

PARAM ANAND SINGH

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v.

JIN

[SUPREME COURT, 1962 (MacDuff C.J.), 27th July, 17th August]

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Appellate Jurisdiction

Moneylending—loan made when lender not a moneylender—payment of interest and new repayment date agreed after lender became registered moneylender—transaction not within Ordinance—Moneylenders Ordinance (Cap. 207) s.16(1).

To fall within the provisions of section 16(1) of the Moneylenders Ordinance a contract must be for the repayment of money lent to the borrower by a moneylender. Notwithstanding that the lender, subsequently to the making of the loan, became a registered moneylender and thereafter the borrower for the first time agreed to pay interest on the loan and a new date for repayment was arranged, there being no evidence that the lender was a moneylender at the time when he made the loan the transaction did not fall within section 16(1).

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Appeal from a judgment of the Magistrate's Court.

A. I. N. Deoki for the appellant.

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K. A. Stuart for the respondent.

The facts sufficiently appear from the judgment of the Chief Justice.

MACDUFF C.J.: [17th August, 1962]—

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This is an appeal from the decision of the First Class Magistrate sitting at Ba. The Respondent, as Plaintiff, claimed from the Appellant, as Defendant, the sum of £283.0.1, being the amount of principal and interest due by the Appellant to the Respondent under a written undertaking dated the 10th day of May, 1958. Of this amount £13.17.6. was abandoned and the learned Magistrate gave judgment for the Respondent for the balance — £269.2.7.

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The facts were not in dispute; briefly they were as follows. On the 15th December, 1952, the Appellant executed a Promissory Note in favour of one Menga f/n Indar Singh for the sum of £200. At this time Menga f/n Indar Singh was not a registered moneylender. In May, 1958, the Appellant executed an undertaking in the following terms:

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“Mr. Menga,
 Father’s Name Indar Singh,
 Tagi Tagi,
 TAVUA.

Dear Sir,

This is to confirm our arrangement whereby in consideration of your forbearing to demand from me the sum of *Two Hundred pounds* due and owing by me to you under a certain promissory note dated the 15th day of December 1952 until 10th day of January, 1959. I do hereby undertake to pay you the said sum of *Two Hundred pounds* together with interest thereon at the rate of twelve pounds per centum per annum computed as from this date on the said 10th day of January, 1959.

DATED at Ba this 10th day of May, 1958.

(sgd.) Param Anand Singh

Witness:

(sgd.) R. N. Nair
 J.P. Western

I agree to the foregoing arrangement.

Menga
 His left thumb mark.

Witness:

(sgd.) R. Singh
 Solicitor’s clerk,
 BA. ”

It was under this undertaking that the present claim was made. In 1954 Menga f/n Indar Singh registered himself as a moneylender under the provisions of the Moneylenders Ordinance (Cap. 207 Laws of Fiji) and he was so registered in 1958 at the date the Appellant executed the undertaking set out above. No memorandum in writing of the contract in the English language was signed by the Appellant or Menga f/n Indar Singh as required by Section 16 of the Moneylenders Ordinance. Menga f/n Indar Singh died on the 18th May, 1960, and the Respondent is executor of his estate.

Counsel for the Appellant abandoned the third and fifth grounds of appeal. The remaining three grounds may be summarised in this form—that the undertaking of the 10th May, 1958, was a contract between Menga f/n Indar Singh and the Appellant for the moneys claimed, that it came within the scope of Section 16 of the Moneylenders Ordinance, and that since the parties did not comply with the terms of that section the contract is unenforceable. Section 16, as far as is relevant to this issue, reads :

“16. (1) No contract for the repayment by a borrower or his agent of money lent to him or to any agent on his behalf by a moneylender or his agent after the commencement of this Ordinance or for the payment by him of interest on money so lent, and no security given by the borrower or by any such agent as aforesaid in respect of any such contract, shall be enforceable

unless a note or memorandum in writing of the contract in the English language be signed by the parties to the contract or their respective agents . . .”

It is contended for the Appellant that the document of the 10th May, 1958, was a new contract between the Appellant and Menga f/n Indar Singh, that it was for consideration, i.e. a forbearance to demand, that it fixed a new date for repayment and that it included a new term, i.e. for payment of interest. In my view these considerations are irrelevant. To come within the scope of Section 16 the contract must be for repayment of money lent to the borrower by a moneylender. The money was lent by Menga f/n Indar Singh in 1952, and there is no evidence that at the date he lent the money he was a “moneylender” with the definition of that term in Section 2 of the Ordinance. The same reasoning applies to the part of the contract regarding payment of interest. To come within the scope of the section the interest must be on money lent to the borrower by a “moneylender”.

For this reason the appeal must be dismissed. The Respondent is to have his taxed costs.

Appeal dismissed.

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