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shall both be extinguished. It is clear, we think, from the language of this section that in the case of a usufructuary mortgage the proper and necessary order for a mortgagee to obtain, if the right of redemption is to be extinguished, is an order for sale. Such an order the mortgagees in this case did not obtain. There was, however, in the decree of the 20th May 1901, a direction that in default of payment of the mortgage debt within the time therein specified the mortgagors' right to redeem would be extinguished. To this order no exception was taken by the mortgagors. They acquiesced in the decree, and the decree has now become final. In view of this we must hold that the plaintiffs were not entitled to succeed in a second suit for redemption even though the order passed in the former suit was not in accordance with law. We are supported in this view by the judgments of our brothers, Banerji and Aikman, in the case of *Sita Ram* v. *Madho Lal* (1). The case may be a hard one on the plaintiffs, but they have themselves to blame in not taking exception to the form of the decree passed in the former suit. We dismiss the appeal with costs.

Appeal dismissed.

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April 18.

Before Mr. Justice Richards.

BADAM AND OTHERS (DEFENDANTS) v. GANGA DEI (PLAINTIFFS).*

Land-holder and tenant—Trees—Land-holder's and tenant's rights as to trees on tenant's holding.

Held that in the absence of special agreement a tenant has, as against his landlord, a right to insist that so long as his tenancy continues the landlord shall not cut down trees standing on the tenant's holding. *Deokinandan* v. *Dhian Singh* (2), *Kausalia* v. *Gulab Kunwar* (3) and *Ruttonji Edulji Shet* v. *The Collector of Thana* (4) referred to.

THIS was a suit brought by a zamindar claiming an injunction to restrain the defendant from interfering with her right to cut down and remove certain trees growing on the holdings of the defendants. The plaintiff claimed by virtue of her general rights as zamindar, but did not plead any particular contract or custom authorizing her to cut trees growing on a tenant's holding. The

* Second Appeal No. 634 of 1905, from a decree of Austin Kendall, Esq., Additional District Judge of Meerut, dated the 15th of April 1905, confirming a decree of Babu Ram Chandar Chaudhari, Additional Munsif of Meerut, dated the 24th of January 1905.

(1) (1901) I. L. R., 24 All., 44.
(2) (1886) I. L. R., 8 All., 467.
(3) (1899) I. L. R., 21 All., 297.
(4) (1867) 11 Moo., I. A., 295.

defendants, on the other hand, while admitting the plaintiff's proprietary title to the trees, maintained that during the subsistence of their tenancy the plaintiff had no right to remove them. The Court of first instance (Additional Munsif of Meerut) decreed the plaintiff's claim, and this decree was on appeal affirmed by the Additional District Judge. The defendants appealed to the High Court.

Mr. *R. Malcomson*, for the appellants.

Babu *Durga Charan Banerji* (for whom Pandit *M. L. Sandal*), for the respondent.

RICHARDS, J.—So far as the present appeal is concerned the only claim I have to deal with is the claim of Ganga Dei to an injunction to restrain the defendants from interfering with her cutting down and removing certain trees growing on the holdings of the defendants. Both sides have expressly stated that this is the only question in the present appeal. Ganga Dei is the zamindar. The defendants are tenants either occupancy or non-occupancy. The plaintiff has given no special evidence from which the existence of a custom or contract enabling her to enter the holdings and cut down and remove the trees can be inferred. On the other hand the defendants have failed to establish any proprietary right in the trees. The learned advocate for the defendants has argued the case on their behalf on the basis that, admitting the property in the trees to belong to the plaintiff, and admitting that the defendants have no right to cut down and remove the timber, nevertheless the plaintiff has not, during the continuance of the tenancy, any right to enter and cut down the trees. There is no evidence that the trees were planted by the tenants or that they are fruit-bearing trees. Mr. *Malcomson* states on his instructions that in the case of one of the tenants the trees shelter his well. He gives this as illustrating that even in an agricultural holding a tenant may have strong interest in the maintenance of growing trees. He cites in support of his contention the case of *Deokinandan* v. *Dhian Singh* (1). In that case the plaintiff sued to recover possession of certain zamindari property. The defendant was in possession of certain plots, part of the land the subject matter of the suit, as proprietary tenant.

