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March, 9.

Before Mr. Justice Piggott and Mr. Justice Walsh.

MIR DAD KHAN AND ANOTHER (DEFENDANTS) *v.* RAMZAN KHAN AND OTHERS (PLAINTIFFS). *

Act (Local) No. II of 1901 (Agra Tenancy Act), sections 10 and 20—Attempt to evade the provisions of the law as to the alienation of sir land—Mortgage and relinquishment of ex-proprietary rights executed by two separate documents of even date.

Certain zamindars, appurtenant to whose proprietary share was a considerable area of *sir* land, executed on the same day in favour of creditors to whom they were indebted to the extent of Rs. 9,000, two documents. By one of these the proprietors covenanted to mortgage with possession 30 bighas of land forming part of their *sir* lands. They recited that they had put the mortgagees in actual possession of the land in question, surrendering all their rights in the *sir* and *khudkasht*. They further covenanted that if the mortgagees should fail to obtain possession, or if the mortgagors should after all not give up the *sir* land from their own cultivation, or should set up any claim to hold it as ex-proprietary tenants, then the mortgagees should be entitled to sue for their mortgage money with heavy interest and to enforce the same by sale of the proprietary rights of the mortgagors, not merely in the 30 bighas of *sir* land, but in a total area of 63 bighas and odd belonging to the mortgagors. The consideration of this document was stated at a sum of Rs. 8,000. A further attempt was made to safeguard the mortgagees by the insertion of a covenant that they should, further, be entitled at any time to sue for the principal of their mortgage debt and to bring to sale the proprietary rights of the mortgagors in this area of 30 bighas, which was formally hypothecated as security for the debt. The other document was a deed of relinquishment, by which the mortgagors under the former deed purported to surrender or to relinquish in favour of the mortgagees in return for a consideration of Rs. 1,000, their rights as ex-proprietary tenants in the 30 bighas of *sir* land in question.

Held, that the whole transaction was but a single one effected under cover of two deeds, and was nothing more than an attempt to evade by an ingenious device the provisions of sections 10 and 20 of the Agra Tenancy Act, 1901.

Moti Chand v. *Ikram-ullah Khan* (1) and *Dipan Rai* v. *Ram Khelawan* (2) followed. *Lekhraj* v. *Parshadi* (3) discussed.

THE facts of this case are fully set forth in the judgment of PIGGOTT, J.

Babu *Panna Lal*, for the appellants.

Mr. *M. L. Agarwala* and Babu *Girdhari Lal Agarwala*, for the respondents.

* First Appeal No. 149 of 1916, from a decree of Shams-ud-din Khan, First Additional Subordinate Judge of Aligarh, dated the 26th of January, 1916.

(1) (1916) I. L. R., 39 All., 173. (2) (1910) I. L. R., 32 All., 383.

(3) (1909) 6 A. L. J., 713.

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PIGGOTT, J.—The suit out of which this first appeal arises is based upon the following state of facts :—

Mir Dad Khan and others were the owners of proprietary rights in a certain mahal. Appurtenant to these proprietary rights was a considerable area of land of which these zamindars were in possession either as *sir* or *khudkasht*. With reference to the *khudkasht* land it is sufficient to say that it was land which had been held by the proprietors in their own cultivation for the full statutory period and which had, therefore, acquired the essential character of *sir* land, so far as section 10 of the Local Tenancy Act, No. II of 1901, is concerned. For purposes of brevity, therefore, it will be convenient hereafter to speak of the *sir* lands of Mir Dad Khan and others. Now these proprietors were indebted, and the evidence on the record shows that there was a decree out against them for a sum of Rs. 9,000, held by Thakur Das and others. The proprietors endeavoured to come to terms with these creditors, and I do not think that there can be any doubt as to the nature of the arrangement effected. The creditors were willing to accept a usufructuary mortgage for Rs. 9,000, that is to say, for a sum sufficient to pay off their decree, provided that the land mortgaged, being 30 bighas of the *sir* land of the debtors, should pass into their actual cultivating possession. In endeavouring to effect such a transaction the parties concerned had to get round the difficulties placed in their way by Statute, that is to say, by the Local Tenancy Act, and particularly by sections 10 and 20 of that Act. It so happens that the law on this point has been recently settled by the highest possible authority in the case of *Moti Chand* v. *Ikramullah Khan* (1). So far as I am concerned, I think I am entitled to say that there is nothing in the propositions of law there laid down other than I have been consistently asserting for some years past, or other than were given effect to by Mr. Justice TUDBALL and myself in the case of *Dipan Rai* v. *Ram Khelawan* (2). Their Lordships of the Privy Council, in deciding the case before them, by no means overlooked the provisions of section 83 of the Tenancy Act, according to which a tenant may at the end of any agricultural year surrender his holding to

