

1898

ABDUL  
MAJID KHAN  
v.  
KADRI  
BEGAM.

of the survivor. There is no doubt that the language used in the award is somewhat ambiguous, and we were pressed by Mr. *Ryves* with the decision of Kindersley, V. C., in *Grant v. Winbolt* (1). In that case the Vice-Chancellor arrived with great difficulty at the conclusion which he expressed. We have not to construe this award as we should have to construe an award settled by counsel or a solicitor in England, but as an award drawn by a plain man of Bareilly, probably of no great business habits, who would know little or nothing about the subtleties of the English system of conveyancing. We have to construe it as we think it was intended by the arbitrator it should be construed, and we hold that it was his intention that the liability to make the payment should continue during the life of the survivor of the parents.

We have said this was a suit for sale. A decree for sale under section 88 of the Transfer of Property Act was made, treating the award as if it were a mortgage or document creating a charge upon land. It does not appear from anything put before us that the arbitrator had any power to charge the lands in question; consequently a decree for sale was bad. However, the plaintiff is entitled to a decree for money. We set aside the decree for sale, and we give the plaintiff a decree for the Rs. 600 (six hundred) annuity for the year in question, together with interest from the date of suit until realisation at 12 per cent. per annum. We also give her her costs of this appeal.

To the extent above indicated we modify the decree below. In other respects we dismiss the appeal.

*Decree modified.*

1898

January 28.

*Before Sir John Edge, Kt., Chief Justice and Mr. Justice Burkitt.*  
SRI GIRDHARIJI MAHARAJ (PLAINTIFF) v. CHOTE LAL AND OTHERS  
(DEFENDANTS).\*

*Landholder and tenant—Rights of zamindars in land forming part of the abadi—Custom—Customary law of the North-Western Provinces.*

According to the general custom prevalent in the North-Western Provinces, a person, agriculturist or agricultural tenant, who is allowed by a zamindar

\* Appeal No. 29 of 1897 under section 10 of the Letters Patent.

to build a house for his occupation in the *abadi*, obtains, if there is no special contract to the contrary, a mere right to use that house for himself and his family so long as he maintains the house, that is, prevents it falling down, and so long as he does not abandon the house by leaving the village. As such occupier of a house in the *abadi* occupying under the zamindar, he has, unless he has obtained by special grant from the zamindar an interest which he can sell, no interest which he can sell by private sale or which can be sold in execution of a decree against him, except his interest in the timber, roofing and wood-work of the house. *Narain Prasad v. Dammar* (1) and *Chajju Singh v. Kanhia* (2) referred to.

1898  
 SRI  
 GURDHARJI  
 MAHARAJ  
 " .  
 CHOTE LAL.

THE facts of this case are as follows :—

The plaintiff came into Court alleging that about twenty-six years previously one Nand Kishore had received from his, the plaintiff's agent, permission to build a house on a piece of land in the village of which the plaintiff was zamindar, on the condition that it should be inhabited by Nand Kishore and his heirs, and alleging further that the house which was built could not legally be transferred. The plaintiff also relied upon a clause in the *wajib-ul-arz*. The house so built by Nand Kishore was sold in execution of a decree against a son of Nand Kishore and purchased by one Chote Lal. The plaintiff zamindar asked for a declaration of his right to the land on which the house stood. Further that he should be put in possession of that land, the auction-purchaser being ordered to remove the materials of the house, or if the Court saw fit, being ordered to receive from the plaintiff the value of those materials.

The Court of first instance (Munsif of Muttra) gave the plaintiff a decree declaring (what was never seriously contested) that the site of the house had not been and could not be sold in execution of Chote Lal's decree, and dismissed the rest of the plaintiff's suit. This decree was affirmed on appeal by the Subordinate Judge of Agra.

The plaintiff appealed to the High Court, and his appeal coming before a single Judge was dismissed on the ground that no custom of inalienability or special agreement not to alienate

(1) Weekly Notes, 1888, p. 125.

(2) Weekly Notes, 1881, p. 114.

1898

SRI  
GIRDHARJI  
MAHARAJ  
v  
CHOTE LAL.

the house had been proved. From this judgment the plaintiff appealed under section 10 of the Letters Patent.

Mr. B. E. O'Connor, for the appellants.

Pandit Sundar Lal and Pandit Baldeo Ram Dave, for the respondents.

