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Lal was making to the property. As she endeavoured to make out that she knew nothing of the improvements, the conclusion to be drawn is that this was because she had allowed the constructions to go on without any objection on her part. As held above, Jawahir Lal was a *bonâ fide* purchaser, and made additions to the house he had bought under the belief that he had a good title to it. The plaintiff knowing this allowed him to do so. In this state of circumstances, she is, in my judgment, entitled to a decree for possession of the property in Jawahir Lal's hands only on condition of her compensating him for his outlay. The result at which I arrive is that the order of remand should stand, and that the case should go back to the Court of first instance for disposal of the remaining issues with due regard to the observations now made.

I would therefore dismiss the appeal against the order of remand. Under the circumstances I would make no order as to costs of this appeal. As to the costs hitherto incurred and hereafter to be incurred in the lower Courts, I would direct that they abide the event.

KNOX, ACTING C. J.—I concur both in the judgment of my learned brother and in the order proposed.

The appeal is dismissed but without costs. Costs hereinbefore incurred and such as may be hereinafter incurred in the lower Court will abide the event.

Appeal dismissed.

Before Mr. Justice Knox, Acting Chief Justice, and Mr. Justice Aikman.

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August 16.

BHAGWATI PRASAD AND ANOTHER (DEFENDANTS) *v.* HANUMAN PRASAD SINGH AND ANOTHER (PLAINTIFFS).*

Landholder and tenant—Mukaddami tenure—Nature of Mukaddami tenure considered.

In the absence of any special evidence to the contrary, the fact of a person holding land under what is known as a "mukaddami" tenure does not imply that the mukaddam has any heritable or transferable interest in the tenement.

THE facts of this case sufficiently appear from the judgment of the Court.

Pandit *Madan Mohan Malaviya*, for the appellants.

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* First Appeal No. 48 of 1898, from a decree of Maulvi Syed Jafar Husain Khan, Subordinate Judge of Gorakhpur, dated the 18th November 1897.

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BHAGWATI PRASAD v. HANUMAN PRASAD SINGH.

Pandit *Sundar Lal* and Babu *Jiwan Chandar Mukerji*, for the respondents.

KNOX, ACTING C. J. (AIKMAN, J., concurring).—The suit out of which this appeal arises is a suit instituted by Babu Hanuman Prasad Singh and Babu Jadunath Singh, the respondents to this appeal. They pray to be put in possession of the entire village of Kot Kamarhya. They also add a claim for mesne profits from date of suit to date of possession. They base their claim upon the allegation that they alone, under the Hindu law, are the owners of, and entitled to, the entire estate of their maternal grandfather, Babu Paltan Singh, deceased.

The short history of the case is as follows. Babu Paltan Singh had a settlement made with him by Government early in the 19th century. The settlement was of a village called Kot Kamarhya. He died in 1822, leaving two widows, Asman Kuari and Harnam Kuari, him surviving. These widows entered into possession, and Government gave them a fresh lease over the village. Upon the death of Musammat Asman Kuari, Musammat Harnam Kuari, who remained in possession, sold her rights in the village to the predecessor in title of the present defendants, who are now in possession. Harnam Kuari died on the 5th of January, 1857, leaving three daughters. The last of these died on the 3rd of March, 1890. In 1894 the present respondents instituted the suit, which has led up to this appeal. The defendants pleaded limitation. That plea succeeded in the Court below, but in this Court the plea of limitation did not prevail—*vide Hanuman Prasad* v. *Bhagwati Prasad* (1), and the suit was remanded for trial of the remaining issues.

The persons who are now in possession, *viz.* the defendants, derive title from a sale made by Harnam Kuari in favour of Harnam Singh, their ancestor. The contention of the respondents is that Musammat Harnam Kuari had no interest in the property over and above a life interest; that Musammat Harnam Kuari on her death was succeeded by her three daughters; that their interest was no higher than the interest of Harnam Kuari, and now that all these persons, mother and daughters, are dead, the respondent's right to succeed has opened out, and hence the present suit.