(1) (1916) I. L. R., 39 All., 173. (2) (1910) I. L. R., 32 All., 383.

his proprietor. What they point out is that this right of surrender cannot be permitted to be used in such a manner as to defeat the provisions of the law by which ex-proprietary tenancies are created. They point out that the policy of Act No. II of 1901, is to secure and preserve to a proprietor whose proprietary rights in a mahal, or in any portion of it, are transferred, otherwise than by gift or exchange between co-sharers in the mahal, a right of occupancy in his *sir* lands. Such right of occupancy is secured and preserved to the proprietor, who becomes by a transfer the ex-proprietary tenant, whether he wishes the right to be secured and preserved to him or not, and notwithstanding any agreement to the contrary between him and the transferee. It is further pointed out that the courts must not allow the policy of the Act to be defeated by any ingenious devices, arrangements or agreements between a vendor and a vendee for the relinquishment by the vendor of his land. They go on to point out, more particularly, that devices to compel such a surrender by the inclusion in the deed of transfer of provisions amounting to a penalty against the transferor, in the event of his failing to relinquish the ex-proprietary tenancy, must also be regarded as devices or arrangements for defeating the policy of the Act. Cases in which attempts have been made, more or less openly, to evade the provisions of the law on the subject of ex-proprietary tenancies do from time to time come before the courts, and we have to notice more particularly the decision of a Bench of this Court in *Lekhraj* v. *Parshadi* (1), in which it would appear that a transaction which one might at least suspect of having been of this nature was given effect to by the court. According to their Lordships of the Privy Council I take the true test to be this:—If a covenant to relinquish the *sir* lands is part of the transaction of sale or of mortgage, then the agreement to surrender will be void and unenforceable, no matter what ingenious devices may be employed to give colour to it. If the court is satisfied that there was first of all a transfer by way of sale or mortgage and that the transferee, having obtained the status of an ex-proprietary tenant, with full knowledge of that fact and of the rights preserved to him by the Statute, deliberately

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chooses, as a separate transaction, to relinquish his ex-proprietary tenancy into the hands of the new proprietor, or of the mortgagee in possession, then the law cannot go further in the way of protecting a reckless and imprudent man against the consequences of his own acts.

In the present case what we have to consider is the nature of the agreement actually entered into between Thakur Das and his fellow creditors on the one hand and Mir Dad Khan and his fellow zamindars on the other. Two documents were executed on one and the same date, namely, the 19th of June, 1913. By one of these documents the proprietors covenanted to mortgage with possession 30 bighas of land forming part of their *sir* lands. They declared themselves to have put the mortgagees in actual possession of the land in question, surrendering all their rights in the *sir* and *khudkasht*. They further covenanted that, if the mortgagees should fail to obtain possession, or if the mortgagors should after all not give up the *sir* from their own cultivation, or should set up any claim to hold it as ex-proprietary tenants, then the mortgagees should be entitled to sue for their mortgage money with heavy interest and to enforce the same by sale of the proprietary rights of the mortgagors, not merely in the 30 bighas of land already referred to, but in a total area of 63½ bighas and odd belonging to the mortgagors. The consideration for this document was stated at a sum of Rs. 8,000. A further attempt was made to safeguard the mortgagees, in any event, against a possible refusal on the part of the mortgagors to carry out the contract in its entirety. The mortgagees did not content themselves with taking a usufructuary mortgage pure and simple. They inserted a covenant that, in spite of their right to obtain possession of the 30 bighas of land and to enjoy the usufruct in lieu of interest, they should nevertheless be entitled at any time to sue for the principal of their mortgage-debt and to bring to sale the proprietary rights of the mortgagors in this area of 30 bighas, which were formally hypothecated as security for the debt. The other document of the same date was a deed of relinquishment, by which the mortgagors under the former deed purported to surrender, or to relinquish in favour of the mortgagees, in return for a consideration of Rs. 1,000, their