EDGE, C. J. and BURKITT, J.—This appeal has arisen in a suit brought by the zamindar against the occupiers of a house in the *abadi* of his village and against one Chote Lal, who purchased at auction-sale under a decree against the occupiers such rights as the occupiers had in the house. The occupiers made no defence to the suit. Chote Lal only has defended the suit. The plaintiff alleged a special agreement under which the house had been originally built; he also relied upon the *wajib-ul-arz*. He did not specifically set up in his plaint, or apparently in his argument before our brother Aikman in this Court, the real point on which this case must be decided, and that is that, according to the general and well known custom of these Provinces, a custom so well established that it may be treated as the common law of the Provinces, a person, agriculturist or agricultural tenant, who is allowed by a zamindar to build a house for his occupation in the *abadi*, obtains, if there is no special contract to the contrary, a mere right to use that house for himself and his family so long as he maintains the house, that is, prevents it falling down, and so long as he does not abandon the house by leaving the village. As such occupier of a house in the *abadi* occupying under the zamindar, as in this case, he has, unless he has obtained by special grant from the zamindar an interest which he can sell, no interest which he can sell by private sale or which can be sold in execution of a decree against him, except his interest in the timber, roofing and wood-work of the house. There is good reason why such a custom should have grown up and have been established. If it were otherwise, agricultural tenants or cultivators who, for the purposes of the cultivation of the agricultural lands of the village, were permitted by the zamindar to build or occupy a house in the *abadi* of the particular village might sell the right to occupy the

house to some person unconnected with the cultivation of the agricultural land in the village, and thus in course of time the *abadi* provided and reserved by the zamindar for the use of those cultivating his lands would come to be occupied by persons in no way connected with the cultivation of the agricultural lands in the village. In such a case the zamindar would practically lose his rights in the *abadi* and would be compelled to restrict the area of culturable land in the village so as to provide sites for fresh houses for agriculturists. It might happen that a purely agricultural village, every single site in the *abadi* of which belonged to the zamindar solely, might come to be a village, for example, of weavers, who neither paid rent to the zamindar nor promoted the cultivation of the agricultural lands of the village.

It is contended that it was for the plaintiff to prove a special contract. In our opinion the plaintiff had only to rely on the common custom of the Provinces, and it was for the auction-purchaser, who alone defended this suit, to show that there was some special contract between the zamindar and the person or the predecessor of the person whose interest he had bought which created, contrary to the general custom, an interest which might be attached and sold in execution of a decree against the occupier. If the defendant, auction-purchaser, had set up, not a special contract, but a local custom of the village in question by which an occupier of a house in the *abadi*, holding under no special contract, but merely occupying a house the site of which belonged to the zamindar, could sell his right to occupy or have it sold for him in execution of a decree against him, we should be prepared to hold that such a special custom was bad.

Our attention has been drawn to the decision of this Court *Narain Prasad v. Dammar* (1). So far as that decision is based upon an assumption that, apart from special contract, the occupier of a house in the *abadi* under the zamindar has any interest in the occupancy of that house which can be sold privately or by auction sale we entirely dissent from it. The

1898

---

SRI  
GIRDHARIJI  
MAHARAJ  
v.  
CHOTE LAL.

(1) Weekly Notes, 1888, p. 125.

1898

SRI  
GIRDHARJI  
MAHARAJ  
v.  
CHOTE LAL.

occupier's right is a mere personal right of residence. The other case to which we have been referred is *Chajju Singh v. Kanhia* (1). There the Full Bench held that the zamindars of a village are, as a rule and presumably, the owners of all the house sites in the village, and that a house left unoccupied by a tenant lapses to the landlord in the absence of heirs or of other lawful assignees of the last occupier. "Other lawful assignees" must not be understood to mean purchasers by private or auction-sale from such occupier.

Chote Lal, the only defendant defending this suit, has made out no case. This appeal must be allowed. We give the plaintiff a decree declaring that the occupiers of the house had no right, except to the timber, the wood-work and the roofing, which could be sold in execution of a decree against them, that a right to occupy the house was not transferable by sale either private or in execution of a decree, and a decree that the plaintiff be put in possession of the site claimed. Chote Lal will be allowed thirty days from the notification of this decree in the Court below to remove such of the materials of the house as were not part of the land; that is, he cannot remove the walls of the house if they are constructed of soil belonging to the village. We allow this appeal with costs in all Courts.

*Appeal decreed.*

1898  
January 31.

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

DIWAN SINGH AND OTHERS (DEFENDANTS) v. JADHO SINGH  
(PLAINTIFF).\*

*Act No. III of 1877 (Indian Registration Act), section 50—Registered and unregistered documents—Priority—Notice.*

*Held that section 50 of the Indian Registration Act, 1877, will not avail to give the holder of a subsequent registered deed priority in respect of his deed over the holder of an earlier unregistered deed, not being a compulsorily registrable deed, if in fact the holder of the registered deed has at the time of its execution notice of the earlier unregistered deed.*

\* Appeal No. 37 of 1897, under section 10 of the Letters Patent.

(1) Weekly Notes, 1881, p. 114.