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It seems to us that the decisions in the two last mentioned cases are in reality supported by the decision in *Brajeshware Peshakar* v. *Budhanuddi*, and we must hold that the admission of the receipt of consideration contained in the mortgage deed now in suit is admissible against the defendants appellants, who are representatives in interest of the original mortgagor.

It is not for us in second appeal to consider the value of the admission, but we may say that it receives in our opinion strong support from the production of the deed of 1867 which bears no signs of having been paid off.

For the above reasons we dismiss the appeal with costs.

Appeal dismissed.

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February, 13.

Before Mr. Justice Sir Harry Griffin and Mr. Justice Chamier.

RAM CHANDRA AND OTHERS (DEFENDANTS) *v.* ALI MUHAMMAD AND OTHERS (PLAINTIFFS) AND KAMARUDDIN BEG (PRO FORMÂ DEFENDANT)*.

Muhammadan law—Waqf—*Right of Muhammadans to worship in mosques—Suit by individual Muhammadans whose right is infringed—Civil Procedure Code* (1908), *order I, rule* 8.

Every Muhammadan who has a right to use a mosque for purposes of devotion is entitled to exercise such right without hindrance and is competent to maintain a suit against anyone who interferes with its exercise, but if he brings his suit in his personal capacity and not on behalf of the whole Muhammadan community, the decision will be binding only as between the plaintiff and the defendant and cannot be taken advantage of by, or be binding on, the Muhammadan community in general. *Jawahra* v. *Akbar Husain* (1) and *Dasondhay* v. *Muhammad Abu Nasar* (2) followed.

THE facts of this case are fully set forth in the judgement of the Court.

Pandit *Shiam Krishna Dar*, for the appellants.

Maulvi *Ghulam Mujtaba* and Munshi *Muhammad Ishaq*, for the respondents.

GRIFFIN and CHAMIER, JJ. :—The plaintiffs in this case, who are Muhammadans, allege that in the time of the Muhammadan kings a mosque and some houses were built in the town of Agra; that from that time the Muhammadans have always worshipped in the mosque and the property has all along been waqf; that some time

* Second Appeal No. 405 of 1912 from a decree of H. W. Lyle, District Judge of Agra, dated the 6th of January, 1912, confirming a decree of Muhammad Amanul Haq, Additional Munsif of Agra, dated the 25th of February, 1911.

(1) (1894) I. L. R., 7 All., 178. (2) (1911) I. L. R., 33 All., 660.

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before 1875 the *mutawalli* of the property mortgaged it to some Hindus, but in a suit brought in the court of the Subordinate Judge in 1875 it was declared that the property was waqf and the Muhammadans continued to worship in the mosque as before; that the plaintiffs had received information that the fifth defendant, when in charge of the mosque, transferred it to an ancestor of the defendants 1—4 who are Hindus; that this mortgage was invalid and notwithstanding the mortgage the Muhammadans continued to use the mosque as before; that defendants 1—4 instituted a suit against six Muhammadans in 1907 and obtained a decree, in execution of which they attempted to take possession of the property on the 20th of March, 1910, but the plaintiffs refused to deliver possession alleging themselves to be in possession of the property like other Muhammadans. The plaintiffs say that the cause of action accrued to them on the 20th of March, 1910, and they pray for a declaration that the property is waqf; that it was intended to be used as a place of worship by all Muhammadans; that it was not transferable, and that defendants 1—4 had acquired no title to the property. The defendants denied that the property was a mosque or that it had been used by the Muhammadans as such. They pleaded that the suit was barred by section 11 of the Code of Civil Procedure, and also limitation. They pleaded further that the right of the Muhammadans, if any, was barred by the long continued adverse possession on the part of the defendants and their predecessors. Both the courts below have come to the conclusion that the property now in suit is part of the property which was in suit in 1875 and that the defendants have failed to prove adverse possession for more than twelve years. The District Judge says that the defendants may have been in possession of the property off and on, but they have not held possession continuously for the requisite period. We must accept these findings. There is nothing to show that the Muhammadans who were made defendants to the suit brought by the present defendants in 1907, were sued as representatives of the Muhammadan community or that the present plaintiffs in any way claim under them or are bound by the decision pronounced in that suit.