rights as ex-proprietary tenants in the 30 bighas of *sir* land in question. Whatever doubt there may be in particular cases as to the precise nature of the transaction entered into, it seems to me that there is no room for doubt in the present case. The total sum of money which Mir Dad Khan and his fellow zamindars owed to Thakur Das and others was Rs. 9,000, and this was distributed between the two deeds, the mortgage-deed and the deed of relinquishment. Moreover, the mortgage-deed itself contained, not merely an express stipulation to put the mortgagees in actual cultivating possession of the *sir* lands, but a penalty clause binding the mortgagors not to assert their rights as ex-proprietary tenants. The transaction, therefore, was one single transaction effected under cover of two deeds. It was a determined attempt to evade "by ingenious devices and arrangements," as their Lordships of the Privy Council have put it, the provisions of sections 10 and 20 of Act No. II of 1901. It is quite immaterial that, according to the terms of the two documents, the surrender purports to have been actually effected. In any such attempt to get round the provisions of the law the transferee is certain to insist upon a statement that he has actually been put in possession and that the surrender which he desires has actually been effected. I must note, however, that the mortgage-deed in question is not a usufructuary mortgage pure and simple; to a certain extent it is a combination of a simple and a usufructuary mortgage, and is therefore what the courts in India commonly speak of as an anomalous mortgage. We are principally concerned in the present case with the effect of this document as a usufructuary mortgage. On the principles laid down by their Lordships of the Privy Council all the stipulations about the surrender of ex-proprietary rights and about the transfer to the mortgagees of actual cultivating possession over this area of 30 bighas are void and unenforcible. The penalty clause goes along with the rest, being strictly analogous to the sort of device spoken of by their Lordships of the Privy Council at the close of the judgment already referred to, whereby the vendor covenants to make himself liable to a suit for breach of contract on his failing or refusing to carry out the stipulated relinquishment of his ex-proprietary rights. Such a stipulation would, in the

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opinion of their Lordships, be void and unenforceable. I can see nothing in the stipulation in the deed in suit by which the mortgagors bound themselves, in the event of their setting up any claim to possession as ex-proprietary tenants, to submit to a decree for sale against their proprietary rights in an area of 63 bighas and odd, to distinguish it from a stipulation that they should be liable to a suit for damages, or to any other kind of penalty, in the event of their failure to relinquish. In the view of the case which I take I am by no means disposed to differ from such decisions as that which we have been referred to, viz., I. L. R., 39 All., p. 539, where a mortgage affecting some property which was transferable, along with other property which was by law non-transferable, was allowed to be enforced against the former of the two properties. I do not say for a moment that the mortgage-deed in suit, regarded as a usufructuary mortgage, was altogether void and of no effect. What it gave the mortgagees was the right affirmed by Mr. Justice TUDBALL and myself in *Dipan Rai* v. *Ram Khelawan* (1), namely, the right to proprietary possession in respect of this area of 30 bighas and the right to have rent assessed thereon upon the mortgagors, as ex-proprietary tenants, and to receive and enjoy the said rent in lieu of interest on their money. This was no doubt less than the mortgagees wanted and hoped to secure by the transaction, but it was the legal effect of the transaction actually entered into, in view of the provisions of section 10 of the Tenancy Act, by which the ex-proprietary tenure was preserved to the former proprietor, "whether he wished it or not," as the Privy Council have said. We have been asked, however, to consider further the anomalous nature of this mortgage and the legal effect of hypothecation of the proprietary rights in this area of 30 bighas as security for repayment of the principal loan. For reasons which I shall have to state presently, I do not think that any decision on this point is necessary to the determination of this appeal. My own opinion undoubtedly is that the original mortgagees, Thakur Das and others, could have enforced this stipulation. They could have taken up the position that the contract of mortgage which they had entered into was

(1) (1910) I. L. R., 32 All., 388.

