

1911
April, 3.

Before Mr. Justice Banerji and Mr. Justice Griffin.

**BENI MADHO AND ANOTHER (PLAINTIFFS) v. BHAGWAN PRASAD
AND OTHERS (DEFENDANTS).***

Act (Local) No. III of 1901 (United Provinces Land Revenue Act), sections 51, 52 and 99—Assignment of Government Revenue—Right of Government to enhance or remit revenue.

An assignee of Government revenue takes the assignment subject to all the rights of Government to assess, enhance, reduce, remit or suspend the revenue.

THIS was a suit brought by certain assignees of Government revenue to recover arrears of revenue payable by the defendants. During the period in respect of which the arrears were claimed a portion of the revenue had been remitted by the Government on account of famine, and the defendants claimed a deduction on account of the portion so remitted. This plea was accepted by the courts below and the amount decreed to the plaintiffs was reduced accordingly. The plaintiffs appealed to the High Court, urging that the Government having assigned the revenue was not competent to grant a remission, and that such remission could not deprive the plaintiffs of their right to the revenue assigned to them.

Pandit *Mohan Lal Sandal*, for the appellants.

Babu *Girdhari Lal Agarwala*, for the respondents.

BANERJI, and GRIFFIN, JJ.—This appeal arises out of a suit brought by the plaintiffs appellants, who are assignees of Government revenue, to recover from the defendants, who are landholders, arrears of revenue payable by them. It appears that during the period in respect of which arrears of revenue are claimed, a portion of the revenue was remitted by Government on account of famine. The defendants claimed a deduction of this amount out of the arrears claimed. The courts below have granted the deduction prayed for. Hence this appeal. The contention on the part of the appellants is that the Government having assigned the revenue was not competent to grant a remission, and that such remission could not deprive the plaintiffs of their right to the revenue assigned to them. It appears that the assignment in favour of the plaintiffs was originally made by the Maharaja Scindia and was continued by the British

* Second Appeal No. 468 of 1910 from a decree of H. W. Lyle, District Judge of Agra, dated the 21st of February, 1910, modifying a decree of B. W. Wahl, Assistant Collector, first class, of Muttra, dated the 6th of September, 1909.

Government. There is nothing to show that under the terms of the assignment it was agreed between the Government and the assignees that there should be no alteration in the amount of the revenue assigned. In the absence of any such agreement, we must hold that the assignees took the assignment subject to the ordinary rights of the Government to assess or reduce, or in seasons of calamity to remit, the whole or a part of the revenue. This is manifest from the provisions of section 52, sub-section (2) of Act No. III of 1901. That sub-section provides that "revenue may be assessed on land, notwithstanding that the revenue, by reason of its having been assigned, released, compounded for or redeemed, is not payable to the Government." Again, in the case of fluvial action the Government has the power under section 99, sub-section (2), to revise the assessment, and the rules framed by the Board of Revenue for such revision contain a distinct provision to the effect that assessment of mahals of which the revenue has been wholly assigned will be liable to revision in the same manner and to the same extent as mahals which pay full revenue, (see rule 56, printed on page 158 of Mr. Agarwala's Edition of the Land Revenue Act). Any other view would cause immense hardship both to landholders and tenants. Under section 51 of the Agra Tenancy Act, where remission of revenue is granted, the land-holder is bound to grant a remission of rent to the extent of twice the amount of the revenue remitted. If the contention of the appellants is right, although under section 51 the land-holder would be bound to grant a remission to his tenants, he himself would be liable, notwithstanding the remission, to pay the full amount of revenue to the assignees of it. It is urged on behalf of the appellants that it is only in the case of revenue payable to Government that a remission can be granted to tenants under section 51, and that therefore land-holders will not be prejudiced. Assuming this contention to be valid, tenants would have no remedy in times of calamity, if the land occupied by them happens to be situated in a locality the revenue of which has been assigned by the Government to a third party. Such surely could not be the intention of the Legislature. In our opinion an assignee of Government revenue takes the assignment subject to all the rights of Government to assess, enhance, reduce,

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remit or suspend the revenue. The defendants, land-holders, are therefore entitled to the benefit of the remission granted by Government. In this view the courts below were right, and this appeal must fail. We accordingly dismiss it with costs.

Appeal dismissed.

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April, 13.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.

BILASO (DEFENDANT) v. MUNNI LAL AND ANOTHER (PLAINTIFFS) AND ISHRI PRASAD (DEFENDANT)*

Will—Construction of document—Bequest to take effect after death of testator and his wife—Legatee surviving testator but predeceasing wife—Vested or contingent interest.

One S executed a will whereby he gave all his property after the death of himself and his wife M to his daughter B and his nephew D. D survived the testator but predeceased M. *Held* that D took a vested interest in the property which was transmissible to his sons. *Bhagabati Barmanya v. Kali Charan Singh* (1) followed.

THE facts of this case are as follows:—

One Sewa Ram, being the owner of certain property, executed a will whereby he gave all his property, after the death of himself and his wife Musammat Mendu, to his daughter Bilaso and his nephew Duli Chand. Duli Chand survived the testator, but predeceased Musammat Mendu. The present suit was brought by the heirs of Duli Chand to recover his share of the property of Sewa Ram from Musammat Bilaso. The court of first instance (Subordinate Judge of Bareilly) decreed the claim, and this decree was on appeal confirmed by the Additional District Judge. The defendant Bilaso appealed to the High Court.

The Hon'ble Pandit *Sundar Lal* and Maulvi *Ghulam Mujtaba*, for the appellant.

Dr. *Satish Chandra Banerji* and Dr. *Tej Bahadur Sapra*, for the respondents.

STANLEY, C. J. and BANERJI, J.—The sole question raised in this appeal depends upon the true construction of the will of one Sewa Ram. Sewa Ram being the owner of certain property,

* Second Appeal No. 1000 of 1910 from a decree of B. M. Nanavutty, Additional Judge of Bareilly, dated the 23rd of June, 1910, confirming a decree of Srish Chandra Basu, Subordinate Judge of Bareilly, dated the 7th of March 1910.