The only question which admits of any doubt is whether the present suit is maintainable. We have been referred to a large

number of decisions of this and other High Courts, and it is contended that such a suit as this cannot be maintained unless it is instituted under order 1, rule 8, of the Code of Civil Procedure, and that individual Muhammadans are not entitled to reliefs such as are claimed in the present suit. There can, we think, be no doubt that a suit of this nature might be brought on behalf of the Muhammadan community, and we think that if the defendants had raised the question in the court of first instance, the Munsif might well have said that in the exercise of his discretion he would not give a declaratory relief unless the plaint was amended and the suit was brought on behalf of the whole Muhammadan community. There has been a great deal of litigation about this property and it would have been well if the suit had been so constituted as to put an end to all disputes once for all. It is difficult to see how the decision arrived at in the present case could be taken advantage of by, or be held binding on, the Muhammadan community in general. But it seems to us that on the authorities we are bound to hold that the plaintiffs are entitled to maintain the suit. In the case of *Jawahra* v. *Akbar Husain* (1) it was held by a Full Bench of five Judges that every Muhammadan who has a right to use a mosque for purposes of devotion is entitled to exercise such right without hindrance and is competent to maintain a suit against anyone who interferes with its exercise, irrespective of the provisions of sections 30 and 539 of the Code of Civil Procedure, 1882. In the present case the defendants interfered with the rights of the plaintiffs and attempted to turn them out of the mosque. We are bound to follow the decision of the Full Bench, which has been followed in other cases, and we must, therefore, hold that the plaintiffs are entitled to maintain this suit. There are other cases in this Court in which the Full Bench decision was followed, the latest case being that of *Dasondhay* v. *Muhammad Abu Nasar* (2). The relief claimed by the plaintiffs is perhaps a little wider than it should have been. But the defendants did not object to the form of relief claimed in the court of first instance, nor in the grounds of appeal to the lower appellate court did they contend that the suit should have been instituted under order 1, rule 8. The decision in this case will, as the District Judge has observed, be binding only as between the

(1) (1884) I. L. R., 7 All., 178. (2) (1911) I. L. R., 33 All., 660.

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plaintiffs and the defendants. In these circumstances we do not think it necessary to interfere with the decree. The appeal is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Sir Harry Griffin and Mr. Justice Chamier.

1913

February, 14.

HADI HASAN KHAN (PLAINTIFF) *v.* PATI RAM (DEFENDANT.) *

Act (Local) No. II of 1901 *(Agra Tenancy Act), section* 4, *chapter X*—"*Land*"—*Resumption of rent-free grants*—*Grove-land*—*Suit for resumption of grove-land not maintainable in Revenue Court.*

Held that grove-land not being "land held for agricultural purposes" within the meaning of section 4 (2) of the Agra Tenancy Act, 1901, nor "land" within the meaning of Chapter X of the Act, no suit will lie in a Revenue Court for resumption of a rent-free grant of grove-land. *Sheo Mangal* v. *Sardar Singh* (1) and *Megh Singh* v. *Nazar Fatma* (2) referred to.

THIS was a suit under sections 150 and 154 of the Agra Tenancy Act, 1901, for resumption of a rent-free grant. The plaintiff alleged that the grant was made for the performance of a specific service in connection with the *Holi*, which he no longer required. The court of first instance (an Assistant Collector of the first class) decreed the claim. On appeal, however, this decision was reversed by the District Judge, on the ground that the land, being grove-land, was not 'land held for agricultural purposes' within the meaning of section 4 (2) of the Tenancy Act, and was not 'land' within the meaning of the word as used in Chapter X of the Act. The suit was accordingly dismissed. The plaintiff appealed.

The Hon'ble Dr. *Tej Bahadur Sapru* and Maulvi *Muhammad Rahmatullah*, for the appellant.

Munshi *Govind Prasad*, for the respondent.

GRIFFIN and CHAMIER, JJ. :—This was a suit under sections 150 and 154 of the Tenancy Act for resumption of a rent-free grant. The plaintiff alleged that the grant was made for the performance of a specific service in connection with the *Holi*, which he no longer required. The Assistant Collector decreed the claim, but on appeal his decision was reversed on the ground that the land, being grove-land, was not 'land held for agricultural purposes' within the

* Second Appeal No. 413 of 1913 from a decree of F. E. Taylor, District Judge of Bareilly, dated the 27th of February, 1912, reversing a decree of Abdul Hadi Khan, Assistant Collector, First Class, of Bareilly, dated the 4th of September, 1911.

(1) (1909) 6 A. L. J., 749. (2) Select Decisions of 1911, No. 4.