a usufructuary mortgage combined with a simple mortgage; that they had made a mistake in attempting to evade the statute law by the terms of their usufructuary mortgage, and that they, therefore, claimed to fall back upon the document as a simple mortgage and to ask for a decree on that basis. It may, however, be noticed at the same time that this remedy would have been worth extremely little to the mortgagees. If the proprietary rights of Mir Dad Khan and his fellow zamindars in this area of 30 bighas had been brought to sale on a decree enforcing the hypothecation of the same for repayment of the loan of Rs. 8,000, the sale itself would at once have given rise in favour of the mortgagors to this very ex-proprietary tenure which it was the object of the deed in suit to get round. The purchaser at auction, whether Thakur Das, or another, would have had to be content with the rent assessed by the Collector on this ex-proprietary tenure as representing to him the usufruct of the property purchased. This right the original mortgagees could enjoy as mortgagees under the usufructuary part of the mortgage, and it would not have made much difference to them to have endeavoured to work out the same result by enforcing the hypothecation lien, if that were limited (as it must be limited apart from the penalty clause) to the proprietary rights in the area of 30 bighas.

The case now before us is not between the mortgagors and the original mortgagees. The plaintiffs, who are the respondents to this appeal, were co-sharers in the same mahal, and the transfer of the proprietary rights of Mir Dad Khan and others by way of usufructuary mortgage gave rise to a right of pre-emption on their part. This right they claimed to enforce and they brought a suit accordingly. That suit was finally settled by a compromise and the compromise decree, which is dated the 16th of June, 1914, gives these plaintiffs as pre-emptors the right of possession as mortgagees over the property pre-empted, that is to say, over the 30 bighas of *sir* land in suit. It gives them nothing more: even if what I have called the penalty clause of the original contract of mortgage were enforceable by the original mortgagees, which I believe it was not, there is nothing in this decree to make it enforceable by the pre-emptors,

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Still less does this decree give the plaintiffs any right, under the mortgage-deed of the 19th of June, 1913, to bring the property to sale under the hypothecation effected in the earlier part of the said deed. I doubt whether an alienation by way of simple mortgage would have given rise to any right of pre-emption. The presumption is that persons possessing the right of pre-emption would have had to wait until the property was brought to sale in enforcement of the hypothecation lien, and then to have asserted any rights of pre-emption which they might claim. However this may be, the pre-emption decree actually passed does not transfer to these plaintiffs any rights as simple mortgagees in respect of the land in suit.

In the suit as brought the plaintiffs claim the full benefit of the terms of the mortgage of the 19th of June, 1913. They say that they are entitled to actual possession over the area of 30 bighas in question or, failing this, that they are entitled to recover the mortgage debt of Rs. 8,000, with interest at 2 per cent. per mensem under the penalty clause of the mortgage-deed, by sale of the area of 63 bighas and odd referred to in that clause. The learned Subordinate Judge who tried the case was not an officer with any revenue experience, nor had he before him at the time of his decision the clear pronouncement of their Lordships of the Privy Council to which reference has already been made. It is, therefore, no imputation against him to say that, in the very brief judgment pronounced by him, he has not shown much appreciation of the difficulties of the case. He has definitely held that the plaintiffs were not entitled to possession as mortgagees over the land in suit, but he has enforced in their favour the penalty clause in the original contract of mortgage, which they were most certainly not entitled to have the benefit of. The decree as passed is for recovery of the principal of Rs. 8,000, with arrears of interest and costs, by sale of the 63 bighas and odd of land already referred to. From the operation of this decree, however, a certain share has been excluded, on the ground that one of the former proprietors was a minor and that his certificated guardian joined in this mortgage on his behalf without having duly obtained the sanction of the District Judge. We have a petition of cross-appeal before us

challenging the decision of the trial court on this point; but in view of the decision which we have arrived at on the main question it seems unnecessary for us to go into it. If the appeal of the defendants succeeds the cross-objection must obviously fail.

Now, as regards the appeal of the defendants, I have already given abundant reasons why in my opinion the decree as passed cannot stand. In the very able and ingenious argument addressed to us by Mr. *M. L. Agarwala* on behalf of the respondents, although he very properly declined to give up any part of his client's case, it is doing him no injustice to say that he could not make out much of a case for affirming the decree of the court below as it stands. What he really pressed upon us was the right of his clients to one or other of two different reliefs. He contended that, in any event, his clients should be given the benefit of what I have called the hypothecation clause in the mortgage-deed of the 19th of June, 1913, and the proprietary rights of the mortgagors in the 30 bighas of land in question brought to sale, at least in satisfaction of the principal of the mortgage debt. In reply to the suggestion that the right to enforce this hypothecation clause had not passed to his clients under the pre-emption decree, Mr. *Agarwala* contended with much keenness that no plea to this effect had been taken in the written statement of any of the defendants. It seems a fair rejoinder to this to say that neither was any claim to this effect set up in the plaint. The claim in the plaint was for cultivating possession over the land in suit, by ejectment of Mir Dad Khan and his fellow mortgagors, or in the alternative, for enforcement of the penalty clause by the passing of a decree for sale in respect of the entire area of 63 bighas and odd. I feel quite satisfied that, whatever might have been the rights of Thakur Das and others in respect of the hypothecation of the area of 30 bighas, those rights did not pass to the present plaintiffs under the pre-emption decree and that therefore this relief is not open to them.

