

1946

Present : de Silva J.

ELIYATHAMBY, Appellant, and MIRANDO, et al.,
Respondents.

198—C. R. Kalmunai, 1,848.

Contract—Mortgage—Loan of paddy—Agreement to pay interest in form of paddy—Outbreak of war—Impossibility of performance of contract as contemplated by the parties—Equitable order.

The plaintiffs had borrowed on a mortgage bond 16 avanams of paddy of the value of Rs. 160 and had undertaken to repay the amount with interest at the rate of 10 maracals for one avanam of paddy per annum. They brought this action to redeem the mortgage bond and undertook to pay the principal, Rs. 160, and interest at the rate of 20 per centum on the basis that it was impossible for them to pay the interest in the form of paddy.

The defendant claimed that, according to the price of paddy at the date of action, he was entitled to nine times the sum which had been lent as principal.

Held, that in view of the outbreak of war it had become impossible to perform the contract as contemplated by the parties and, under the circumstances, it was open to the Court to do what seemed to be equitable and to provide that a reasonable interest should be given for the principal lent.

A PPEAL from a judgment of the Commissioner of Requests, Kalmunai.

S. Nadesan, for the defendant, appellant.

C. E. S. Perera (with him *E. A. G. de Silva*), for the plaintiffs, respondents.

March 8, 1946. DE SILVA J.—

The plaintiffs in this case had borrowed 16 avanams of paddy of the value of Rs. 160 and had undertaken to repay the amount with interest at the rate of 10 maracals for one avanam of paddy per annum. They brought this action to redeem the mortgage bond and undertook to pay the principal, Rs. 160, and interest at the rate of 20 per centum on the basis that it was impossible for them to pay the interest by way of paddy. They also apparently urged that the value at which paddy was sold at Puliantivu at the time of suing cannot be determined because there is no sale of paddy at the present time owing to the various Defence Regulations and other laws regarding the sale of paddy.

The learned Commissioner of Requests apparently took the view that paddy was a commodity which was *extra commercium* and that therefore it had become impossible to perform the contract in view of the Defence Regulations. In the circumstances he decreed that the plaintiffs should pay the principal and interest at the rate of 18 per centum on the principal for the time for which interest was due.

In appeal it is urged that as paddy is purchased by the Government at the rate of Rs. 45 per avanam, there was a market for paddy and that the defendant was entitled to get at the rate of Rs. 45 for the paddy due in terms of the mortgage bond, and in support of this the judgment in case No. 530 D. C., Batticaloa*, has been cited. On the other hand the Counsel for the respondent has referred me to case No. 573 D. C., Batticaloa, decided on January 21, 1946, in which a different view was taken by this Court.

In the circumstances, I am free to decide the matter adopting either view which has been taken by this Court. It seems to me, in law, the defendant will not be at any time able to recover more than double the principal which has been lent. His claim at present comes to nine times the principal which has been lent. In the circumstances, I think the defendant's claim as it is made at present cannot be sustained. The real position is that the parties contemplated at the time they entered into this contract that normal conditions would prevail and they had not in view the possibility of war breaking out or paddy being regulated by Defence Regulations. It has, therefore, really become impossible to perform the contract as contemplated by the parties. Under such circumstances, I think, it is open to the Court to do what seems to be equitable as between the parties and to provide that a reasonable interest should be given for the principal lent. I think, in all the circumstances, the learned Commissioner has arrived at a correct conclusion and dismiss the appeal without costs.

Appeal dismissed.

* See page 105 (*Supra*)—Ed.