

Radha Kishan and ors. Vs. Devi Das Alias Devi Ram and ors.

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Court : Allahabad

Decided On : Feb-19-1945

Reported in : AIR1945All298

Appellant : Radha Kishan and ors.

Respondent : Devi Das Alias Devi Ram and ors.

Judgement :

Allsop, J.

1. This second appeal arises out of a suit on the basis of a mortgage. The learned Munsif disallowed interest and costs. under the provisions of the Agriculturists' Relief Act on account of a failure on the part of the plaintiff to keep and furnish accounts. The learned Judge upset this finding upon the ground that the plaintiff was not a creditor within the meaning of the Agriculturists' Relief Act. He seems to have thought that no person can be a creditor unless he is in the habit of advancing loans to an agriculturist. In my judgment that is not the true interpretation of the provisions of the Act. According to the Act a creditor means a person who in the regular course of business advances a loan defined in this Act. The term used is a 'loan and not 'loans'. It, seems to me that a creditor is one who carries on business as a money-lender and in the course of that business advances a loan to an agriculturist. There can be no doubt as found by the learned Munsif and indeed as admitted by the plaintiff that the plaintiff was a regular

money-lender, although he says he gave up his business when the Agriculturists' Relief Act came into force. He was a regular money-lender when he advanced the loan to these agriculturists appellants and he advanced the loan in the course of his business. That, being so the decision of the learned Judge on this point is wrong. There was another question whether a sum of Rs. 60 was paid back on the date of the mortgage or a year later. The learned Munsif assumed that it was paid on the date of the mortgage. The learned Judge of the lower appellate Court held that it was paid a year later. The later credit would increase the amount of interest. As this is a finding of fact I cannot set it aside. I consequently direct that the decree of the learned Judge of the lower appellate Court will be amended. In so far as interest and cost have been disallowed the decree of the trial Court is restored but interest will be recalculated on the assumption that the repayment of Rs. 60 was made a year later than was held by the Munsif. The appellants will get their costs in this Court and costs in the lower Courts will be proportionate to their success and failure. A correct decree shall be drawn up.

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