The other contention pressed upon us by Mr. *Agarwala* has caused me more difficulty. It is based not merely on the documentary evidence already referred to but upon certain evidence

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as to transactions which followed the execution of the mortgage-deed in suit. Broadly speaking, Mr. *Agarwala's* contention is this :—That the mortgagors, Mir Dad Khan, and others, whatever may or may not have been their rights under the deed in suit, did carry out their part of the contract by actually surrendering to the mortgagees, Thakur Das and others, the ex-proprietary tenancy which the Statute created in their favour. The argument is that the original mortgagees thus obtained actual cultivating possession of the land in question and enjoyed the same for the period of about a year : that by this possession the ex-proprietary tenure became finally extinguished and can no longer be set up against the plaintiffs pre-emptors. I admit the contention to be a highly ingenious one and the question which it raises seems to me of some difficulty. In the first place, however, I think that on the evidence on this record Mr. *Agarwala* is asking too much of us in the way of findings of fact in his favour. The patwari of the village was not put into the witness box nor were any of the original mortgagees called. We know from the plaint that Mir Dad Khan and the other mortgagors were in actual cultivating possession of the 30 bighas of land when the suit was instituted on the 5th of July, 1915, and the plaint certainly does not explain how or when they recovered that possession, if they did in fact surrender their ex-proprietary tenancy into the hands of the original mortgagees. One of the plaintiffs was put into the witness box and deposed that the mortgagees, Thakur Das and others, had entered into actual possession of the land. He said he himself failed to get actual possession because Mir Dad Khan forcibly cultivated it. He was cross-examined on this point in a manner which clearly showed that the defendants did not admit the facts stated by him to be correct, but the only evidence by which he sought to support himself was the production of certain records of the Revenue Courts showing the mutation proceedings which followed the execution of the mortgage-deed in suit. Now the execution of that deed required in any event to be taken due notice of in the village records. There had to be some mutation of names in respect of it and the natural tendency of the Revenue Court, unless their attention was specially called to the matter, would

be to effect formal mutation of names in accordance with the terms of the deed. What I notice more particularly is that the Tahsildar, on whom the duty of making the necessary preliminary inquiries lay, when reporting the matter for the orders of the Assistant Collector in-charge of the Sub-division, contented himself with mentioning that there had been a surrender of the ex-proprietary holding, keeping back the very important fact, which he should certainly have mentioned, that that surrender purported to have been made and attested by a deed of even date with the usufructuary mortgage itself, that is to say, at a time when it was at least doubtful whether the mortgagees were entitled to receive any such surrender, and under circumstances strongly suggestive on the face of them of an attempt to evade the law. The Assistant Collector appears to have passed his order for mutation of names, without further consideration or inquiry, on the strength of the Tahsildar's report. I am not satisfied therefore that this evidence proves that there was an effective surrender of the land in suit into the hands of Thakur Das, much less that the possession of Thakur Das and his fellow mortgagees lasted for the entire period of one year, or for anything like that period. It is of course possible that, as between the original mortgagees and the original mortgagors, the contract would have been carried out according to its terms, if the plaintiffs had not interfered with their suit for pre-emption. The fact remains that, by the time when the present plaintiffs tried to obtain the benefit of their pre-emption decree, they found the original mortgagors in effective possession of the land in suit and claiming to be exactly what the law says they are, namely ex-proprietary tenants of the same. Looking at the matter in its broadest aspect, I would say that the rights which these plaintiffs took under their pre-emption decree in respect of the mortgage deed in suit, regarded as a usufructuary mortgage, were simply the rights which the law would permit the original mortgagees themselves to take under the same, namely, the right to proprietary possession subject to an ex-proprietary tenancy in favour of the original mortgagors. This is the position taken up by the defendants in this suit, and I think that position is correct in law and that the plaintiffs are not entitled, either to

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the relief which has been decreed to them by the court below or to any of the reliefs which have been claimed on their behalf in the alternative. In this view of the case I would allow the appeal, set aside the decision of the court below and dismiss the plaintiffs' suit with costs, and similarly dismiss with costs the cross-objection filed by the plaintiffs respondents.

