Before Mr. Justice Piggott and Mr. Justice Kanhaiya Lal.

1920 *May*, 19.

CHOKHE LAL (DEFENDANT) *v.* BIHARI LAL AND OTHERS (PLAINTIFFS)*

Grove-land—Customary rights of grove-holder—Right to maintain grove by plantation of new trees—Wajib-ul-arz—Relation of rights recorded in the wajib-ul-arz to the customary law.

So far as decided cases (with reference to the rights of grove-holders) go, the tendency has been to limit the decision by the provisions of the wajib-ul-arz, and to assume that the grove-holder possesses all rights in respect of his grove which are not excluded by those provisions. For example, if it is intended to debar a grove-holder from his usual right to maintain his grove by planting fresh trees from time to time, it is to be expected that some mention of such a curtailment of the grove-holder's customary right will be found in the wajib-ul-arz.

On suit filed by the zamindar against a grove-holder for a declaration that the land in defendant's possession as a grove had ceased to be grove-land and for an injunction to prevent him planting more trees thereon, it was found that the grove-holder had for some years been planting trees to replace trees which had fallen, and this without interference on the part of the zamindars, also, on a construction of the wajib-ul-arz, that, although the planting of new groves or trees without the permission of the zamindars was forbidden, there was no specific provision barring the customary right of a grove-holder to replace dead or fallen trees, and the conclusion was that the grove-holder still possessed the customary right of a grove-holder to plant fresh trees.

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

Munshi *Lakshmi Narain*, for the appellant.

Dr. *Kailas Nath Katju* and Maulvi *Mukhtar Ahmad*, for the respondents.

PIGGOTT and KANHAIYA LAL, JJ.:—The plaintiffs in this suit are the zamindars of a certain village. The defendant is a a tenant of the village and is in possession of two plots of land constituting a grove or groves. It is not clearly stated anywhere whether the plots of land are contiguous, but from the pleadings and the manner in which evidence was adduced it would seem that they must be. At any rate it will be convenient to speak of the "defendant's grove." It is alleged in the plaint that at the time of the settlement in 1301 *fasli* there were 383 trees standing in the grove and that now there are only 108 scattered trees. The plaintiffs, relying on their rights as

* First Appeal No. 153 of 1919, from an order of Muhammad Zia-ul-Hasan, Additional Subordinate Judge of Budaun, dated the 12th of September, 1919.

proprietors of the land and on the provisions of the wajib-ul-arz prepared at settlement, claimed that the defendant's grove, or at least some unspecified portion of the same, had become denuded of trees and had lost the character of a grove. They sought relief by way of a declaration and also by way of an injunction restraining the defendant from planting new trees in the grove, coupled with an order directing him to remove a number of trees alleged in the plaint to have been planted between a year and six months prior to the institution of the suit. The suit was resisted on a variety of grounds. The court of first instance found that the land in suit considered as a whole had not lost its character of a grove, so that no right of re-entry had come into existence in favour of the plaintiffs zamindars, either in respect of the land as a whole or in respect of any portion of it. The learned Munsif went on to criticize the form of the reliefs claimed and held that, in any case the plaintiffs were not entitled to relief by way of declaration because, if any right of re-entry had accrued to them, they should have defined the area in respect of which that right had accrued and claimed possession over the same and not a mere declaration. On the question of the injunction, the trial court interpreted the provisions of the wajib-ul-arz in favour of the defendant and held that he had a right to continue planting new trees within the limits of the grove as defined in the settlement papers. There were one or two other issues fixed which were not tried out, but the first court dismissed the suit substantially upon these findings. In appeal the learned Additional Subordinate Judge has not discussed some of the points taken by the court of first instance. He has not thought it necessary to consider whether the claim for relief by way of a declaration was in fact maintainable. He seems to have limited his consideration to the plaintiffs' claim for an injunction. Placing an interpretation upon the terms of the wajib-ul-arz different from that adopted by the first court, he has held that the defendant has no right to plant new trees without the permission of the plaintiffs. Upon this finding he has remanded the suit for final disposal to the court of first instance. In appeal before us there has been some argument on the question discussed in the

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first court's judgment which have not been touched upon in appeal. The learned Munsif was in our opinion, clearly justified in his finding that, on the admission contained in the plaint itself, the land in suit still retains its charactor of a grove, so that no right of re-entry had come into existence in favour of the plaintiffs, either in respect of the land as a whole or in respect of any portion of it. There is also great force in the reasons given by the learned Munsif for his finding that in no event were the plaintiffs entitled to maintain a suit for a mere declaration, and those reasons have not been dissented from by the lower appellate court. There remains, however, the question whether the plaintiffs are or are not entitled to an injunction restraining the defendant from planting new trees. The point must be determined with reference to the provisions of the wajib-ul-arz and to the evidence on the record as to the previous conduct of the parties, that is to say, the rights hitherto exercised by the grove-holder. The trial court laid no small stress on the fact that, in the period of thirty years or so between two settlements, a very large number of new trees, 147 at least, according to the learned Munsif, must have been planted by the grove-holder. It has also been shown to us that the re-planting of the grove on which the defendant has now embarked is on a considerable scale. According to the evidence there are two or three hundred young trees at present standing in the grove, over and above the 108 old trees referred to in the plaint. There was much controversy as to the age of these newly planted trees, but we do not think that anything substantially turns upon it. We are content to accept the finding of the lower appellate court that this re-planting of trees in the grove was at least started some four years prior to the institution of the suit. As to the terms of the wajib-ul-arz, the essential points are the following. There is first of all a clear reference to these two groves as held by a '*riaya*', the predecessor in title of the present defendant, and as standing on a wholly different footing from the groves of proprietors, of which a detail is also given. It is clearly laid down that the grove-holder is to enjoy the full benefit of the grove, including the fruit and the right to remove the timber. Then comes a provision that when the grove

