 7 and 8, Nand Kishore, Defendants 9 and Rahim-ud-Din and others, defendants 10-12. The other appeal is by the plaintiffs who desire that the decree be increased by a sum of Rs. 450 which represents interest on a sum said to have been tendered to them in payment by Nand Kishore. When the appeal came on for hearing before us it was found that the defendants-appellants had paid a court-fee of Rs. 10 on their appeal. Their counsel expressed his willingness to pay a court-fee on the amount at which he valued the appeal and he stated this to be Rs. 8,750. Subsequently, however, he said that he only appealed for a reduction of the decree by a sum of Rs. 3,080. In other words, he desired that the decree should be one for the principal sum only, i. e., Rs. 52,500. The question in the defendants' appeal is whether they should be allowed a rebate of the interest on sums tendered by them in payment to the plaintiffs on various dates prior to the institution of the suit. The findings of the first Court so far as they are material to the appeals before us, are as follows:

(1). That there was no provision in the mortgage deed for piecemeal redemption, (2) That it was contemplated that part payment of the principal mortgage money should be allowed. (3): That the tender of Rs. 12,322 made by Rahim-ud-Din and the others in August 1909 was not a valid tender as it was clogged with a claim for partial redemption of the property mortgaged. (4): That the tender of Sultan Singh and another of part of the mortgage money was for similar reasons not a valid tender. (5): That the tender by Nand Kishore of Rs. 13,125 on 23rd October 1913 was a valid tender and that he was not liable for further interest after that date. First of all we deal with the tender, made by Rahim-ud-Din and others. This was made on 14th August 1909 but the actual letter which accompanied the tender, has not been produced. Plaintiffs' letter in reply, dated 16th August 1909, is printed at p. 247 of the paper book. It shows that plaintiffs re-

fused to take part payment as they had become entitled to the entire mortgage money. They also said that they did not wish that part of the property should be redeemed. This leads to the inference that the defendants' offer was made with a view to partial redemption. If it was not, they should have addressed the plaintiffs again and should have clearly stated that they offered money, in part payment of the principal. They, however, sent no answer to the plaintiffs in reply to this letter and apparently did nothing until October 1913 when they again tendered the same sum. Before that, however, the plaintiffs on 28th January 1913 had sent notices to all the mortgagors or their representatives-in-interest demanding payment of the full sum due under the mortgage. As more than ten years had expired from the date of the mortgage, plaintiffs were entitled to demand payment of the whole mortgage money and they were certainly not bound after that to accept any sum in part payment.

In our opinion, therefore, no offer by any of the defendants-appellants subsequent to 28th January 1913 was a valid tender so as to entitle them to claim any rebate of interest on the sums tendered. We note that Sultan Singh in his pleas never asked for any reduction of interest on account of the sum tendered by him. He merely said that he had always been willing to pay his share and that he should not be held liable for costs. In our opinion, therefore, it is not proved that any valid tender was made to the plaintiffs prior to the institution of the present suit such as would entitle the defendants to claim any reduction in interest. We hold accordingly that plaintiffs are not only entitled to the sum decreed by the first Court but to the additional sum of Rs. 450 for which they have appealed. We, therefore, dismiss the defendants' appeal and accepting that of the plaintiffs, increase the decree to one for Rs. 56,028-10-0 and we further modify the decree of the lower Court to this extent that interest will be calculated at the rate agreed upon, namely, Ro. 0-8-9 per cent. per mensem on the full principal sum Rs. 52,500 from 27th April 1914 until realisation. We further direct that the defendants shall pay the plaintiffs' costs in this Court in both appeals.

R.M./R.K.

Appeal accepted.

A. I. R. 1918 Lahore 401

LESLIE JONES, J.

Ramji Shah and another—Petitioners,

v.

Ghulam—Opposite Party.

Civil Revn. Petn. No. 142 of 1917, Decided on 11th January 1918, from order of Dist. Judge, Attock, D/- 28th October 1916.

Civil P. C. (1908), S. 11 and O. 2, R. 2—Previous suit for possession and interest dismissed as not maintainable—Second suit for interest held neither *res judicata* under S. 11 nor barred under O. 2, R. 2—Punjab Redemption of Mortgages Act (1913).

Defendant mortgaged some land to the plaintiffs for a certain sum, a part of which was to carry interest. On an application to the Collector under Punjab Act 2 of 1913, the mortgagor was allowed to redeem the land on payment of the principal only. A suit was then brought by the mortgagees for possession of the mortgaged property and for a declaration of their charge together with interest, which was dismissed on the ground that no civil suit to disturb possession given under Act 2 of 1913 could lie and that the plaintiffs were not entitled to interest. In a subsequent suit brought by the plaintiffs for interest:

Held: that the finding of the Court in the former suit with regard to interest being superfluous, the present suit for interest was neither *res judicata* under S. 11 nor barred under O. 2, R. 2, Civil P. C. [P41 C 1]

Nand Lal—for Petitioners.*L. M. Dutta*—for Opposite Party.

Judgment.—The District Judge of Attock has dismissed this suit on the ground that it is barred by S. 11, Civil P. C. The defendant had mortgaged some land to the plaintiffs for Rs. 300. One of the conditions of the mortgage was that a sum of Rs. 160 out of the total mortgage-debt should carry interest. On application to the Collector under Punjab Act 2 of 1913 the mortgagor was allowed to redeem on payment of the principal only. The mortgagees then brought a regular suit for possession in the Court of a Subordinate Judge. They claimed at the same time that the amount of their charge, which they put at Rs. 1,305 including interest, should be declared. The Subordinate Judge dismissed the suit on the ground that once possession had been given under Act 2 of 1913, no civil suit to disturb that possession could lie. Whether that order was right or wrong, it was sufficient for the disposal of the suit and the subsequent finding of the Subordinate Judge that the plaintiffs were not entitled to interest was superfluous.