WALSH, J.—I agree. I think this is a colourable transaction. The two deeds were in fact an attempted sale of the ex-proprietary rights. If so, the case is clearly covered by the decision in *Dipan Rai* v. *Ram Khelawan* (1) and also by the observations of the Privy Council reported in I. L. R., 39 All., p. 173, where Sir JOHN EDGE, in delivering judgment, affirmed the principle laid down by the High Court that the transaction was not a lawful one, whether it was regarded as an attempted sale of the ex-proprietary rights or an agreement to relinquish those rights when they should arise, and pointed out that the policy of Act No. II of 1901, was that the right of occupancy should be secured and preserved to the proprietor who becomes by a transfer the ex-proprietor, whether he wishes it to be secured and preserved to him or not, and notwithstanding any agreement to the contrary between himself and the transferee.

The transactions in these two deeds are in substance one transaction which took place on the same day. They are in form inseparable, but I think that the same principle would apply even if they were in form separable. I apply the reasoning which was applied by the House of Lords in *Maas* v. *Pepper* (2). The law being in England that no mortgage of movable chattels can be entered into where the chattels remain in the possession of the grantor without a registered document, there had been a sale of furniture to an alleged purchaser, who by a contemporaneous document re-let them on a hire agreement for the original price at which he had bought them, *plus* an addition to that sum which the court regarded as merely interest under another name, the agreement giving to the hirer the right to become the owner by re-purchase if he paid the instalments under the agreement. Now those two documents were entirely independent in form. None the less the House of Lords held that the trial court had

(1) (1910) I. L. R., 32 All., 363. (2) (1905) A. C., 105, H. L.

been right in going behind the form and deciding what was in substance the real transaction, and pointed out that the sale was really a colourable sale to disguise what was in substance a loan. I think by the same reasoning this was a colourable relinquishment to disguise what was in fact a sale. No doubt an ex-proprietary tenant can, as such, surrender his rights by a proper relinquishment. Nobody can put the point, I think, better than it has been put by Mr. *M. L. Agarwala* at page 69 of his book on the Tenancy Act in this sentence :—" It comes to this, that though a proprietor can, in fact give up his ex-proprietary rights when they accrue, by not availing himself of them, he cannot bind himself by an express stipulation to that effect in a deed of transfer of the property or the like. "

I think that is what these documents purported to do. I agree with what my brother has said about the decision in *Lekhraj* v. *Parshadi* (1). Unless the facts of that case are distinguishable from this case by something which does not appear in the judgment, I am bound to say, having regard to the fact reported that the two transactions were contemporaneous in date, I should have found difficulty in holding that the alleged relinquishment in that case was not also a colourable transaction. To that extent I am unable to agree with the decision.

BY THE COURT:—We allow the appeal, set aside the decision of the court below and dismiss the plaintiff's suit with costs. We also dismiss with costs the cross-objection filed by the plaintiffs respondents.

Appeal allowed. Cross-appeal dismissed.

Before Mr. Justice Tudball and Mr. Justice Abdul Raoof.

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DEBI PRASAD AND ANOTHER (PLAINTIFFS) *v.* BADRI PRASAD (DEFENDANT).*

Act No. IX of 1908 (*Indian Limitation Act*), *section* 28 ; *schedule I, article* 144—*Right recurring at uncertain intervals—Right to take wood from trees when fallen or cut—Adverse possession.*

The father of the plaintiffs in 1867 obtained leave from the Collector to plant trees alongside a road on land belonging to Government. He expressed

* Second Appeal No. 712 of 1916, from a decree of G. C. Badhwar, Additional Judge of Farrukhabad, dated the 26th of January, 1916, confirming a decree of Ali Ausat, Officiating Subordinate Judge of Farrukhabad, dated the 19th of June, 1915.

(1) (1909) 6 A. L. J., 713 ; 2 Indian Cases, 409.