the present case the finding, based on evidence, of fact by the Appellate Authority is that the demised premises which were let for business, that is to say, clinic of the respondent, have been used for residential purpose in part. There is not even an allegation, much less evidence, that the respondent used part of the demised premises for residence to safeguard the same having regard to the proviso in section 2(d) of the Act. This is, on the findings of the Appellate Authority, not assilable in this revision being findings of fact, a case to which the ground of eviction under section 13(2) (ii) (b), apparently and without question applies. In this approach the revision application of the applicant is accepted, and, reversing the orders of the authorities below, the eviction application of the applicant is allowed, and the eviction of the respondent from the demised premises is accordingly ordered. As some reported cases have brought the litigation between the parties to this stage, so there is no order in regard to costs. The respondent is given two months from the date of this order within which to vacate the demised premises.

BAL RAJ TULI, J.—I agree.

K.S.

APPELLATE CIVIL

Before S. B. Capoor and R. S. Narula, JJ.

MANOHAR LAL AND ANOTHER,—*Appellants.*

versus

GANESHI RAM AND OTHERS,—*Respondents.*

Regular First Appeal No. 456 of 1958

September 16, 1968.

Usurious Loans Act (X of 1918) as amended by Punjab Relief of Indebtedness Act (VII of 1934)—S. 3 proviso (ii)—Word "decree"—Whether includes consent decree—Courts—Whether can re-open debt transaction payable on the basis of a previous consent decree in subsequent suit for redemption.

Civil Procedure Code (V of 1908)—S. 11—Compromise decree—Whether operates as resjudicata.

Held, that the invoking of the relief under the purview of sub-section (1) of section 3 of the Usurious Loans Act is subject to the second proviso to that sub-section and that the word "decree" in that proviso applies as much to a consent decree as to a decree based on appraisal of evidence by the Court itself. A decree based on a compromise is in a way passed on the admission of the parties on the points in issue and has for all practical purpose the same force as a decree obtained after contest. The Civil Courts have no jurisdiction to re-open a transaction or scale down the debt in respect of mortgage money which is payable on the basis of a previous consent decree, because it cannot but affect the said previous decree. (Para 8).

Held, that a compromise decree is not a decision by the Court but is the acceptance by the Court of something to which the parties have agreed. A compromise decree merely sets the seal of the Court on the agreement of the parties. The Court while passing the compromise decree at the earlier stage has not decided anything. It is only a decision by the Court which can be *res judicata,* whether statutory under section 11 of the Code of Civil Procedure or constructive as a matter of public policy. Hence it is an adjudication of a *res* that operates as a bar on the principles of *res judicata* whether statutory or constructive. When it is found that there has in fact been no adjudication by a Court, the provisions of section 11 of the Code of Civil Procedure do not bar the trial of the relevant issue and a decree based on compromise will not operate as *res judicata* to bar the trial of that issue. (Paras 5 and 6).

First Appeal from the decree of the Court of Shri Mohan Lal Jain, Sub Judge 1st Class, Rohtak, dated the 25th day of August, 1958, granting the plaintiffs a decree for possession by redemption of the land in dispute subject to their depositing into Court a sum of Rs. 6,000 *within one month of the date of the decree, failing which their suit would stand dismissed.*

DALIP CHAND GUPTA AND J. V. GUPTA, ADVOCATES, for the Appellants.

G. P. JAIN, SATYA PARKASH JAIN AND G. C. GARG, ADVOCATES, for respondent No. 1 only.

Other Respondents, NEMO.

JUDGMENT

NARULA, J.—The sole question which calls for decision in this plaintiff's Regular First Appeal against the judgment of the Court of Shri Mohan Lal Jain, Subordinate Judge, 1st Class, Rohtak, dated August 25, 1958, granting the plaintiff-appellants a decree for

possession of the land in dispute conditional on their depositing in the Court a sum of Rs. 6,000 within six months of the date of the decree for redemption of the mortgaged land is—whether in a subsequent suit for redemption of mortgaged property the question of the amount due from the plaintiff-mortgagor to the defendant-mortgagee on the mortgage in suit, which question has already been decided in a previous suit *inter partes,* on the basis of which the mortgaged land has not been redeemed nor the mortgage foreclosed, can be reopened under section 3 of the Usurious Loans Act as amended by the Punjab Relief of Indebtedness Act (7 of 1934). This question has arisen in the case in hand in the following circumstances:—

