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March 20.

## APPELLATE CIVIL.

*Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Mahmood.*

KACHWAIN (DEFENDANT) v. SARUP CHAND AND OTHERS (PLAINTIFFS)\*.

*Execution of decree—Property liable to attachment and sale—Grant to Hindu widow for maintenance for life—Reversionary right of grantor—Act VIII of 1859, s. 205—Civil Procedure Code (Act XIV of 1882), s. 266 (k)—“expectancy.”*

One *N*, the sole owner of a certain village, had a son *J*. *J* had two wives. By his first wife he had a son *U*. *J*'s second wife was *G*, by whom he had a son whose widow is *K*, the defendant in the suit. *J* died, leaving *U*, his son, *G*, his widow, and *K*, his son's widow, and on his death *U* inherited the village. Prior to the year 1874 *U* had made a gift to *G* of 105 bigahs situate in the village. In 1874 the rights and interests of *U* in the village were sold by auction and purchased by *T*, the ancestor of the plaintiffs. *G*, by a deed of gift conveyed the 105 bigahs to *K*, and ultimately died on 26th January, 1883. Plaintiffs then sued to set aside the gift and for possession of the land. The learned Judge found that the land was given to *G* in lieu of her maintenance which she was to hold rent free for her life and that she had been in possession thereof for twenty years. Further that *U* had the right to resume the land and assess it to rent on the death of *G*, and that all the rights and interests of *U* in the land were attached and sold in 1874. On second appeal it was contended that the interest of *U* in the land at the time of the sale of the village by auction was in the nature of a mere expectancy and therefore could not be sold and was not sold. *Held*, that *U* gave to *G* the usufruct of the land for her life in lieu of her maintenance. That after the gift the interest of *U* in the land was of the same character and carried with it the same consequences, as the reversion which the lessor would have for land leased for life or years and analogous to the right which a mortgagor who had granted a usufructuary mortgage would have. That *U* had a vested right in the land which was capable of being sold, and that right passed to the auction purchaser at the sale of 1874.

Counsel for appellant cited the following cases in the course of his argument; *Koraj Koonwar v. Komwi Koonwar* (1), *Ram Chunder Tanta Doss v. Dhurmo Narain Chukarbatty* (2), *Tuffuzzool Husain Khan v. Raghunath Pershad* (3).

One Nirand Singh was the sole owner of a certain village. On his death the village was inherited by his son Jawahir Singh. Jawahir Singh had two wives. By his first wife he had a son called Umrao Singh. By his second wife, Musammat Galotan, he had a son who married Musammat Kachwain. Jawahir Singh died, leaving Umrao Singh, Galotan, and Kachwain surviving him.

\* Second appeal No. 582 of 1886, from a decree of A. Macmillan, Esq., Judge of Mainpuri, dated 6th January, 1886, confirming a decree of the Subordinate Judge of Mainpuri, dated 17th September, 1883.

(1) 6, W. R. C. R. 34.

(2) 15, W. R. F. B. R. 17.

(3) 14, Moo., I. A. 41.

On his death Umrao Singh inherited the village. On the 20th August, 1874, the rights and interests of Umrao Singh in the village were put up for sale in execution of a decree, and were purchased by one Tara Chand.

Galotan had on the 26th July, 1882, transferred certain land in the village to Kachwain, by a deed of gift, and died on the 26th January, 1883.

The plaintiffs in this case, who were the representatives of Tara Chand, sued Kachwain, to set aside the gift and for possession of the land. The contention for the plaintiffs was that Tara Chand had purchased the village including the land in suit; that the land had been given to Galotan for her life only; that she had no power of alienation; and that as she was dead, the defendant Kachwain was no longer entitled to possession of it. The contention for the defendant was that the sale to Tara Chand did not pass the land to him; that the land had not been given to Galotan for life only; that Nirand Singh had given the land to Galotan rent free as "*pan masala*," and after his death Jawahir Singh had allowed the land to remain in Galotan's possession as *stridhan*, and she had become the absolute owner of it, and that holding it at the time of the gift as absolute owner she had power to make the gift. The Court of first instance gave the plaintiffs a decree for the possession of the land, which on appeal the lower appellate Court affirmed.

On second appeal by the defendant, Edge, C. J., and Mahmood, J., remanded to the lower appellate Court the following issues for trial:—

1. Who made the gift of the land in suit to Musammat Galotan for maintenance during her life?
2. What were the terms of the grant?
3. How long was she in possession?
4. What interest, if any, had Umrao in the land in suit at the date of the sale, *i.e.*, on the 20th August, 1874.
5. Was such interest actually attached, proclaimed, and sold at that sale?

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6. What were the terms of the order of attachment, of the proclamation, and of the order confirming the sale ?