(1) (1886) I. L. R., 8 All., 467.

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On these plots there were certain fruit and other trees, and it was held by Straight and Mahmood, JJ., that the defendant was entitled to the trees on the land. It is not quite clear whether the learned Judges intended to decide that the defendant (the tenant) could cut down, sell or remove the trees, but it is quite clear that the learned Judges were of opinion that the zamindar had no right to cut trees during the continuance of the tenancy, and it is not necessary for the purposes of the present appeal for me to decide anything more than that the plaintiff is not entitled to cut, sell or remove the trees growing on the holdings of the defendants. The only decision cited on the other side is the case of *Kausalia* v. *Gulab Kunwar* (1). In that case Sir Arthur Strachey, Chief Justice, and Knox, J., held that the property in the trees growing on a tenant's holding is by the general law vested in the zamindar and that in the absence of special custom the tenant is not entitled to cut down trees. This case does not decide that in the absence of custom or contract the zamindar will have a right to cut and sell the trees growing on a tenant's holding during the continuance of the tenancy. The case of *Ruttonji Edulji Shet* v. *The Collector of Thana* (2) was also referred to. That was a case in which a lessee from the Government sought damages against Government for preventing him from cutting forest trees for sale. The passage relied on is at p. 313 of the report and is in the following words :—" At the time, then, that this lease was made the whole of the land and all the rights connected with the land, subject to such claims as third parties might have upon it, belonged to the Government. The trees upon the land were part of the land and the right to cut down and sell those trees was incident to the proprietorship of the land." This again is no authority that the landlord is always entitled after he has made a letting to cut down trees, even though property in trees still remains in him. Mr. Justice Mahmood in his judgment in the first case referred to was dealing with an exproprietary tenant, but the nature of the interest of an exproprietary tenant differs only from the nature of the interest of an occupancy tenant by reason of the fact that an exproprietary tenant is entitled to occupy the land at a lower rate. The principle of the

(1) (1899) I. L. R., 21 All., 297. (2) (1867) 11 Moo., I. A., 295.

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judgment seems also to apply to the case of a tenant, who is either an occupancy tenant or an exproprietary tenant. But of course the zamindar in the case of a tenant who has no such "occupancy rights" will probably be able to carry out his wish with regard to the timber by bringing the tenancy to an end. I leave the decree appealed from undisturbed as regards the trees actually cut. I allow the appeal, set aside the decrees of both the Courts below so far as it grants an injunction to the plaintiff restraining the defendants from offering obstruction to the plaintiff in cutting down, removing and selling the trees (other than the trees actually cut). I do not intend and do not decide that the defendants have any right in the trees save the right to insist that during the continuance of the tenancy they shall not be cut down and removed by the plaintiff. The defendants will have their costs in all the Courts.

Appeal decreed.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkitt.

1907. *April.* 23.

GOBIND KRISHNA NARAIN AND ANOTHER (PLAINTIFFS) v. KHUNNI LAL (DEFENDANT)*

Hindu Law—Change of religion—Effect of conversion of a member of a joint Hindu family to Muhammadanism—Regulation No. VII of 1832, s. 9—Compromise—Effect of compromise entered into by a Hindu female with a limited estate.

Held that Regulation No. VII of 1832 did not abrogate the Hindu law as to the consequences of apostacy, but merely laid down for the guidance of the Judge a rule under which he might refuse to enforce these consequences. Where, therefore, in a joint Hindu family consisting of a father and one son the father was converted to Muhammadanism in the year 1845, the immediate effect of such conversion was to make the son sole owner of the property which up to that time had belonged jointly to him and his father.

Held also that a compromise made by a person holding a Hindu widow's or Hindu daughter's estate in the property of her deceased husband or father, is not binding on the reversioners, even though it has been followed by a decree of Court, nor is a decree on an arbitration award, one of the parties to the submission having been a Hindu widow, or daughter; but the reversioners can only be bound by a decree made after full contest in a *bonâ fide* litigation.

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* First Appeal No. 135 of 1905, from a decree of Pandit Pitambar Joshi, Subordinate Judge of Bareilly, dated the 20th of May 1905.