(2) The land in suit was mortgaged with possession by one Ganeshi Lal with the predecessor-in-interest of defendants Nos. 2 to 11 for Rs. 4,000 in the year 1921. The usufruct of the land was to be adjusted against the interest amounting to Rs. 200 which amount of interest fell due on half of the mortgage money, i.e., on Rs. 2,000. The remaining mortgage-money of Rs. 2,000 was to carry interest at Re. 0-7-9 per cent per mensem. After the death of the original mortgagee, his heirs sold their mortgagee rights in favour of Ghasi Ram, defendant No. 1 for a sum of Rs. 3,000. The plaintiff-appellants (to whom reference will be made in this judgment by their title in the trial Court as also to the other parties to this litigation) who are the heirs of Ganeshi Lal, the original mortgagor, obtained on May 9, 1955, a decree for redemption of the land in dispute on payment of Rs. 6,000 to be deposited by them within six months of the date of that decree. The decree of the competent Civil Court, dated May 9, 1955, further provided that if the plaintiffs fail to deposit the amount within the aforesaid period of six months "the mortgage shall continue as before." It is the admitted case of both sides that the mortgage amount determined by the consent decree of the Civil Court in the previous suit was not paid by the plaintiffs within the prescribed period or indeed at any time thereafter. It is also not in dispute that the defendants took no steps to foreclose the mortgage. It was in the abovesaid circumstances that the suit from which the present appeal has arisen was filed by the plaintiffs on August 5, 1957, claiming a decree for possession by redemption of the land in dispute without payment of any mortgage money or on payment of the mortgage money which may be fixed according to law after taking account of profits accruing from the

land. The suit was resisted by Ghasi Ram, defendant No. 1 alone. Proceedings against other defendants were *ex-parte*. Defendant No. 1 admitted the mortgage as well as its terms. He, however, pleaded that the claim of the plaintiffs was barred on principles of *res-jujdicata* on account of the previous adjudication by a competent Civil Court, and on account of the plaintiffs not having redeemed the land on making the requisite payment within the time allowed by the said previous decree. Defendant pleaded that this had resulted in automatic foreclosure of the mortgage. In the alternative it was pleaded that in any case the plaintiffs could not challenge the quantum of the mortgage money which they were liable to pay, i.e., Rs. 6,000 which had been found by the Court in the previous suit, and that, therefore, the plaintiffs could not call for accounts from the defendant. On the pleadings of the parties, the trial Court framed as many as seven issues out of which we are concerned in this appeal with issues Nos. 2 and 3 only, which were:—

> "2. Whether the suit is barred by *res judicata* ?
>
> 3. Whether the plaintiffs can challenge the amount of Rs. 6,000 as agreed upon between the parties in the previous suit?"

(3) By its judgment and decree under appeal, the trial Court found issue No. 2 against the contesting defendant and held that the suit for redemption was not barred by *res judicata*, but decided issue No. 3 against the plaintiffs and held that the plaintiffs could not ask for the decision of the competent Court in the previous suit though based on a compromise being reopened, as to the amount of mortgage money which the plaintiffs were liable to pay for redemption of the land in dispute. Not satisfied with the finding of the trial Court on issue No. 3, the otherwise successful plaintiffs have preferred this appeal to this Court. While admitting the appeal on December 1, 1958, Dua, J., directed on the application of the plaintiff-appellants that the sum of Rs. 6,000 in question may be deposited by them in Court and the mortgagee-respondents may be allowed to withdraw the amount on furnishing adequate security to the satisfaction of the executing Court for restitution of the amount in question. We were informed by the learned counsel for the contesting parties that in pursuance of the abovesaid order, the plaintiffs did deposit the requisite amount in the trial Court and have in consequence thereof already obtained actual possession of the mortgaged land in full satisfaction of the decree under appeal subject to the decision of this Court.