On the 1st issue the lower appellate Court\* found that Umrao Singh had granted the land to Galotan for maintenance during her life. On the 2nd issue it found the terms of the grant to be that Galotan should hold the land rent-free for her life-time in lieu of maintenance. On the 3rd issue it found that Galotan was in possession under the grant for twenty years. On the 4th issue the finding was, that the interest which Umrao Singh had in the land on the 20th August, 1874, before the sale took place, was a right to resume the land and assess it to rent on the death of Galotan. On the 5th issue the Court found that the interest which Umrao Singh had in the land on the 20th August, 1874, before the sale took place was not specifically attached and sold at that sale, but as the whole rights and interests of Umrao Singh in the village were attached and sold, such interest must be considered to have passed to the purchaser. On the 6th issue it found that the proclamation of sale had been destroyed and its terms could not be ascertained, but that the orders of attachment and confirmation of sale showed that the whole rights and interests of Umrao Singh in the village had been attached and sold.

On the return of these findings objections were taken by the defendant-appellant.

Mr. W. Colvin and Hon. Pandit *Ajudhia Nath*, for the appellant.

Pandit *Sundar Lal* and Babu *Sital Prasad Chatterjee* for the respondents.

EDGE, C. J.—This is an action brought by the representatives of a purchaser at an auction-sale of the interest of one Umrao Singh in a village sold in execution of a decree on the 20th August, 1874. One Rao Nirand Singh had a son named Jawahir Singh. Jawahir Singh had two wives. By his first wife he had a son Umrao Singh, who is still alive, and whose property was sold. Jawahir Singh's second wife was Musammat Galotan. By her he had a son, whose widow, Musammat Kachwain, is the defendant in this action and appellant in this appeal. Rao Nirand Singh and Jawahir Singh died previous to the 20th August, 1874. Musammat Galotan, on the 26th July, 1882, executed a deed of gift in

favour of the defendant-appellant, and on the 26th January, 1883, Musammat Galotan died. The deed of gift related to 105 bighas of land which were situate in the village in question and form the subject of the claim in this action. The plaintiffs contended that Umrao Singh had given those bighas in dispute to Musammat Galotan for her life for maintenance. The finding on remand is in accordance with that contention. The defendant, on the other hand, contends that the bighas in dispute had been given by Rao Nirand Singh to Musammat Galotan, and that the gift had been confirmed by Umrao Singh's father, Jawahir Singh. That contention has been disposed of by the findings on remand. Many questions were raised by the appellant before us. It was contended that at the date of the sale in 1874, Umrao Singh had no interest remaining in the bighas in question that could be sold under s. 205 of Act VIII of 1859, and it was contended that after the gift made by Umrao Singh to Musammat Galotan, Umrao Singh stood in no better position than that of a first expectant reversioner to property in possession of a childless Hindu widow. It appears to me that the position of Umrao Singh was very different to that of such a reversioner. What had been done in effect was this. Musammat Galotan, being entitled to maintenance, Umrao Singh, who was the full owner of the whole village, gave her for her life the usufruct of these 105 bighas in lieu of her maintenance, limiting the grant to her for her life, and she accepted the bighas on those terms. Umrao Singh's interest, as it appears to me, was much more than the mere expectancy of a reversioner to property on the death of a Hindu widow. It was of the same character, and carried with it the same consequences, in my opinion, as the reversion which the lessor would have for land leased for life or years, and would be analogous to the right which a mortgagor who had granted a usufructuary mortgage would have. It is misleading to use in connection with such a right the term "expectancy." On the determination of the life-interest, the right to possession would be in Umrao Singh or his assignee, or if he had not assigned and had died, then in his heirs. I think that the cases cited by Mr. Colvin (*Koraj Koonwar v. Komul Koonwar* (1), *Ram Chunder Tantra Doss v. Dhurmo Narain Chukerbutty* (2)) do not apply. The case which

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(1) 6, W. R., Civ. R., 34.

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was cited to us, namely, *Tuffuzzool Hossein Khan v. Raghoo-nath Pershad* (1), obviously does not apply. That was a case in which the thing which was sold at auction was the chance of the success of a party in an arbitration. It was said on behalf of the appellant further that the bighas in question, having been granted by Umrao Singh to Musammat Galotan in lieu of maintenance, they became her *stridhan*, and that Umrao Singh ceased to have in them a saleable interest. That proposition would be a correct view of the law if Galotan's interest had not been limited to an interest for her life. This was not an absolute gift by Umrao Singh, but merely a grant to operate during the lifetime of Musammat Galotan. There was a considerable amount of legal argument as to the rights of a Hindu widow in the property left by her husband in respect of her right of maintenance. I do not think that any of those arguments assist us in the determination of this case, which is not one of partition, but is one of a private arrangement between Umrao Singh and Musammat Galotan, by which he agreed to give to her and she agreed to receive from him, these bighas for her life only and as a mode of payment of her maintenance. In my opinion, whatever might have been the position of Musammat Galotan if this had not been the arrangement that had been come to, we must give effect to that arrangement or agreement, and consider the effect of that agreement only. In the result I have come to the conclusion that Umrao Singh had a vested right to these bighas in question which was capable of being sold at the auction-sale, and that that right, that is, the right of possession on the death of Musammat Galotan passed to the auction-purchaser at the sale on the 20th August, 1874. The appellant before us may or may not be entitled to maintenance out of these lands in question. That point has not been raised in the action and no issue has been framed relating to it, and consequently I do not think I would be justified in giving any opinion on the subject. In my opinion this appeal should be dismissed with costs.

MAHMOOD, J.—I am of the same opinion.

*Appeal dismissed.*