(1) (1897) I. L. R., 19 All., 357.

The answer filed by the defendants rested mainly upon the assertion that Paltan Singh was never the owner of the property in dispute. His interest in it was confined to a lease executed in his favour by the Government. Upon that lease coming to an end, Musammat Harnam Kuari came into possession of the property under a new lease which the Government executed in her favour. The property therefore was her self-acquired property, and she was fully entitled to do what she pleased with it. The Court of first instance held that Paltan Singh had a transferable and heritable right in the village, and that subsequently to his death his widows, who entered into possession of the village, had no higher estate in it than that enjoyed by Hindu widows under such circumstances. In appeal the whole controversy particularly turned upon what was the true nature of the interest that was possessed by Babu Paltan Singh in the property under dispute.

The village when it passed under Paltan Singh's control was a tract of forest land. It is agreed that the tenure of Paltan Singh over it was a tenure known by the name of mukaddami. If there was any deed or writing by or under which the tenure was first granted to Paltan Singh, it is not now forthcoming, and there is no evidence to show what were the terms of it. The learned advocate for the respondents, who are out of possession, and on whom therefore the burden of proof, in the first instance, lies, contended that the mukaddami tenure was heritable and transferable. He relied mainly for this assertion upon a despatch of the Court of Directors in the year 1830. This is to be found at page 199 of the circular orders of the Sudder Board of Revenue of Fort William, and runs as follows:—"Like other terms employed in your revenue correspondence there is some uncertainty in the import of the term mukaddami settlement. It is not ryotwar, and it is not a settlement with what you call a recorded proprietor, but something between these two. The mukaddam is a proprietor, but not what you call a 'recorded proprietor,' that is, a proprietor entered in the Collector's book as having a title to be recorded as contractor, but when the engagement is made with the mukaddam, he also is a contractor, and he contracts for a certain amount of revenue to be derived by him from a certain number of contributors."

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It is doubtful whether there is anything in this passage which is sufficiently clear in terms to be cited as authority for the contention of the respondents. But, be that as it may, a reference to the rest of the circular shows that the mukaddams, to whom reference is made in it, are a very different class from men like Paltan Singh. The mukaddams referred to are not men admitted to contracts for the reclamation of forest lands, but men admitted to temporary settlements in villages where the settlement made with the proprietors has broken down. Paragraphs 3 and 4 of the circular under quotation show this to be the case, and the circular itself and the extract from the despatch of the Court of Directors has no reference to or bearing on the circumstances of the present case.

The learned advocate has also referred us to the definition of the word mukaddam to be found in Wilson's Glossary, and to a passage to be found in the Tagore Law Lectures for 1874 and 1875 at page 103, to the fourth paragraph of Regulation VII of 1822, and to the preamble of Regulation IX of 1824. The remarks we have already made above apply with equal force to these passages. They are all of too vague a nature and too undetermined in terms to allow of their being cited as proof of the assertion that a mukaddam was a man whose tenure was in every case transferable and heritable. To tell us that in some cases the mukaddam has been suffered to assume a character of a petty proprietor, or that in zilla Bhagalpur the *malik* mukaddams have particular rights, does not really help us to decide what were the particular attributes of the tenure granted to mukaddams of Gorakhpur. Regulation VII of 1822 and Regulation IX of 1824 are regulations which relate to a settlement of the district of Gorakhpur *inter alia*, but we do not find in them the word mukaddam specially referred to, and it would be dangerous to infer that the tenure in the present instance was of precisely the same nature as the zemindars or farmers mentioned by name in those Regulations. If anything is to be inferred from what is apparently the only instance where the word mukaddam is cited in those Regulations, *viz.* section 24, it would be that mukaddams were men of the same class as "padans, ryots or other residents—" men who would not have an hereditary and transferable tenure. A case