(4) Mr. Ganga Parshad Jain, the learned counsel for the contesting defendant-respondent, did not question the correctness of the finding of the trial Court on issue No. 2 and indeed frankly conceded that the subsequent suit of the plaintiffs for redemption was not barred. Parties, therefore, contested before us only about the correctness or otherwise of the finding of the trial Court on issue No. 3 Mr. Dalip Chand Gupta, the learned counsel for the plaintiff-appellants submitted that the decree in the previous suit for redemption having been passed on a compromise between the parties, the Court below was bound to ignore the same for purposes of the subsequent suit in which the whole matter must be held to be again open. What the plaintiffs actually claim is that the Court is bound to scale down the mortgage debt under section 3 of the Usurious Loans Act and the previous decree is no bar to this being done. He further contended that determination of the quantum of the mortgage money was not a *res* which had been adjudicated upon by the Court itself in the previous suit, and that what had in fact happened was that the trial Court had merely superimposed its seal on a mere agreement between the parties as to the quantum of the mortgage money. In addition, counsel contended that the whole decree in the previous suit must be treated as one indivisible unit and the moment the plaintiffs had not redeemed the mortgage within the time allowed by the said decree, the whole of the previous decree should be deemed to have been washed out, and that the present suit should have been tried as if no decree at all had been passed in the previous suit. Counsel firstly referred to the judgment of the Privy Council in *Raghunath Singh and others* v. *Mt. Hansraj Kunwar and others* (1). It was held in that case that unless it could be said that a decree involved a decision to the effect that the mortgagor's right to redeem was extinguished, it cannot operate by way of *res judicata* so as to prevent the Court, under section 11 of the Court of Civil Procedure, from trying a second redemption suit. There is no quarrel with the proposition of law laid down by the Privy Council in *Ragunath Singh's case* (supra) and as already observed, learned counsel for the contesting defendant did not for a moment assail the proposition of law laid down by the Judicial Committee of the Privy Council. No question as to the reopening of the determination of the Court in the previous suit as to the quantum of mortgage money arose in the *case of Raghunath Singh and others.* Reference was

(1) A.I.R. 1934 P.C: 205:

then made to the judgment of a learned Single Judge of the Madras High Court in *Keesari Santamma* v. *Kanumatha Reddi Venkatarama Reddi and others* (2), wherein it was held that with respect to the application of Order 23, Rule 1 of the Code of Civil Procedure, a suit for partition should be treated differently, and a subsequent suit for partition of the same property involved in the previous suit is not barred under Order 23 Rule 1 by the dismissal of the previous suit, even though no permission to institute a fresh suit was obtained when the previous suit was dismissed on the ground of compromise, the reoson being that the right to bring a suit for partition unlike other suits is a continuing right, and as soon as the defendant failed to carry out the compromise, "the parties are relegated to their rights as they existed prior to the compromise." Though the main question decided by Madhavan Nair, J., in *Keesari Santamma's case* (supra) is not in dispute in the appeal before us, Mr. Dalip Chand Gupta has laid greater stress on the observation of the learned Judge to the effect that in case of non-carrying out of the compromise what happens is that "the parties are relegated to their rights as they existed prior to the compromise". From the abovesaid expression used by the Madras High Court in its judgment in the *case of Keesari Santama,* counsel wants to spell out that the result of not redeeming the land in dispute by the plaintiffs in execution of or in pursuance of the decree in the previous suit is that the parties before us are also relegated to their rights as they existed prior to the compromise which would mean that the compromise as well as the decree passed thereon have to be completely ignored and that this would result in the determination of the mortgage money in the previous suit being deemed to be non-existent. We do not find any force in this contention of the learned counsel. The only aspect of the case with which the Madras High Court was concerned was as to the maintainability of the subsequent suit for partition. No question of detail such as the one involved in issue No. 3 before us was mooted before the Madras High Court. The observation to which reference has been made by Mr. Dalip Chand Gupta was made only for the purpose of emphasising that the second suit would not be barred by the partition suit having been dismissed on the allegation that it had been adjusted. The Madras High Court held that the parties had been relegated to their rights which existed prior to the compromise and that giving effect to the said principle would result in the finding that

(2) A.I.R. 1935 Mad. 909.

the subsequent suit was maintainable. All that was held was that the dismissal of the previous suit in the case before the Madras Court could not operate as a bar to the plaintiffs' suit. The ratio of the judgment in *Keesari Santamma's case* does not appeal to advance the contention of Mr. Dalip Chand Gupta at all.

