

occasions, including foreclosure actions, when the managers of a joint Hindu family so effectively represent all other members of the family that the family as a whole is bound. It is quite clear from the facts of this case and the findings of the courts upon them that this is a case where this principle ought to be applied. There is not the slightest ground for suggesting that the managers of the joint family did not act in every way in the interests of the family itself, and no question arises under section 85 of the Transfer of Property Act, 1882, because the mortgagee had no notice of the plaintiffs' interests. Their Lordships have therefore no hesitation in deciding that there is no reason for interfering in the decision of the High Court. They will, therefore, humbly advise His Majesty that this appeal should be dismissed and that the appellants should pay the costs.

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Appeal dismissed.

Solicitor for the appellants:—*Douglas Grant.*

Solicitors for the first respondent:—*T. L. Wilson, & Co.*

J. V. W.

MISCELLANEOUS CIVIL.

Before Mr. Justice Tudball and Mr. Justice Muhammad Rafiq.
 RAJ KISHORE DAS (PETITIONER) v. JAINT SINGH AND OTHERS
 (OPPOSITE PARTY).*

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 March, 6.

Lease—Expired term of lease bequeathed to widow—Widow holding over on expiry of lease—Grant by Government to widow of property the subject of the lease—Nature of estate taken by widow.

A lease of a village in Kumaun was granted by the Government in 1844 for a period of twenty years. The lessee died in 1852 having left his interest in the village (without clearly specifying what it amounted to) to his widow for life and after her to her daughter for life with a reversion in favour of a certain temple. The widow, however, continued in possession of the village down to 1871, when the Government granted her a proprietary interest in it, which she subsequently sold.

Held, on suit for possession after the death of the widow and her daughter by a person obtaining as reversioner to the original lessee, that the estate which the widow acquired in 1871 as the grantee of the Government was her own personal estate and not merely an enlargement of the leasehold estate of her husband, and that the plaintiff had consequently no right to succeed.

* Civil Miscellaneous No. 129 of 1913.

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THIS was a reference by the Local Government under rule 17 of the rules and orders relating to the Kumaun Division, 1894. The facts out of which it arose were as follows :—

In 1844 a settlement of certain tracts of jungle and waste land in the district of Kumaun was made with one Tula Ram Sah for the period of 20 years at an assessment of Rs. 3 a year, by means of a farming or *mustajiri* lease granted by the Government to him. In 1851, Tula Ram Sah made a will by which he bequeathed the whole of his property to his wife, Musammat Ratni, for her life, and after her death to his daughter for her life, and the reversion to the temple of Sri Jagannathji. Tula Ram died in 1852, and after his death Musammat Ratni obtained possession of his property including the said tracts of land. Her possession over these lands continued up to 1871. In that year the Government made a grant to her of full proprietary rights thereto. Soon after the grant Musammat Ratni sold these lands to the defendants or their predecessors in interest.

After the death of Musammat Ratni and that of her daughter the manager and trustee of the temple of Sri Jagannathji sued as reversionary legatee of the will of Tula Ram, for recovery of possession of these lands from the defendants. He contended that Musammat Ratni could not pass to the defendants anything more than her life interest which she had derived under her husband's will. The defendants pleaded that Musammat Ratni was a full owner when she sold the property to them and passed to them rights of full ownership. They also raised other pleas, one of them being that if the plaintiff was entitled to possession he should first pay them compensation for the improvements made by them to the estate. The Deputy Commissioner dismissed the suit on the ground that Musammat Ratni was the absolute owner of the property at the date of the sale by her to the defendants. This decision was upheld by the Commissioner on appeal. The plaintiff petitioned the Local Government, who referred the case to the High Court.

The Hon'ble Dr. *Sundar Lal*, for the applicant (plaintiff):—

The exact terms of the lease granted to Tula Ram are not available; but a reference to the settlement records and other publications shows that the lease was a sort of farming lease

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(*mustajiri*) carrying with it an understanding that if the Government was satisfied with the efforts of the lessee to improve the land, proprietary rights would be bestowed on him or on his heirs. This was the settled and declared policy of the Government; and in accordance with it proprietary rights were conferred on the *mustajirs* at the settlement of 1871, so that there were no *mustajirs* left after that settlement.

