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be in conflict with the statement made by the defendants in these cases. In their written statement they say that their share of rent was payable not only to Thunda Bibi but also to other persons her co-sharers in the ousut taluk. This point will have to be gone into on remand, if it really arises between the parties. If the Court finds that there is no other co-sharer to whom the rent of the *howla* and *nim-howla* was payable, but that the entire rent was payable to Thunda Bibi, then the plaintiff's suit would not be liable to any objection. But it would be necessary to apportion the rent of the subordinate tenure between the purchaser and Thunda Bibi, and after apportionment of the rent, the plaintiff would be entitled to his proportionate share. But if the Munsiff finds that the rent of the *howla* and *nim-howla* was payable not only to Thunda Bibi but also to other persons, then the cases would be open to the objection of defect of parties.

Costs will abide the result.

H. T. H.

Appeal allowed and case remanded.

Before Mr. Justice Cunningham and Mr. Justice O'Kinsaly.

RAJANIKANTH NAG RAI CHOWDHURI (PLAINTIFF) v. HARI MOHAN GUHA AND OTHERS (DEFENDANTS.)*

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 December 22.

Transfer of Property Act (IV of 1882), s. 135—Right of Suit—Suit to set aside a document—Actionable claim.

The co-sharers of a Hindu family, one of whom was a minor, owned certain immoveable property in Munshigunge near Dacca. In 1873 a perpetual lease of this property, executed by all the co-sharers except the minor, was granted to certain persons hereinafter called the lessees. On the minor's behalf the lease was executed by his elder brother as guardian of the minor. In May 1882, the minor, who had previously attained his majority, sued the lessees and his co-sharers for a declaration of his right to and for possession of his share in the said property, alleging that the perpetual lease was not binding on him. On the day after the institution of the suit the plaintiff sold all his interest therein to A for Rs. 600.

Held, that A's purchase was an actionable claim within the meaning of s. 135 of the Transfer of Property Act (IV of 1882.)

* Appeal from Appellate Decree No. 2369 of 1884, against the decree of Baboo Mati Lal Sirkar, Second Subordinate Judge of Dacca, dated the 11th of September 1884, affirming the decree of Baboo Chandra Mohan Mockerkji Munsiff of Munshigunge, dated the 24th of September 1883.

IN this case it appeared that Sitanath Kundu (the original plaintiff) and others were joint owners of certain immoveable property situated at Munshigunge in Dacca, Sitanath's share being one anna ten gundas. On the 27th of October 1873, a perpetual lease of the abovementioned property was granted to certain persons named Guha. The lease purported to have been granted by Sitanath and his co-sharers, but it was admitted in the present case that Sitanath was then a minor, and that the lease was executed on his behalf by his elder brother Doorga Churn Kundu, who professed to act as his guardian on that occasion. It was stated in the plaint that, at the time of the granting of the lease, Sitanath was living under the protection and guardianship of his mother Umbica Soondery Dossee.

Para. 5 of the plaint as far as material was as follows:—

“After attaining the age of majority, the plaintiff Sitanath has come to know that the principal defendants,” the Guhas, “have in concert and collusion with his brother Doorga Churn Kundu fraudulently got it mentioned in the *pottah*, obtained by them on the 27th of October 1873, that the aforesaid Doorga Churn Kundu was the guardian of the plaintiff, and have caused some mention to be made about the existence of some false necessities for the granting of that *pottah*. But as the plaintiff's brother, the aforesaid Durga Churn Kundu, was neither guardian of the plaintiff nor a person legally competent to grant any *pottah* on behalf of the plaintiff, and as in reality there was no legal necessity for granting any such *pottah* to the defendants, and as by the aforesaid act of the defendants with regard to the aforesaid lands the plaintiff has suffered a great deal of loss, the plaintiff can by no means be bound by the same.” The plaintiff prayed for a declaration of his right to the one anna ten gundas share for *lehas* possession, and *mesne* profits.

This suit was instituted by Sitanath Kundu on the 14th of May 1883, and on the next day he sold to Rajanikanth Nag Rai Chowdhuri, certain landed property together with all his rights and interests in the present suit for Rs. 600. On the 10th of July 1883, Rajanikanth was substituted as plaintiff in this suit for Sitanath Kundu, and on the same day one of the defendants, Hari Mohan Guha, made an application to the Court in which

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he offered to pay to Rajanikanth the price he had paid for Sitanath's claim. The application was based on the provisions of s. 135 of the Transfer of Property Act (IV of 1882.)

On the 29th of July 1883, the principal defendants, the Guhas, filed written statements. The defence was—(1), that Doorga Churn was the guardian of Sitanath, and the person who looked after and managed the trading business carried on by his family, and the landed properties; (2), that Sitanath since attaining his majority had received rents from the defendants; (3), limitation. The defendants also relied on the offer made by Hari Mohan Guha on the 10th of July 1883.

At the hearing of the suit in the Court of first instance the plaintiff Rajanikanth contended (1) that s. 135 of the Transfer of Property Act did not apply to the present suit; and (2) that all the defendants must join in an application under s. 135. These contentions were overruled, and the suit was ordered to be dismissed on the defendant Hari Mohan Guha paying into Court the sum of Rs. 548-4-6. This decision was upheld on appeal. The plaintiff Rajanikanth Nag Chowdhuri appealed to the High Court on the ground that s. 135 of the Transfer of Property Act was not applicable to the circumstances of the case; and on other grounds not material for the purposes of this report.

Baboo *Auktul Chunder Sen*, for the appellant.

Baboo *Rash Behari Ghose*, and Baboo *Grish Chunder Chowdhury*, for the respondents.

The judgment of the Court (CUNNINGHAM and O'KINEALY, JJ.) was delivered by

CUNNINGHAM, J.—We think that under the circumstances of this case the Court below was right in holding that what the plaintiff purchased was an actionable claim. It appears to have been merely a right to set aside a document on the ground that the person by whom it was executed exceeded his powers. Without going any further, therefore, into the question of the meaning of those words under the Transfer of Property Act, we consider at any rate that they cover such a right as the one now in question. The appeal must, therefore, be dismissed with costs.

F. O'K.

Appeal dismissed.