1880

EMPRESS OF INDIA v. M KUAR.

over to Udai Ram in order that she might become his brother's wife, the accused receiving a gratification for her trouble. The facts do not, therefore, appear to me to constitute an offence under s. 370.

STRAIGHT, J.—Upon the facts as disclosed in the judgment of the Sessions Judge, I am of opinion that the conviction of Ram Kuar under s. 370 of the Penal Code cannot be sustained. There is no sufficient evidence that the girl Deoki was "sold or disposed of" to the brother of Udai Ram for the purpose of her being dealt with as a slave, or, in other words, that a right of property in and over her should be asserted by her purchaser in employing her in menial and enforced services against her will and by restraining her liberty. On the contrary, the proof appears to be, that the Rs. 4 and the buffalo were given by Udai Ram's brother under the belief that Deoki was a *Ját*, and his admitted object and intention in reference to her was marriage. Moreover, the moment it was discovered she was a *Gararia*, Udai Ram started to take her back to Ram Kuar and was only prevented from doing so by his arrest. Under all the circumstances, I think that the decision of the Sessions Judge should be set aside.

1880
arch 11.

APPELLATE CIVIL.

Before Mr. Justice Spankie and Mr. Justice Straight.

PURAN MAL AND OTHERS (PLAINTIFFS) *v.* PADMA (DEFENDANT).*

Rent-free grant—Jurisdiction—Act XVIII of 1873 (*N.-W. P. Rent Act*), *ss.* 30,95 (c)—*Act XIX of* 1873 (*N.-W. P. Land Revenue Act*), *ss.* 79, 241 (h)

The plaintiffs in this suit, zamindars of a certain village, sued for the possession of certain land in such village, alleging that it had been assigned to a predecessor of the defendant to hold so long as he and his successors continued to perform the duties of village-watchman, and the defendant had ceased to perform those duties, and was holding as a trespasser. The defendant set up as a defence to the suit that he and his predecessors had held the land rent-free for two hundred years, and that he held it as a proprietor. *Held* that such assignment was not a grant within the meaning of Regulation XIX of 1793, and the plaintiffs' claim was

* Second Appeal, No. 1029 of 1879, from a decree of Maulvi Maqsud Ali Khan, Subordinate Judge of Agra, dated the 6th June, 1879, affirming a decree of Maulvi Munir-ud-din, Munsif of Jalesar, dated the 26th March, 1879.

1880

PURAN MAL v. PADMA.

not one to resume such a grant or to assess rent on the land, of which a Revenue Court could take cognizance under ss. 30 and 95 (*c*) of Act XVIII of 1873 or ss. 79 and 241 (*h*) of Act XIX of 1873, but one which was cognizable by the Civil Courts.

THIS was a suit for the possession of five bighas, nine biswas, of land situate in Thoke Sundar Lal, mauza Chedermi, pargana Firozabad, Agra district. The plaintiffs, who were zamindars of the village, claimed such land on the ground that it had been granted to a predecessor of the defendant in consideration of his services as "*balahar*" or village-watchman, and the defendant had ceased to perform those services. The defendant set up as a defence to the suit that he and his predecessors had held the land rent-free for two hundred years, that he held the land as a proprietor, and that the suit was not cognizable by the Civil Courts. The Munsif and the Subordinate Judge concurred in holding that the suit was not cognizable by the Civil Courts, the matter in dispute being in their opinion the resumption of a rent-free grant of land, and one therefore on which an application might have been made to a Revenue Court, under s. 30 of Act XVIII of 1873, or s. 79 of Act XIX of 1873.

On appeal by the plaintiff to the High Court it was contended that the claim was not one for the resumption of a rent-free grant of land, within the meaning of those sections, but one for the possession of land which had been given to the defendant for the performance of services which he had ceased to perform, and the suit was consequently cognizable by the Civil Courts.

Munshi *Hanuman Prasad*, for the appellants.

Maulvi *Obeidul Rahman*, for the respondent.