Thus the nucleus of the proprietary rights was already with Tula Ram, which would ripen in time to full rights of ownership. As legatee under his will his widow obtained a life interest in his rights for the residue of the term of the lease, with the probability that those rights would ripen into full ownership; and when they did so ripen she continued to hold the enlarged estate for her life, with reversion to the other legatees. The enlargement of the estate would enure for the benefit of the estate and not for her own personal benefit. Her estate would continue to be a life estate merely, and she could not confer anything more upon the defendants; *Kashi Prasad v. Inda Kunwar* (1); *Siroya*, Hindu Woman's Estate, page 113. Cases of confiscation and subsequent re-grant of the former estate by the Government are analogous; for example the case of *Baboo Beer Pertab Sahee v. Maharajah Rajender Pertab Sahee* (2). The principle of the following cases is also applicable, *Pingala Lakshmi pathi v. Bommireddipalli Chalamayya* (3) and *Subburaya Chetty v. Aiyaswami Aiyar* (4).

If the Government had granted to Musammat Ratni some other property she might then become full owner in her own individual right. The grant was made of the same land; and it was made to her in, and by virtue of, her capacity as the heir of the *mustajir* Tula Ram. The grant was made in accordance with the policy of the Government to confer the full estate upon those who already held the limited interest.

Dr. *Satish Chandra Banerji*, for the opposite party (defendants):—

Tula Ram was only a *mustajir*; he had no proprietary rights. The Government might or might not choose to confer such rights on him afterwards. It has not been shown that there was any

(1) (1908) I. L. R., 30 All., 490.

(3) (1907) I. L. R., 30 Mad., 494.

(2) (1867) 12 Moo. I. A., 1 (34).

(4) (1906) I. L. R., 32 Mad., 86.

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guarantee, or that it was an invariable practice to confer full rights upon *mustajirs*. A reference to Government records and Board circulars shows that *mustajiri* rights would cease at once on the determination of the term of the *mustajiri*, and that they were not transferable. No nucleus of proprietary rights had vested in Tula Ram. Thus, Tula Ram had no interest in the land which he could devise by will. The plaintiff has derived no title under the will, and, Tula Ram not having any devisable interest in the property, Musammat Ratni's possession was, from the outset in her own individual capacity and not in the capacity of legatee of Tula Ram's estate. Even if Tula Ram could devise or transfer the unexpired remainder of the farming lease, the rights of the transferee or legatee would terminate on the expiry of the term of the lease, in 1864. In that year the operation of the will came to an end. After that year Musammat Ratni's possession could in no way be deemed to be that of a legatee of her husband's estate. Since 1864, at all events, her possession was in her own personal right and capacity, and it was in that right and capacity that she acquired full proprietary rights in 1871. She was, therefore, competent to transfer absolute rights of ownership to the defendants. If the legatee continues in possession after the term of the original grant has expired, and then acquires full rights he cannot be said to have acquired the property in his capacity of legatee. If during the continuance of the original lease the legatee acquires full rights then the matter is different, and the doctrine of graft applies; *Keech v. Sandford* (1). Where the original estate is not extant there can be no engrafting. It has been held that if the tenant holds over, the term of the original lease is not thereby extended. The fact that Musammat Ratni was holding over after expiry of the term of the lease in 1864 could not extend the lease beyond 1864. The rulings cited by the applicant are not applicable to the facts of this case. I rely on the analogy of the case of *Brij Indar Bahadur v. Ranee Janki Koer* (2).

The Hon'ble Dr. *Sundar Lal*, in reply:—

The holding over for a shorter term is in effect a renewal of the original lease for that term. It is by reason of the person

(1) (1726) 2 W. and T., 7th Ed., p. 693. (2) (1877) L. R., 5 I. A., 1.

being the former tenant that the law implies a renewal of the lease. A stranger would not be treated in this way. In effect the term of the original *mustajiri* was being extended from year to year since 1864 until the Settlement of 1871. She was holding as a *mustajir*, and it was in that capacity that proprietary rights were granted to her. So the doctrine of graft applies.

