

We concur in the view of the law taken by the Bombay High Court in *Purshotamdass Tribhovandass v. Mahant Surajbharthi* (1), which supports the view we take here.

The plaintiff is therefore entitled to a decree, and we reverse the decree of the lower Court, and decree the claim with all costs.

Appeal allowed.

Before Mr. Justice Oldfield and Mr. Justice Brodhurst.

THE LAND MORTGAGE BANK OF INDIA (PLAINTIFF) v. MOTI AND OTHERS (DEFENDANTS) *

License, revocation of—Works of permanent character executed by licensee—Act V of 1882 (Easements Act), ss. 60, 61.

In a suit by a zamindár to have his right declared to build a house on some waste land in the mauza, the defendants, who were tenants in the mauza, resisted the claim on the ground that they had built wells and water-courses on the land, and had a right also to use it as a threshing-floor and for stacking cow-dung.

Held that the defendants having acquired no right adverse to the plaintiff as owners, by prescription or otherwise, in the land, their right of use could only be as licensees of the plaintiff; and although he could not interfere with their right to the wells, which were works of permanent character, and on which the defendants had incurred expenses, he could revoke the license as to the other use claimed of the land, and his claim to build the house should therefore be decreed.

The facts of this case are stated in the judgment of the Court.

Babu Jogindro Nath Chaudhri, for the appellants.

The respondents were not represented.

OLDFIELD and BRODHURST, JJ.—The claim is by a zamindár to have his right declared to build a house on some waste land in the mauza. Defendants are tenants in the mauza, and assert that they have built wells and water-courses on this land, and have a right also to use it as a threshing-floor and for stacking cow-dung. On these grounds they resist the claim.

The Court below admits that the defendants have no proprietary right in this land, but has dismissed the claim on the ground that they have acquired a right to use it for the purposes claimed.

* Second Appeal No. 61 of 1885, from a decree of Rai Cheda Lal, Subordinate Judge of Farukhabad, dated the 10th December, 1884, modifying a decree of Maulvi Mchammasd Anwar Husain, Munsif of Kaimganj, dated the 13th June, 1884.

(1) I. L. R., 6 Bom., 538.

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But if they have acquired no right adverse to the plaintiff as owners, by prescription, or otherwise, in the land, their right of use can only be as licensees of the plaintiff; and, on the facts found in this case, it can be revoked by the plaintiff, except in respect of the wells, which are works of a permanent character, and on which the defendants have incurred expenses.

The principle of ss. 60 and 61 of the Easements Act is quite applicable to this case, although that Act is not in force here.

In this case, their right to the wells which they have made cannot be interfered with; but the zamindar can revoke the license as to the other use claimed of the land.

The decree of the Court of first instance, which, while decreeing the claim to build the house, preserves the rights as to the wells and taking water from them, and also provides, by consent of the plaintiff, facilities for a threshing-floor, &c., is fit to be affirmed.

We set aside the decree of the lower appellate Court, and restore that of the first Court, with costs.

Appeal allowed.

1885

December 9.

Before Sir W. Comer Petheram, Kt., Chief Justice, and Mr. Justice ~~Duffield~~

BHOLAI AND ANOTHER (PLAINTIFFS) v. KALI AND ANOTHER (DEFENDANTS)*

Hindu widow—Mortgage by Hindu widow in possession of property in lieu of maintenance—Declaratory decree—Act I of 1877 (Specific Relief Act), s. 42.

The name of the widow of a member of a joint Hindu family was allowed by the other members to be recorded in her husband's place in respect of his rights and interests in the family property by way of compliment to her, and they consented that, in lieu of maintenance, she should receive the profits of the property during her lifetime. The widow executed a deed of mortgage of the property, which did not specifically state the amount of the estate mortgaged, and also a bond, upon which the obligee obtained a decree, in execution whereof he attached part of the property recorded in the name of the obligor. The members of the family brought a suit in which they prayed for a declaration that the mortgage executed by the widow was invalid, and that the property was not liable for the amount due thereunder, or to attachment in execution of the decree obtained upon the bond.

Held that if the widow's possession were only a possession by the plaintiffs' consent entitling her merely to receive the profits for her maintenance, the plaintiffs

* First Appeal No. 18 of 1885, from a decree of Rai Raghunath Sahai, Subordinate Judge of Gorakhpur, dated the 3rd December, 1884.