The following judgments were delivered by the Court:

SPANKIE, J.—I have considered the appellants' plea and have come to the conclusion that the finding of the Courts below, that the suit is not cognizable in the Civil Courts, is incorrect. The grants referred to in s. 30, Act XVIII of 1873, and in s. 79, Act XIX of 1873, are those set forth in the preamble of Regulation XIX of 1793, and in the first section thereof. That section recites

1880

JEAN MAL v. PADMA.

that, by the ancient law of the country, the ruling power is entitled to a certain proportion of the produce of every bigha of land (demandable in money or kind, according to local custom), unless it transfers its right thereto for a term or in perpetuity, or limits the public demand upon the whole of the lands belonging to an individual, leaving him to appropriate to his own use the difference between the value of such proportion of the produce and the sum payable to the public, while he continues to discharge the latter. As a necessary consequence of this law, if a zamindar made a grant of any part of his lands to be held exempt from payment of revenue, it was considered void, from being an alienation of the dues of Government without its sanction. There the grants referred to are those made by the zamindar. *Badshahi* or royal grants are excepted in the preamble. The grant referred to is a permanent alienation of revenue, or, as Acts XVIII and XIX, in ss. 30 and 79 respectively, term it, rent. The first section of Regulation XIX of 1793 further indicates the nature of the grants as having been made under the pretext that the produce of the lands was to be applied to religious or charitable purposes. Of these grants some were applied to the purposes for which they were professed to have been made, but, in general, they were given for the personal advantage of the grantee, or with a view to the clandestine appropriation of the produce to the use of the grantor, or sold to supply his private exigencies. All such grants since the 1st December, 1790, and in future, were declared null and void by s. 10 of the Regulation.

What the plaintiff desires in this case is full possession of a plot of land which he says has hitherto been held without payment of rent by defendant, the village "*balahar*" or watchman. He was allowed to occupy the land for his support, and in point of fact whatever he derived from the land constituted his wages. But there was no permanent grant of the land to him or his predecessors. He would continue to occupy it as long as he continued to give his services as watchman. Obviously such an assignment is not a grant within the meaning of Regulation XIX of 1793, and the present claim is not one to resume such a grant or to assess the rent on the land. The settlement officer therefore very properly refused to entertain the claim. Nor could an application to dispossess the

1880

PURAN M. v. PADMA.

defendant be made to the Collector under letter (*c*), s. 95, and s. 30, Act XVIII of 1873, for the same reason. It is not a claim to recover a rent-free grant as being one of those declared by the Regulation to be null and void, nor is it a claim to assess the rent on the land.

The plaintiff wishes the defendant to give up the land or pay rent. The defendant repudiates the plaintiff's superior title, and claims that he has acquired a proprietary right in the plot which has been in the possession of himself and his family for two hundred years. Clearly there is a dispute between the parties which it is the special duty of the Civil Courts to determine. The plaintiff now regards the defendant, who is no longer watchman, as a trespasser; the latter asserts his full proprietary right in the plot. The Courts below are bound to determine the party to whom the right belongs and to decide the case on all its merits.

I would therefore decree the appeal, reverse the decision of the lower appellate Court, and remand the case for trial on the merits by that Court, should it find materials on the record to enable it to do so; but if it should appear that the first Court has excluded evidence of fact essential to the determination of the rights of the parties, the lower appellate Court is at liberty to reverse the decree of the first Court. Costs to abide the result of a new trial.

STRAIGHT, J.—I concur fully in the above judgment of my honorable colleague.

Cause remanded

Before Mr. Justice Spankie and Mr Justice Straight.

1880
March 15

MARKUNDI DIAL (PLAINTIFF) *v.* RAMBARAN RAI AND ANOTHER (DEFENDANTS).*

Sale of proprietary rights in a Mahál—Right of occupancy—Ex-proprietary tenant—Act XVIII of 1873 (N.-W. P. Rent Act), ss. 7, 9.

The right of occupancy which a person losing or parting with his proprietary rights in a mahál acquires, under s. 7 of Act XVIII of 1873, in the land held by him as sír in such mahál at the date of such loss or parting, is a saleable interest.

* Second Appeal, No. 997 of 1879, from a decree of Maulvi Muhammad Bakhsh, Additional Subordinate Judge of Ghazipur, dated the 22nd May, 1879, modifying a decree of Maulvi Mir Badshah, Munsif of Saidpur, dated the 17th February, 1879.