becomes denuded of trees the zamindars shall have a right to occupy and to bring it under their own cultivation. This is followed by the crucial words which we are asked to interpret. Rendered as literally as possible the words are as follows:—"and no tenant (*riaya*) has any right without the consent of zamindars to plant a grove or scattered trees." The case for the plaintiffs respondents is that these words refer to all *riayas* in the village, including the holder of the two particular groves which are mentioned just before this sentence, and that they amount to a prohibition of the planting of new trees within the grove in suit, either to replace the old ones as those fall down, or under any other circumstances, unless the consent of the zamindars is obtained. The trial court regarded these words as wholly independent of the provisions immediately preceding about the two specified groves belonging to the defendant's ancestor. It treated them as merely containing a general statement that in future tenants of the village would not have any right either to plant a new grove or to plant individual trees, as for instance, on the boundaries of their fields or on the waste lands of the village, without previously obtaining the consent of the zamindars. The lower appellate court seems to have thought it sufficient to hold that the words "*aur kisi riaya ko*" are perfectly general and are sufficient to include the predecessor in title of the defendant. This is a fair remark enough, if the attention of the court is to be limited to these words alone; but it is certainly difficult to apply the words immediately following to the case of the existing grove-holder whose rights have just previously been defined. We had to put it to the learned counsel for the respondents whether he wished us to apply this particular sentence to the facts of the present case on the ground that the defendant had been planting scattered trees, or on the ground that the defendant had been planting a grove The former alternative he very properly abandoned. It seems indeed quite impossible to apply the words "*lagane darakht mutafarriqa*" to the facts disclosed by the evidence as to what the defendant has been doing within the boundaries of his own grove. The contention, therefore, is that the defendant has transgressed a provision of the wajib-ul-arz

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by virtually planting a grove. We think that this contention is almost as difficult to adopt as the other. The defendant has presumably waited until a considerable number of the trees in the grove had reached an age at which they were no longer valuable as fruit bearing trees, but were likely to yield a profit either as timber or as firewood He has then begun to plant a large number of trees to replace those which have thus been lost. The expression "*lagane bagh*," as it appears in the wajib-ul-arz, certainly seems to us to refer to the planting of a new grove. It is quite true that there is no word like "*jadid*" in the sentence in question; but when one comes to read the context the meaning does seem to be that, apart from the rights of the existing grove-holder which have been just specified, no tenant in the village is recognized as having a right to plant a grove, that is to say, in effect to plant a new grove, without the consent of the proprietors.

Something has been said to us about the rights of the parties under the general law. So far as decided cases go, the tendency has been to limit the decision by the provisions of the wajib-ul-arz and to assume that the grove-holder possesses all rights in respect of his grove which are not excluded by those provisions. At any rate we think that, if it had been intended to prevent this grove-holder from keeping up the character of the grove by the planting of new trees, something explicit would have been said on the subject in the wajib-ul-arz, and in this connection the evidence relied upon by the first court as to the practice of planting new trees, which had apparently been going on without question for the entire interval between two settlements, becomes of considerable significance. The learned Additional Subordinate Judge has said that the terms of this wajib-ul-arz are very similar to those of another wajib-ul-arz which a learned Judge of this Court was called upon to interpret in another case. There is, no doubt, a certain similarity, but as a matter of fact the judgment under appeal is an illustration of the danger of attempting to interpret a document in one case by the interpretation which may have been put upon a differently worded document in some other case. We think the wording of the wajib-ul-arz which has to be considered in the present case is distinguishable

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in the most crucial point from that of the wajib-ul-arz referred to in the judgment of the lower appellate court. In our opinion, therefore, the decision of the court of first instance was correct. The plaintiffs were entitled to no relief and the order of remand passed by the lower appellate court is unsustainable. We allow this appeal, set aside the order of the lower appellate court and restore the decree of the court of first instance with costs throughout in favour of the defendant

Appeal allowed.

REVISIONAL CIVIL.

Before Mr. Justice Ryves and Mr. Justice Gokul Prasad.

KANDHAIYA SINGH (DEFENDANT) *v* MUSAMMAT KUNDAN (PLAINTIFF)*.

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May, 19.

Civil Procedure Code (1908), *sections* 148 *and* 151 ; *order XXXIV, rule* 8 ; *order XLVII—Decree conditioned upon payment of money within a fixed period—Court not competent to extend time for payment otherwise than in the case of mortgage decrees.*

Except in the case of a decree in a mortgage suit to which order XXXIV, rule 8, of the Code of Civil Procedure applies, a court has no power to extend the time limited for payment of money ordered by a decree to be paid as a condition precedent to its operation. *Suranjan Singh* v. *Ram Bahal Lal* (1) followed. *Idumba Parayan* v. *Pethi Reddi* (2) dissented from.

THE plaintiff in this case sued to set aside a mortgage and subsequent sale of a house which she had executed in favour of one of the defendants. The decree of the appellate court, passed on the 17th of February, 1919, was to the effect that the plaintiff should get possession of the house on condition that she paid a sum of Rs. 600 into court within one month. Four days before the term limited by the decree had expired the plaintiff made an application to the court in which she stated that she had been unable to get a copy of the decree up till then, and that as she was a pauper, she had not money herself to satisfy the decree and could not get a loan from the local bankers without showing them the copy of the decree. She, therefore, prayed that she might be permitted to deposit the money within a month of her receiving a copy of the decree. On this application the court passed the following order :—"As it appears there

* Civil Revision No. 75 of 1919.

(1) (1913) I.L.R., 35 All., 582. (2) (1919) I. L.R., 43 Mad., 357.