TUDBALL and MUHAMMAD RAFIQ, JJ.—This is a reference under rule 17 of the rules and orders relating to the Kumaun division. The facts of the case out of which the reference has arisen are as follows. In the year 1844 one Tula Ram Sah was a Government treasurer at Almora. The village of mauza Nagar, together with its appurtenant hamlets called Bajera, &c. was lying waste. At the settlement of that year a farming lease of the same was offered to Tula Ram for a period of twenty years, on payment of a sum of Rs. 3 per annum. Tula Ram appears to have been very unwilling to accept this generous offer of the Government. The completion of the matter was delayed for about two years, until in 1846 he was finally forced to accept a *patta* and to execute an agreement. In 1851 he executed a will under which he left the whole of his estate without specification of its details to his wife for her life and on her death to her daughter, Musammat Gangotri, for her life with reversion to the temple of Jagannath, the trustee of which is the plaintiff in the present suit. Tula Ram died in 1852. His widow Musammat Ratni sold all her right, title and interest in the above-named village to the predecessor in title of the present defendants. They have been in possession since then ostensibly as owners. Prior to their purchase the vendees appear to have been *khaikars*, or a class of occupancy tenants in possession of cultivated lands. Musammat Ratni died, but her daughter Musammat Gangotri remained alive till 1904. The present suit was brought soon after her death by the trustee of the temple of Jagannath to recover possession from the defendants on the ground that the estate of Musammat Ratni was only one for her life and that, the two life estates having now vanished, the plaintiff as remainderman under the will was entitled to the property and that Musammat Ratni had no power to transfer more than her life interest under the will. The defendants met the case by pleading that Musammat Ratni on the date of the sale was the absolute

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owner of the property and had power to transfer to them full right of ownership. There was a further plea that, even if the plaintiff was entitled to the estate, still section 51 of the Transfer of Property Act applied in respect to those improvements which had been made by the defendants, and the plaintiff would not be entitled to possession unless and until he made good to the defendants the expenditure incurred by the latter on the said improvements. It was also pleaded that the defendants were persons who had a right, at the date of the sale, to occupy and cultivate the said lands, and, even if absolute title did not pass to them, they have not lost that right and still are entitled to retain actual physical possession as *khaikars*. The suit was dismissed by the District Judge, who held that Musammatt Ratni was, at the date of the sale, an absolute owner of the property. He held that section 51 of the Transfer of Property Act would apply even if the widow had only a life-interest. He also held that the plaintiff's claim to possession was barred by the re-emergence of the previous occupancy rights of the defendants. This decision was upheld by the Commissioner on appeal and the Local Government have referred to us seven points for an expression of our opinion.

The first question and the most important is "was Musammatt Ratni's title previous to 1871 based on the will of her husband, or on mere possession." It should be noticed in the beginning that the will of Tula Ram Sah makes no special mention of his estate in the village now in suit. His exact right in this village is not absolutely clear. There can be no doubt from the settlement record of 1844 that a lease was granted to him, but no copy of this lease is forthcoming. It is not to be found on the settlement record, and his agreement, dated the 8th of August, 1846, does not set out the terms and conditions on which the lease had been granted to him. It is clear that the lease was for a fixed period, which came to an end in 1864. Whether his rights as a lessee were transferable or not is by no means clear. A reference to the selections of the records of the Government of the North-Western Provinces, known as Mr. Thomason's Despatch, volume II, at pages 202, 203 and 204, specially to paragraph 9 on page 204, goes to show that a farming tenure such as was granted to Tula Ram was not transferable. It shows clearly that such a

lease, however, terminated on the expiry of the period for which it was granted. On behalf of the defendants it is urged that when Tula Ram died in 1852 the lease came to an end, and if his widow Musammat Ratni continued to hold the property she could not possibly have held *quâ* legatee under the will, but only in her own personal right. It is further urged that, even supposing that the lease continued to run for its full period, and that she held the property during that period *quâ* legatee under the will, still the leasehold came to an end in 1864, that is some seven years before 1871, the date of the transfer, and that when she continued to hold from 1864 to 1871 she held in her own right either as a lessee direct from the Government or as a trespasser. In the year 1871 the Government bestowed on her full proprietary title in the estate in dispute. On behalf of the defendants it is urged that this is an acquisition of her own, and that she had therefore full power to transfer it by a deed of sale. On behalf of the plaintiff it is urged, however, that Musammat Ratni, from the date of her husband's death up to the year 1871, was holding this estate as a legatee under the will having therein only a life estate; that while she held in this capacity the estate was enlarged, and that the enlargement is one which enured to the benefit of the estate and as such must pass over to the remainderman. The decision of the point depends on the capacity in which Musammat Ratni was holding the village now in dispute in 1871, at the time when the Government in pursuance of a general policy of not retaining proprietary possession in its own hands, bestowed proprietary title on many persons, some of whose claims thereto were vague and some who as farmers had no claim at all. As we have pointed out above, it is by no means clear on what terms this property was leased to Tula Ram. It seems highly probable that the rights of a lessee were not transferable. But it is impossible to come to a definite finding in the absence of clear evidence on the point. It is, however, quite clear that the term of the lease came to an end in 1864, and it was then in the option of the Government to grant a fresh lease to anybody to whom it might think fit to grant it. As a matter of fact it allowed Musammat Ratni to continue in possession, and in the year 1871, finding her to be a person who had apparently brought the village under cultivation and settled tenants on it, and therefore a

