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all authorities, "that with respect to personal property of every description, whether ancestral or acquired, and with respect to real property acquired or recovered by the occupant, he (the father) is at liberty to make any alienation which he may think fit, subject only to spiritual responsibility."

Entertaining this view of the point in dispute, and finding as we believe, that authority and precedent are with us, we have no hesitation in holding that the decision of the Judge is wrong, and that this exclusive gift by Sital the father, to his son Sadho, of the house in dispute, was not illegal under the Hindu law, and the facts not being disputed, the claim should have been dismissed. We accordingly decree this appeal and dismiss the claim, by reversing the judgments of the Courts below, with costs.

Decree reversed.

APPELLATE CIVIL.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Pearson.

MAJOR-GENERAL SHOWERS (DEFENDANT) v. SETH GOBIND DASS (PLAINTIFF).*

Act VIII of 1859, ss. 240, 248—Act XIX of 1873, s. 3 cl. 1—Irregularity in publication of Court sale of Khalisa Mahal.

In the case of a sale by the Civil Court of forest land, which formed a grant from Government under a deed describing the property as a "Khalisa Mahal," subject to the payment of revenue after a term of years, the sale not having been proclaimed at the site of the grant. *Held*, that the sale was invalid by reason of irregularity in the publication, and because it was not competent to the Civil Court to sell land chargeable with, although not actually paying revenue at the time of sale, such Khalisa Mahals being revenue paying lands within the meaning of s. 248 of Act VIII of 1859, and s. 3, cl. i, Act XIX of 1873, and that therefore the sale should have been held by the Collector.

The decree-holder, respondent in this case, attached through the Court of the Judge of Small Causes exercising the powers of a Subordinate Judge in Dehra Dún, a grant of forest-land comprising 2,080 acres conferred by Government upon the judgment-debtor, General Showers, on terms embodied in a deed. By the said deed

* Miscellaneous Regular Appeal, No 5 of 1877, from an order of B. Alexander, Esq., Judge, Small Cause Court, Dehra Dún, with special jurisdiction, dated the 11th December 1876.

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it was stipulated that revenue on the land conveyed by the grant would become payable after the expiration of three years, during which term the land should be held free of revenue. Upon attachment of the land during the said term, and after the order for its sale by the Court Amin, had been passed by the Dehra Dún Court, the judgment-debtor, by petition, objected that the land attached and advertised for sale, was in fact a Khalisa Mahal, (and so described in the deed of grant), paying revenue to Government, and that under the provisions of s. 248 of Act VIII of 1859 the sale should be effected through the Collector. The Subordinate Judge over-ruled the objection on the ground that s. 248 of Act VIII of 1859 applied to land actually paying revenue to Government, and not to land which would be subject to revenue at some future time.

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The sale having been effected by the Court, the judgment-debtor petitioned the Court again, praying that the sale might not be confirmed, as publication of the sale was irregular in that it was not duly proclaimed at or near the land; further, that the sale notification neither described the property to be sold with the requisite distinctness, nor contained any mention of where the sale would be held; in consequence of which material irregularities the judgment-debtor had been greatly prejudiced. The Court found against the petitioner on all the irregularities alleged, except as to the sale not having been proclaimed on the land, which omission the Court, however, held not to be a material irregularity, and accordingly disallowed the petition.

From these orders of the Subordinate Judge, the judgment-debtor appealed to the High Court, on the ground that the sale proceedings were in contravention of the provisions of s. 248 of Act VIII of 1869, whereby the appellant sustained substantial injury, and that the said Court was not competent to conduct the sale of property paying revenue to Government.

The High Court in the following judgment decreed the appeal with costs, holding that the sale was invalid, both by reason of the irregularities alleged in conducting the sale, and because the property sold, though not paying revenue at the time of sale.

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Khalisa Mahal paying revenue to Government, and that the sale should, therefore, have been held by the Collector.

Messrs. *Ross* and *Hill* for appellant.

The *Junior Government Pleader* (*Babu Dwarka Nath Banerji*) and *Munshi Hanuman Prasad* for respondent.

