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that the defendants have a lien on the property to the extent of the purchase-money. They are not in possession under the sale-deed, but were in possession as mortgagees, and as such have continued to be recorded in the Collector's books. The sale had already been declared invalid, when the plaintiff purchased Zalim Singh's rights at auction and acquired by his purchase the right of redeeming the mortgage. If the purchase-money had been received by Zalim Singh who is no longer alive, the purchasers might have sued to recover the purchase-money from him during his life, and might possibly in execution of their decree have proceeded against Zalim's rights and interest in the property. They did not adopt this course, though the sale was, as has been observed, completely set aside by the judgment of the *Sudder Dewany Adawlat* in 1864. Any claim to recover the money now would appear to be barred by time, and the defendants, mortgagees, can have no right now to make the property responsible for the repayment of the purchase-money on account of the sale in 1861, which was held to be altogether invalid, as against the plaintiff who has purchased the equity of redemption of the mortgage in 1859, and that too after the objections of these defendants had been overruled, and the order made against them on the 15th November, 1867, had become final.

The finding of the lower appellate Court regarding the Rs 75, "*malikana*," is one of fact, with which we cannot interfere. The Judge in deducting this yearly allowance from the principal of the mortgage-loan has not acted contrary to law, and the plea that he should not have done so, because the term of the mortgage had expired, has no force, inasmuch as the mortgagees have continued to hold possession under the mortgage and as long as they do so are bound by its conditions. We dismiss the appeal and affirm the judgment with costs.

*Appeal dismissed.*

*Before Mr. Justice Spankie and Mr. Justice Oldfield.*

KAMAL SINGH (PLAINTIFF) v. BATUL FATIMA (DEFENDANT)\*

*Trust—Assignment by Trustees—Limitation.*

In 1840 the purchasers and recorded proprietors of a four biswas share of a certain village caused a statement to be recorded in the village record-of-rights.

\* Second Appeal, No. 266 of 1870, from a decree of J. H. Prinsep, Esq., Judge of *Cawnpore*, dated the 19th December, 1878, reversing a decree of Babu Ram Kali Chaudhri, Subordinate Judge of *Cawnpore*, dated the 4th March, 1878.

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to the effect that *B* claimed to be the proprietor of a moiety of such share, and that they were willing to admit his right whenever he paid them a moiety of the sum which they had paid in respect of the arrears of revenue due on such share. In 1843 *M* purchased such share and became its recorded proprietor. In 1877 *K*, the son of *B*, sued the representative of *M*, for possession of a moiety of such share, alleging, with reference to the statement recorded in the record-of-rights, that such moiety had vested in *M*'s assignors in trust to surrender it to *B* or his heirs on payment of a moiety of the sum they had paid on account of revenue, and paying into court a moiety of such sum. *Held* that that statement could not be regarded as evidence of the alleged trust, and that, assuming that the alleged trust existed, the suit was barred by limitation, *M* having purchased without notice of the trust and for valuable consideration.

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In 1838 one Kesri Singh was the recorded proprietor of a four biswas share in a certain village. In 1839 Kesri Singh's rights and interests in this share were purchased by one Pitambar Singh at a sale in the execution of a decree held by him against Kesri Singh. On the 7th June, 1839, Pitambar Singh transferred his rights under this purchase by sale to one Ratan Singh and one Dirgpal Singh, who were recorded as the proprietors of the four biswas share, and paid the arrears of revenue due in respect of the share amounting to Rs. 108. In 1840, at the settlement of the village, Bal Singh, brother of Kesri Singh, having claimed to be the owner of a moiety of the four biswas share, Ratan Singh and Dirgpal Singh caused the following statement to be recorded in the village record-of-rights: "We Ratan Singh and Dirgpal Singh have purchased Kesri Singh's share: Bal Singh claims a moiety of it: he owes us Rs. 54 on account of the revenue we have paid: whenever he pays that amount with interest, he shall become the proprietor of his share." The four biswas share was then specified in manner following: "Our exclusive share (one moiety)": "on account of Bal Singh (one moiety)". On the 20th November, 1843, one Muzaffar Husain purchased the four biswas share from Ratan Singh and Dirgpal Singh, and became its recorded proprietor. In 1874, at the settlement of the village, Kamal Singh, the son of Bal Singh, who had meanwhile died, applied to the settlement officer to have his name recorded as the proprietor of a moiety of the four biswas share as his father's heir. The settlement officer refused this application. In April, 1877, Kamal Singh brought the present suit against Muzaffar Husain's widow for the possession of a moiety of the four biswas share, alleging, with