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fit person on whom to bestow proprietary rights, it made a free gift to her of those rights. The estate of Tula Ram, whatsoever it may have been in the village in dispute, came to an end at least in the year 1864, and in our opinion the possession of Musammat Ratni from that time onwards was the possession of herself in her own personal right and not possession of any portion of Tula Ram's estate under the will. This is our answer to the first question.

The second question is :—“ If her possession up to 1871 was based on the will, did the enlargement of her legal estate, by settlement proceedings in 1871, operate to alter her title as legatee with a life-interest to a title of grantee with absolute interest ?” It is quite clear that if her possession up to 1871 was based on the will the enlargement of the legal estate could not operate to alter the capacity in which she held it. If she held it *quâ* legatee under the will, the enlargement of the estate must have operated as an enlargement of the estate of her husband for the benefit of the remainderman under the will. It could not in any way create in her a title as a grantee with absolute interest.

The third question is :—“ What interest in the property in suit did the sale-deed by Musammat Ratni in favour of the defendants operate to transfer ?” In view of our reply to the first question the answer to this question is that the sale-deed operated to transfer full proprietary title to the vendees.

The fourth question is :—“ Was the Commissioner right in upholding the District Judge's decision, that the right of the plaintiff as reversioner under the will to possession was barred by the re-emergence of previous occupancy rights of the defendants transferees ?” It is admitted on behalf of the plaintiff that as reversioner under the will he would be entitled only to proprietary possession, and that any occupancy rights previously acquired by the defendants could not be affected in any way, and they would be entitled to retain actual physical possession with such occupancy rights ; the proprietary title being in the plaintiff. This in our opinion is correct and our answer to the question is that the decision of the Commissioner is correct only to the above extent.

The fifth question relates to section 51 of the Transfer of Property Act. If the plaintiff's case be a good one, and if he is entitled to proprietary possession of the property, it is quite clear

to our minds that section 51 of the Transfer of Property Act has no application to the case at all. The defendants, if the plaintiff's case be a good one, were persons who purchased from a widow in possession of the estate either as a legatee under her husband's will or in the ordinary way as a Hindu widow, and in such a case section 51 of the Act could have no application.

Our reply to the sixth question is that the decision of the District Judge as upheld by the Commissioner was correct on two points and incorrect on the third.

As to the relief if any to which the plaintiff is entitled we would hold that the plaintiff is entitled to no relief at all and his suit ought to stand dismissed with costs in all courts.

APPELLATE CRIMINAL.

Before Mr. Justice Muhammad Rafiq and Mr. Justice Piggott.

EMPEROR v. GAYA PRASAD AND OTHERS.*

Act No. XLV of 1830 (*Indian Penal Code*), section 62—Sentence—Forfeiture of property—Offences in respect of which forfeiture is a suitable penalty.

Hold that section 62 of the Indian Penal Code which empowers a court to order in certain cases the property of a convicted person to be forfeited to the Crown, should ordinarily be applied in cases of crimes against the State or affecting the safety of the public generally.

So far as they are necessary for the purposes of the present report the facts of this case are briefly as follows:—

Four persons—Gaya Prasad, *Brahmin*, Chadammi Lal, *Mallah*, Raja Ram, *Brahmin*, and Nanhe, *Bhat*—were tried before the Sessions Judge of Cawnpore on a charge under section 302, Indian Penal Code, in respect of the murder of a woman named Musamat Janki Kunwar and a boy eleven or twelve years of age named Durga. They were found guilty and sentenced to death. The Sessions Judge also, under section 62, Indian Penal Code, passed an order of forfeiture in respect of all the property of the accused Chadammi Lal. The record was submitted in due course by the Sessions Judge for confirmation of the sentences of death and the four accused also filed appeals.

* Criminal Appeal No. 157 of 1914, from an order of Austin Kendall, Sessions Judge of Cawnpore, dated the 11th of February, 1914.

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