(5) Reliance was lastly placed by Mr. Gupta on the authoritative pronouncement of their Lordships of the Supreme Court in *Pulavarthi Venkata Subba Rao and others* v. *Valluri Jagannadha Rao and others* (3). The fate of the case before the Supreme Court depended upon the scope and true construction of section 19 of the Madras Agriculturists Relief Act (4 of 1938) as amended by section 16(ii) of the Madras Agriculturists Relief (Amendment) Act (23 of 1948). Sub-section (1) of section 19 of the 1938 Madras Act, *inter alia*, provided that where a Court has passed a decree before the coming into force of that Act for the repayment of a debt against an agriculturist, the Court shall, on an application of the judgment-debtor apply the provisions of that Act to such decree and notwithstanding anything contained in the Code of Civil Procedure, amend the decree accordingly or enter satisfaction thereof as the case may be. Sub-section (2) of section 19 makes the provisions of sub-section (1) applicable even to those cases where the decree has been passed by a Court in respect of a debt payable on the date of commencement of the Act after such commencement. Section 16 of the Amending Act of 1948 states that the amendments made by the said 1948 Act shall apply to the following sets of proceedings, namely: —

(i) all suits and proceedings instituted after the commencement of this Act;

(ii) all suits and proceedings instituted before the commencement of this Act, in which no decree or order has been passed, or in which the decree or order passed has not become final, before such commencement;

(iii) all suits and proceedings in which the decree or order passed has not been executed or satisfied in full before the commencement of this Act.

(3) (1964) 2 S.C.R. 310.

The relevant substantive provisions of the Madras Act entitle the judgment-debtors against whom decrees covered by section 16 have been passed to apply for their being scaled down. One of the questions which arose for decision before the Supreme Court under the above provisions was whether a compromise decree passed in a suit instituted before the commencement of the Act falls within clause (ii) or clause (iii) of section 16 of the Amending Act. The Supreme Court held :—

> "There being no distinction between decrees passed after consent and decrees passed on compromise, the words in which the decree or order passed has not become final' in clause (ii) of section 16, cannot be held to refer to a compromise decree but to decrees which are final such as final decrees for foreclosure, etc., in suit on mortgages."

Their Lordships held on the facts of the case before them that it was governed by clause (iii) of section 16 read with sub-section (2) of section 19 of the principal Act and the judgment-debtors were, therefore, entitled to broach the question of the scaling down of the decree once again. In the portion of the judgment on which Mr. Gupta has relied, it was observed by the Supreme Court that though the conduct of the judgment-debtors in omitting to press the claim for reduction of the amount of the claim on the first occasion was significant, it did not constitute *res judicata* either statutory or constructive. It was in that context that the Supreme Court observed that the compromise decree was not a decision by the Court, but was the acceptance by the Court of something to which the parties had agreed, and that a compromise decree merely sets the seal of the Court on the agreement of the parties. On that basis it was held that the Court while passing the compromise decree at the earlier stage had not decided anything, and that it was only a decision by the Court which could be *res judicata,* whether statutory under section 11 of the Code of Civil Procedure or constructive as a matter of public policy. Their Lordships of the Supreme Court refused to look into the evidence to show that the judgment-debtor had actually paid two sums under the consent decree because no plea of estopple by conduct had been raised or tried in that case. The contention of Mr. Gupta was that a judgment-debtor is doubtlessly not entitled to invoke the provisions of section 3 of the Usurious Loans Act (10 of 1918) as amended by section 5 of the Punjab Relief of Indebtedness Act (7 of 1934), in a case where the grant of

relief under that provision would affect any decree of a Court, but that the earlier consent decree cannot in the light of the observations made in the judgment of the Supreme Court in Pulavarthi Venkata Subha Rao's case (supra), be called a decree of a Court. In order to appreciate this argument of the learned counsel, it is necessary to take notice at this stage of the relevant part of section 3 of the Usurious Loans Act as amended by Punjab Act 7 of 1934. The relevant extract from the section is quoted below :—

"(1) Notwithstanding anything in the Usury Laws Repeal Act, 1855, where, in any suit to which this Act applies, whether heard *ex-parte* or otherwise, the Court has reason to believe,—

(a) that the interest is excessive; and

(b) that the transaction was, as between the parties thereto, substantially unfair, the Court may exercise all or any of the following powers, namely, may,—