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reference to the statement which Ratan Singh and Dirgpal Singh had caused to be recorded in 1840 in the village record-of-rights, that a moiety of the four biswas share had vested in them and their assigns in trust to surrender it on payment of the sum, with interest, which they had paid on account of the revenue due in respect thereof. The plaintiff paid into court Rs. 54, and an equal sum on account of interest, or Rs. 108 in all. The defendant set up as a defence to the suit that the plaintiff's right was extinguished by length of time, because Ratan Singh and Dirgpal Singh were not trustees of the property when they assigned it to Muzaffar Husain, and because, assuming that they were trustees of it when they so assigned it, Muzaffar Husain had purchased it in good faith, without notice of the trust, and for valuable consideration. The Court of first instance held that Ratan Singh and Dirgpal Singh were trustees of the property, and that Muzaffar Husain had not purchased the property in good faith, as he had purchased without making any inquiry, and the suit was consequently not barred, and gave the plaintiff a decree. On appeal by the defendant the lower appellate Court, for reasons which will be found stated in the judgment of the High Court, dismissed the suit. The plaintiff appealed to the High Court.

Mr. *Niblett*, for the appellant.

Pandits *Ajudhia Nath* and *Nand Lal*, for the respondent.

The judgment of the Court (SPANKIE, J. and OLDFIELD, J.) was delivered by

SPANKIE, J.—The property in suit was recorded in the name of Kesri Singh, who fell into arrears in 1838 to the amount of Rs. 108. In 1839 Ratan Singh and Dirgpal Singh bought the rights and interests of Kesri Singh, and in 1840 they paid up the arrears of the entire share of four biswas. It is now alleged that Bal Singh, a brother of Kesri Singh, was also the owner of half the land, and the plaintiff relies upon an entry in the settlement record of 1840, which it is contended not only amounts to a recognition of Bal Singh's title by Ratan Singh and Dirgpal Singh, but shows that they continued to hold Bal Singh's share in trust, and plaintiff now seeks to pay the share of arrears due by Bal Singh and to take over the share. We are far from satisfied that

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the acknowledgment can be regarded as evidence of a trust as between Bal Singh and the original purchasers of Kesri Singh's rights. The entry is to the effect that a petition had been presented by Bal Singh claiming to be the owner of half of the four biswas in possession of Ratan Singh and Dirgpal Singh, and that the latter are willing to allow his share, when he pays the arrears due on it. We doubt whether these words are sufficient to raise a valid trust such as that which the plaintiff is endeavouring to set up. There is no undertaking on the part of Ratan Singh and Dirgpal Singh that they would continue to hold Bal Singh's share in trust for him and his heirs, over any extent of time, until some one of them was able to recover the land. In effect they did not do more than express their willingness, if Bal Singh chose to pay up his arrears, to give him up the land. Bal Singh might have availed himself of this opportunity but he never did. There does not appear to have been any promise to give up the land at any future time after long years of enjoyment of it to any other person than Bal Singh. If there was any agreement at all, it was a present one between the parties, but beyond the entry already referred to there is no sufficient evidence of any agreement, and Ratan Singh and Dirgpal Singh continued to be recorded as the owners of the entire four biswas. They were not the first purchasers of Kesri Singh's rights, which had been bought previously by one Pitambar Singh, and had been sold by him to Ratan Singh and Dirgpal Singh on the 7th June, 1839, and it was probably owing to this circumstance, and not caring to litigate the point whether Pitambar Singh had bought four or two biswas, when he purchased Kesri Singh's rights, they, who had paid up the arrears due to Government on the entire share, which was recorded in the name of Kesri Singh alone, were willing to release two biswas to Bal Singh, if he chose to discharge the arrears that would be payable by him. Beyond what has been stated there is nothing to show that the transaction had any of the characteristics of a trust. Pitambar Singh was put in possession of the share; Ratan Singh and Dirgpal Singh purchased it from him, and had to pay Rs. 108, Government arrears, on account of it, and certainly obtained possession of the four biswas as Kesri Singh's. They continued to hold them as owners, being recorded as such in the settlement record, until Dirgpal Singh