JUDGMENT.—We are disposed to hold that the irregularities in publishing and conducting the sale are such as to render it invalid.

The place where the sale was to take place was not described with sufficient distinctness, nor was proclamation made on the spot as required, and there is no reason why the requirements of the law in this respect should have been omitted. But we further hold that the sale should not have been conducted by the officer of the Civil Court, but should have been held by the Collector, the estate being land paying revenue to Government within the meaning of s. 248 of Act VIII of 1859.

The property is a jungle grant situated in the eastern Dún, which at the time of the sale, had been granted to, and was in possession of General Showers. It was granted under the rules for such grants, which were subsequently formally embodied in the deed of 21st February 1877. Under the terms of the grant, no revenue was payable by the grantee for the first three years, but became payable for the fourth or following years. But because no revenue was payable at the time of actual sale, we cannot hold, with the Judge, that the estate was not a revenue paying estate, within the meaning of the section.

The term "paying revenue" in s. 248, is used in contradistinction to "revenue free," and will apply to all lands known as "Khalisa." The Government treated this estate as such, for it is so described in para. XI of the deed of grant, and such lands have always been so regarded, as may be implied from para. 20 of the present rules dated the 7th October 1876, for grant of waste lands. When the land granted on such terms as these is considered to be a mahal, as defined in s. 3, cl. i., of Act XIX of 1873, and subject to all conditions attaching by law to such terms, the remission of revenue for a few years on the land, will not alter its general character as Kha-

lisa, or revenue paying, the revenue still remains assessed. It often happens that Government remits the revenue of revenue paying estates for several years, on various grounds, but the estates do not cease to be considered revenue paying, so far as to be subject to the conditions attaching by law to such estates.

We decree the appeal with costs, and set aside the order of the Judge, and set aside the sale.

Decree reversed.

APPELLATE CIVIL.

Before Mr. Justice Turner, and Mr. Justice Oldfield.

PARAM SINGH (DEFENDANT) v. LALJI MAL (PLAINTIFF).*

Agreement not to execute decree—Breach of faith—Deed of conditional sale—Defeating claims of third persons—Disavowal of trust—Estoppel—Execution—Ex parte decree—Fictitious transaction—Foreclosure proceedings—Justice, equity, and good conscience—Limitation—Position under deed—Prejudice—Real nature of transaction—Relief—Suit to enforce agreement—Wrongful execution.

The plaintiff sued in 1875 to recover possession of immoveable property which the defendant had obtained in 1873, in execution of an *ex parte* decree dated the 8th June 1861. That decree was founded on a deed purporting to be a deed of conditional sale dated the 24th December 1853, executed by the plaintiff in favor of the defendant. The plaintiff alleged that the deed was executed in order to protect the property against the claims of plaintiff's son, and the plaintiff sought to set it aside on account of defendant's breach of an agreement dated the 16th January 1856, whereby the defendant stipulated that plaintiff's possession should not be disturbed. The defendant *inter alia* pleaded estoppel, and the bar of limitation, against plaintiff's suit.—*Held*, that the suit was not barred by limitation, as plaintiff's cause of action only arose when defendant first practically disavowed the trust by seeking more than nominal execution of decree, and (following (1) and (2)) that plaintiff is not estopped from showing the real truth of the transaction between plaintiff and defendant, and from obtaining relief through the Court against defendant's breach of good faith, because of plaintiff's attempt to hinder or defeat the possible claim of a third party, the maxim "*in pari delicto potior est conditio possidentis*," not being applicable without qualification to India, where justice, equity, and good conscience require no more than that a party should be precluded from contradicting, to the prejudice of another, an instrument pretending to the solemnity of a deed when the parties claiming under it, or their representatives, have been induced to alter their position on the faith of such instrument.

* Regular Appeal, No. 7 of 1875, from a decree of Maulvi Muhammad Wajh-ul-lah Khan, Sudordinate Judge of Moradabad, dated the 30th November 1875.

(1) 13, Moo. I. A. 551. Ram Saran Singh v. Musammam Ram Peary.
(2) 27, L. J., N. S. 262. Bowes v. Foster.

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