was cited to us, *viz. Zoolfikar Ali* v. *Ghunsam Baree* (1). It is a Gorakhpur case, and has reference to the settlement of lands under reclamation. But in this judgment the word mukaddam is nowhere used. The person with whom the clearing lease was made is called "abadkar," and there is nothing to show us that abadkars and mukaddams were on the same footing. The result is that we find no safe ground for holding that the tenure enjoyed by Babu Paltan Singh was either heritable or transferable. The respondents have not proved that they have any title to the land in dispute. We might end here, but we think it as well to add that there is on the other side a good deal of evidence which points in the opposite direction. Observations are to be found in the recent report of the Gorakhpur settlement published in 1891 and 1893. At page 56 the settlement officer sums up all that he has been able to ascertain with reference to mukaddami tenure in these words:— "The originally non-proprietary nature of this kind of mukaddam tenure is apparent, but after some oscillations in policy the mukaddams were acknowledged by Government as the subordinate proprietors and the engagements for revenue were taken from them." This is entitled to fully as much weight as, if not more than, what has been cited by the other side.

If again we look to the circumstances of the case, we are met with the following facts, which are very significant. The original lease in favour of Babu Paltan Singh was only for three years. The terms of the lease which was granted after his death to Musammat Harnam Kuari, and which are to be found at page 3 of the appellant's book, nowhere assert existence of proprietary right properly so called. The whole document reads just what it pretends to be, as a lease for a period of 5 years with option of renewal, but still a lease, and not a document conferring any higher rights. Reference has more than once been made to what is called the mukaddami right and mukaddami rate, but there is nothing to show the precise nature of these two. There is a subsequent document to be found at page 5 of the appellant's book. This too does not place the tenure upon any higher apparent level than that the lease is for 12 years. When we bear in mind that the tendency would be in these documents towards the assertion of higher and

(1) S. D. A., N.-W. P., 1865, Vol. I., p. 92.

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stronger rights than in the original document, whatever it was, which was granted to Babu Paltan Singh, we are confirmed in our view that it would not be safe to hold that Babu Paltan Singh had any heritable or transferable right. We find that the plaintiffs have established none such. The appeal therefore succeeds, and the claim brought by the respondents (who claim through him) must be dismissed with costs in both Courts.

Appeal decreed.

PRIVY COUNCIL.

P. C.
J. C.
1900
June 22 *and* 26.
July 21.

SURJAN SINGH AND OTHERS (PLAINTIFFS) *v.* SARDAR SINGH AND OTHERS (DEFENDANTS).*

[On appeal from the Court of the Judicial Commissioner of Oudh.]

Evidence—Pedigree table—Act No. I of 1872 *(Indian Evidence Act), section* 32, *sub-section* (6).

In a suit for an inheritance claimed by the plaintiffs, alleging themselves to be collateral relations and heirs of the last male owner, through an ancestor common to him and to them, a pedigree table was received in evidence by the Court of first instance. The persons from whose statements at no distant date the pedigree had been drawn up were absent, and it had not been shown in that Court that this had been for any one or other of the reasons contained in section 32 of Indian Evidence Act, 1872.

Held, that the appellate Court had rightly rejected the document as inadmissible under that section. The alleged relationship not having been proved, the claim failed.

APPEAL from a decree (15th May 1897) of the Judicial Commissioner, reversing a decree (12th November 1894) of the Subordinate Judge of Kheri.

The plaintiffs-appellants brought their suit on the 29th November 1892, claiming as collateral relations to be heirs in default of male issue of Munnu Singh, deceased in 1858, the last male inheritor of the ancestral estate, Piparya Andu, a village in the Kheri district of Oudh. As reversionary heirs of male descent they claimed to be entitled to dispossess the defendants Sardar Singh and Baldeo Singh, the two sons of a daughter, now deceased, of the said Munnu, and a third defendant Durga Singh, their father and husband of that daughter. On the death of Munnu

* *Present*: LORDS HOBHOUSE, MACNAGHTEN AND LINDLEY, SIR RICHARD COUCH, AND SIR HENRY DE VILLIERS.