(i) re-open the transaction, take an account between the parties, and relieve the debtor of all liability in respect of any excessive interest;

(ii) notwithstanding any agreement, purporting to close previous dealings and to create a new obligation, re-open any account already taken between them and relieve the debtor of all liability in respect of any excessive interest, and if anything has been paid or allowed in account in respect of such liability, order the creditor to repay any sum which it considers to be repayable in respect thereof;

(iii) * * * * *
* * * * *
* * * * *

Provided that, in the exercise of these powers, the Court shall not—

(i) * * * * *
* * * *

(ii) Do anything which effects any decree of a Court.
* * * *
* * * *
* * * *
* * * *

(6) A mere perusal of the above-quoted provision makes it plain that the ratio of the judgment of the Supreme Court in *Pulavarthi Venkata Subba Rao's case* (3), has no application to the matter before us. It is only an adjudication of a *res* that operates as a bar on the principles of *res judicata* whether statutory or constructive. When it is found that there has in fact been no adjudication by a Court, the provisions of section 11 of the Code of Civil Procedure do not bar the trial of the relevant issue. In the present case, however, the appellants must fail, not because of the ordinary principles of *res judicata,* but because of the fact that the jurisdiction of the Court to reopen or scale down the debt is expressly barred by the very provision which the appellants seek to invoke for getting the relevant relief. What the relevant part of section 3 of the Usurious Loans Act says is that the Court shall not reopen any transaction or grant any relief under sub-section (1) of section 3 where by doing so "any decree of a Court" is effected. The expression "any decree of a Court" in proviso (ii) to sub-section (1) of section 3 of the Usurious Loans Act applies, in my opinion, as much to a consent decree as to a decree passed in a contested action. This is in contra-distinction to the provisions or principles of section 11 of the Code of Civil Procedure, which bar the trial of only such an issue which was directly or substantially in issue in the previous litigation and on which the adjudication of a competent Court has been superimposed. The answer to the question whether the appellants in the present case can escape the bar of the second proviso to sub-section (1) of section 3 depends upon the answer to the simple question—"whether the grant of any relief resulting in the reduction of the sum of Rs. 6,000 payable under the previous decree would or would not effect the previous decree." To ask that question is to answer it. An answer to the above question in the negative appears to me to be an impossibility. In the Supreme Court case the relevant provisions of the Madras Act clearly provided for the scaling down of decretal debts. There is no jurisdiction in the Civil Courts in Punjab to scale down any debt under section 3 of the Usurious Loans Act as amended by the 1934 Punjab Act, except in the circumstances mentioned in section 3 itself. No reference is being made by me in this connection to the various sections contained in Part IV of the 1934 Punjab Act as subsequently amended relating to proceedings before Debt Conciliation Boards as the same are not relevant for purposes of deciding this appeal. The relief available in the Civil Courts of Punjab under

section 3 of the Usurious Loans Act is subject to proviso (i) and proviso (ii) to sub-section (1) of that section. This case falls squarely within proviso (ii). Nor do we find any force in the contention of Mr. Gupta to the effect that the non-payment of the mortgage money by the plaintiffs within six months of the previous decree made the decree non-existent for purposes of the second proviso to sub-section (1) of section 3 of the Usurious Loans Act. The relevant proviso does not say that it is only an executable decree the effecting of which would bar the availability of relief under the purview of sub-section (1) of that section. The effecting of any decree of a Court is prohibited by the proviso.

(7) Mr. Ganga Parshad Jain, the learned counsel for the contesting defendant, referred us to a Division Bench judgment of the Oudh Chief Court in *Darshan Lal and another* v. *Munnu Singh* (4), wherein it has been held that the former decree operates as *res judicata* on the question of amount due on the mortgage and that the purchaser of the equity of redemption is entitled to redeem on payment of the amount determined by the former decree. The question whether the former decree was a consent decree or one obtained after contest did not arise in *Darshan Lal's case*, (supra). Reliance was then placed on behalf of the defendant on the judgment of a Division Bench of the Lahore High Court in *Phula Singh* v. *Bur Chand and others* (5). This case was really followed by the Oudh Court. In the Lahore case it was held that the question of the amount due on the mortgage in question was *res judicata* by reason of the decree in the previous suit. A Full Bench of the Bombay High Court held in *Ramji valad Bapuji Patil* v. *Pandharinath valad Ravji and others* (6) (per Scott, C.J.), that "a second redemption suit must recognise the binding effect of the previous redemption decree *nisi* in so far as it settles the accounts up to the date of that decree, and the duty of the Court in the second suit would be limited to the ascertainment of the amount due at the date of the second suit or decree and to give such consequential relief as the law permits." In *Mt. Maina Bibi and others* v. *Chaudhri Vakil Ahmad and others* (7), (at page 68), it was held that the