died, and subsequently Ratan Singh and his brother Mardan Singh sold the four biswas on the 20th November, 1843, to the defendant's husband, in whose possession and that of his family the property remained for twenty-nine years before the plaintiff made any claim to it in 1874, to the settlement officer, who in October, 1874, rejected his claim. The plaintiff then allowed two years and a half to elapse before he brought the present suit. The lower appellate Court, after reviewing the old Regulations which related to transfers by the Collector of a defaulting share or patti of an estate, distinguishes the alleged transfer in this case from those made by authority, and if we understand him aright, he appears to regard it as one made by agreement or mutual understanding between Bal Singh and Ratan Singh and Dirgpal Singh, and accepting that view, he looks upon their possession as that of trustees or mortgagees. But as already observed there is no other evidence of a mutual understanding or agreement than the entry in the settlement record, by which, as we are advised at present, no trust was raised. All the circumstances point to a different conclusion from that at which the Judge has arrived. There was a sale in execution of a decree, and very soon after a sale by the auction-purchaser to Ratan Singh and Dirgpal Singh, and immediately, or very soon afterwards, the latter obtained full possession of the four biswas and paid up all the arrears due upon the share, and at this time the lower appellate Court itself admits "that there is no record to show that Bal Singh's rights and interests were recognised as then existing, and that an assignment of them was made to Ratan Singh and Dirgpal Singh by authority," though, strange to say, he adds that the presumption is that they were so transferred as in similar cases of default of land revenue. The presumption would appear to be the other way, assuming it to be the fact, as stated by the Judge, that Bal Singh's rights were not even recognised by the revenue authorities. It is also inconsistent with the other view of the case which he immediately adopts, that by private agreement or mutual understanding Ratan Singh and Dirgpal Singh held as mortgagees or trustees. Assuming however that the Judge is right in this view, we are of opinion that he was justified in holding that the claim was barred by limitation, for there is nothing whatever to prove, nor is it alleged, that the purchasers from Ratan

Singh and Mardan Singh in November, 1843, took the property with any notice of the trust, and it is certain that the purchasers in 1843 bought for a valuable consideration and have been holding ostensibly as proprietors from that date. Under these circumstances limitation would run from the date of that conveyance. So that this suit fails altogether, whether or not we admit a trust in 1830-40, and we therefore dismiss the appeal and affirm the judgment with costs.

*Appeal dismissed.*

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## CRIMINAL JURISDICTION.

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*Before Mr. Justice Straight.*

IN THE MATTER OF THE PETITION OF GOBIND PRASAD AND ANOTHER.

*Act XLV of 1860 (Penal Code), s. 441—Criminal trespass.*

Certain immoveable property was the joint undivided property of *C*, *G*, and a certain other person. *R* obtained a decree against *G* for the possession of such property and such property was delivered to him in the execution of that decree in accordance with the provisions of s. 234 of Act X of 1877. *C*, in good faith, with the intention of asserting her right, and without any intention to intimidate, insult, or annoy *R*, or to commit an offence, and *G*, in like manner, with the intention of asserting the right of his co-owners, remained on such property. *Held* that, under such circumstances, they could not be convicted of criminal trespass (1).

Re-entry into or remaining upon land from which a person has been ejected by civil process, or of which possession has been given to another, for the purpose of asserting rights he may have solely or jointly with other persons, is not criminal trespass unless the intent to commit an offence or to intimidate, insult or annoy is conclusively proved.

This was an application to the High Court for the exercise of its powers of revision under s. 297 of Act X of 1872. The facts of the case are sufficiently stated, for the purposes of this report, in the judgment of the High Court.

*Mr. Leach*, for the petitioners.

*Pandit Ajudhia Nath*, for the opposite party.

STRAIGHT, J.—This is an application for revision under s. 297, Criminal Procedure Code, of an order of the Magistrate of Mirzapur, passed upon the 3rd of September last, convicting two

(1) See also *Empress v. Budh Singh*, I. L. R., 2 All. 101