

The pleader for the respondent in this case appears to consider that there is an analogy between the rights of a tenant who by holding land and paying rent for it for twelve years acquires a right of occupancy, and the title of a person who by twelve years' adverse possession extinguishes the rights of the previous owner and himself acquires a title by prescription.

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It appears to me that there is no analogy between the two cases. The right, if any, which the plaintiff had in the present case, is created entirely by his continued occupancy of the land. It does not rest upon any grant, it is not in general transferable, and it appears to me that if the tenant desires to maintain that right and have himself to be replaced in the possession which he occupied before ouster, he is bound to bring a suit under s. 27 of Beng. Act VIII of 1869 within one year from the date of dispossession. I think, therefore, that the plaintiff's suit in this case ought to fail, and that the judgments of the Courts below ought to be reversed, and the plaintiff's suit dismissed with costs.

*Appeal allowed.*

*Before Mr. Justice Mitter and Mr. Justice Tottenham.*

NARAIN MAL (OBJECTOR) v. KOER NARAIN MYTME  
(PETITIONER).\*

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April 26.

*Act XXVII of 1860—Right to Certificate of a Son adopted after the death of his adoptive Father.*

A son adopted in pursuance of an *unomoti putro* (power to adopt), some time after the death of his adoptive father, does not require, and is not entitled to obtain, a certificate under Act XXVII of 1860, to enable him to collect debts in respect of the properties left by his adoptive father, which accrued due while they were under the management of his adoptive mother.

The estate of the adoptive father, if the adoption is a good one, vests immediately on the adoption on the adopted son, and debts to it, if they accrued due after the death of the adoptive father, are debts recoverable by the adopted son in his own right and not as representative of his adoptive father.

In this case one Juggunauth Mal died in Falgoun 1270 (March 1864), having, as the petitioner alleged, previously, on

\* Appeal from Original Order, No. 46 of 1879, against the order of W. Cornell, Esq., Officiating Judge of Midnapore, dated the 8th January 1879.

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the 23rd Assin 1270 (8th October 1863), executed an *unoomoti puttro*, or power of adoption, in favour of his wife, who was then pregnant, empowering her to adopt a son in case of the child then in her womb dying without issue.

After the death of Juggunauth Mal, his widow gave birth to a daughter, and shortly afterwards applied for, and obtained, a certificate under Act XXVII of 1860 to collect the debts due to her husband's estate. Some time afterwards, the daughter having died in infancy, the widow, acting under the *unoomoti puttro*, adopted the petitioner, who, thereupon, applied for a certificate under Act XXVII of 1860, and was opposed by the objector Narain Mal, who, had there been no adoption, or if the adoption had been without authority, would have been, subject to the widow's estate, the heir of Juggunauth Mal.

The lower Court held, that both the *unoomoti puttro* and the adoption were fully proved, and granted a certificate to the petitioner.

Against this order the objector appealed to the High Court.

Baboo *Bhowany Churn Dutt* and Baboo *Bhowany Churn Banerjee* for the appellant.

Baboo *Kali Mohun Doss* for the respondent.—The objection relied upon by the appellant was, that the lower Court was wrong in granting a certificate to the petitioner without any evidence to prove that any debts due to Juggunauth were still due and could be collected.

The judgment of the Court was delivered by

MITTER, J. (TOTTENHAM, J., concurring).—We think that, upon the facts stated in the petition, the applicant is not entitled to a certificate under Act XXVII of 1860. The petition is based upon an *unoomoti puttro* alleged to have been executed by Juggunauth Mal on the 23rd Assin 1870 (8th October 1863), he having died in Falgoun (March 1864) of that year, and if this *unoomoti puttro* be a genuine document, the estate of Juggunauth vested in the applicant as soon as he was taken in adoption.

The present application is made to collect the debts due in respect of the properties left by Juggunauth while they were under the management of the alleged adoptive mother Doorgamonee. The petitioner cannot possibly have a *locus standi* under the provisions of Act XXVII of 1860. The Act applies to cases where applications are made by representatives of deceased Hindus, Mahomedans, and others not usually designated as British subjects, to collect the debts which are payable in respect of the estates of such deceased persons. In this case it would appear, upon the applicant's own showing, that the debts were payable to himself, because they had accrued due during his minority, while his estate was under the management of Doorgamonee, his alleged adoptive mother. It is quite clear, therefore, that there was no necessity for applying for a certificate under Act XXVII of 1860, and no right to obtain one.

Upon this ground alone we think that the order of the lower Court ought not to stand. We, accordingly, reverse that order with costs.

*Appeal allowed.*

*Before Mr. Justice Ainslie, and Mr. Justice Broughton.*

DEOLIE CHAND AND OTHERS (DECREE-HOLDERS) v. NIRBAN SINGH  
(JUDGMENT-DEBTOR).\*

1879  
March 25.

*Mortgage—Sale to Mortgagee of Portion of Mortgaged Property—Resale to Mortgagee—Decree—Equitable right to whole of Property Mortgaged.*

A mortgaged a fourteen-annas share in a certain mouza to B. B obtained a decree on his mortgage-bond. Subsequent to this decree B bought from A a two-annas share in the mouza, but at a later period resold the share to A. In execution of another decree B had obtained against A the twelve-annas share in the mouza belonging to A was put up for sale and purchased by B; B next applied for execution of the decree he had obtained on the mortgage-bond, seeking to sell the two-annas share which remained in the mouza as part of the property mortgaged to him,—

*Held*, that so long as A had only a twelve-annas share of the property in his possession, B's security was of necessity reduced to that amount, but on A's

\* Appeal from Original Order, No. 265 of 1878, against the order of Baboo Matadin, Roy Bahadur, Subordinate Judge of Gya, dated 27th July 1878.