(4) A.I.R. 1940 Oudh 273.
(5) A.I.R. 1917 Lah. 446.
(6) I.L.R. 43 Bom. 334.
(7) A.I.R. 1925 P.C. 63.

question of the amount of the dower debt and that of the rate of interest which had been decided in the earlier suit could not be reopened in the second suit, and that it was only the amount subsequent to the date of the previous decree which could be gone into at the later stage. It was observed by the rPivy Council that the non-fulfilment of the condition attached to the decree in the earlier suit only extinguished the right of the plaintiffs to the inheritance of, or their rights to recover possession of the lands at some future time.

(8) Mr. Ganga Parshad Jain lastly referred to the Division Bench judgment of Harries and Ganga Nath, JJ., in *Ibney Hasan* v. *Gulkandi Lal and others* (8). In that case it was held that where it is not possible for the High Court to reduce the interest without affecting a decree previously passed by a Court of competent jurisdiction, it cannot exercise the powers given by section 3 of the Usurious Loans Act. It was decided by the Allahabad High Court that the Court in exercising its powers under section 3 of the Usurious Loans Act must not do anything which affects any decree whether such decree be *inter partes* or not. Once the distinction pointed out by the Allahabad High Court is recognised, it becomes clear that the law laid down by the Supreme Court in connection with the application of the principles of *res judicata* is not at all relevant for determining the question of application of the second proviso to sub-section (1) of section 3 of the Usurious Loans Act. Relief under the purview of sub-section (1) of section 3 cannot be granted even in a case where some decree not *inter partes* is likely to be affected. A consent decree which is *inter partes* cannot certainly be placed at any lower pedestal than a decree which is not even *inter partes*. As already stated it is not necessarily an adjudication of the Court itself in a contested action which creates the bar under the second proviso. It is the possibility of affecting any decree of any competent Court which creates the relevant bar. We are, therefore, unable to find any fault with the ultimate decision of the trial Court on issue No. 3. It is unnecessary to deal with the reasoning on which the trial Court based its finding on that issue. We would, therefore, hold that the invoking of the relief under the purview of sub-section (1) of section 3 of the Usurious Loans Act is subject to the second proviso to that subsection and that the word "decree" in that proviso applies as much

(8) A.I.R. 1936 All. 611.

to a consent decree as to a decree based on appraisal of evidence by the Court itself. A decree based on a compromise is in a way passed on the admission of the parties on the points in issue and has for all practical purposes the same force as a decree obtained after contest. In the circumstances of this case any relief granted to the appellants in respect of the mortgage money which was payable on the date of the previous consent decree, cannot but affect the said previous decree.

(9) No other point having been argued before us in this case, the appeal of the plaintiffs fails and is accordingly dismissed with costs.

S. B. CAPOOR, J.—I agree.

R.N.M.

APPELLATE CIVIL

Before Mehar Singh, C.J. and H. R. Sodhi, J.

PIARA SINGH AND OTHERS,—*Appellants.*

versus

BALWANT SINGH SETHI AND OTHERS,—*Respondents.*

Regular First Appeal No. 92 of 1958

Civil Miscellaneous 2476-C of 1968

September 16, 1968.

September 18, 1968.

Displaced Persons (Debts, Adjustment) Act (LXX of 1951),—S. 16—Benefit of—Whether can be claimed in ordinary Civil Courts on the analogy of section 17—Section 16(4—Whether can be read apart from other sub-sections of section 16—Election to retain the security of the mortgaged property—Whether can be made outside the jurisdiction of the Tribunal—Displaced debtor putting the displaced creditor in possession of the land originally mortgaged, and after partition, of the land allotted in lieu thereof—Such displaced creditor—Whether deemed to have elected to retain the mortgage security—Mortgage debt—Whether automatically scaled down.