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way of precaution in view of the insolvency of the male heirs. The result of this is that we partly allow and partly dismiss the appeal. We think the appellant is right in saying that it ought to be made quite clear that she takes her own share under the Muhammadan Law in the property in both mahals of Sarai Abdul Malik. The learned District Judge probably intended this, but the point should be put beyond doubt. Our order is that the receiver is entitled to take free of any mortgage charge one-half of the property in mahal Bisheshar Dayal as that of the insolvent, Muhammad Khalil, and another 1/4th as that of the insolvent, Muhammad Murtaza Husain, but that the share in the other mahal must be released from the claim of the receiver and left to Musammat Aziz-un-nissa Bibi as legatee under the will. The appeal is, therefore, partly decreed and partly dismissed. The parties should bear their own costs in this Court. The receiver will be entitled to take his costs out of the estate.

Decree modified.

Before Justice Sir Pramada Chandra Banerji and Mr. Justice Sulaiman.

BHUP SINGH AND OTHERS (PLAINTIFFS) v. CHEDDA SINGH AND OTHERS
(DEFENDANTS).*

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Mortgage—Partition—Effect of partition on a mortgage of an undivided share in joint property—Decree for sale passed prior to final decree for partition, but actual sale subsequent to such decree.

It is one of the incidents of a mortgage of an undivided share that the mortgagee cannot follow his security into the hands of a co-sharer of the mortgagor who has obtained the mortgaged share upon partition. If the partition is tainted with fraud, or if in the making of the partition the incumbrance was taken into account and the partition was made subject to the incumbrance, the result will be different, but in the absence of fraud or of the circumstances mentioned above the mortgagee's remedy is against the share or property which the mortgagor has obtained under the partition.

Hence where execution of a decree for sale of a share in undivided property the subject of a mortgage was going on *pari passu* with proceedings for partition, and the mortgaged share was sold two days after the final decree for partition, (by which the mortgaged property fell to the share of a member of the family other than the mortgagor) was made, it was *held* that the auction purchasers (in this case the decree-holders themselves) took nothing by their purchase.

* First Appeal No. 387 of 1917, from a decree of Shams-ud-din Khan, First Additional Subordinate Judge of Aligarh, dated the 7th of July, 1917.

Byjnath Lal v. Ramoodaen Chowdry (1), *Amolak Ram v. Chandan Singh* (2), *Hem Chunder Ghose v. Thakro Moni Debi* (3), *Venkatrama Iyer v. Esamsa Rowthen* (4), *Muthia Raja v. Appala Raja* (5), *Shahabzada Mahomed Kazim Shah v. R. S. Hills* (6) and *Hakim Lal v. Ram Lal* (7) referred to.

THE facts of this case are fully stated in the judgment of BANERJI, J.

Pandit *Shiam Krishna Dar*, for the appellants.

Mr. *N. C. Vaish*, for the respondents.

BANERJI, J. :—The question which arises in this appeal is a simple one but is by no means easy of solution.

The facts are these :—

On the 10th of February, 1904, Haidar Shah executed a mortgage in favour of Lachman Prasad, the predecessor in title of the plaintiffs, and among the property mortgaged was a share in the village of Hasanpur Ladauki the extent of which was two-fifths of 8/15. The present suit is for enforcement of this mortgage.

The property comprised in the mortgage originally belonged to Sardar Bahadur Mir Khan who died on the 14th of June, 1889, leaving considerable property and a large number of heirs, namely, eight sons, eight daughters and three widows. Among the sons were Haidar Shah aforesaid and Amir Muhammad Khan. The latter executed a mortgage on the 7th of March, 1889, in favour of Sant Lal and Moti Lal in respect of several items of property, one of which was an eighth share in the aforesaid village of Hasanpur Ladauki. Sant Lal and Moti Lal brought a suit for sale on the basis of that mortgage and obtained a decree for sale on the 3rd of May, 1901. In execution of this decree they caused a 24/192 share in Hasanpur Ladauki to be sold by auction on the 20th of July, 1903, and themselves purchased it. Their widows sold that share to the defendants of the 4th party, who, under a decree subsequently obtained, are in possession of a 14/192 share. Meanwhile, in 1896, Nur Begam, one of the widows of Sardar Bahadur Mir Khan, and Wazir Begam, one of his daughters, brought a suit for partition

(1) (1874) L. R., 1 I. A., 106.

(4) (1909) I. L. R., 38 Mad., 423.

(2) (1902) I. L. R., 24 All., 483.

(5) (1910) I. L. R., 34 Mad., 175.

(3) (1893) I. L. R., 20 Cal., 533.

(6) (1907) I. L. R., 35 Cal., 338.

(7) (1907) 6 C. L. J., 46

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of their shares in the estate of Sardar Mir Khan against his other heirs and obtained a decree on the 17th of February, 1898. This decree was made final on the 18th of July, 1903, that is, two days before the auction sale held in execution of Sant Lal and Moti Lal's decree. Under this final decree which was passed after the death of Nur Begam, who appears to have died after the passing of the preliminary decree, the whole of the village Hasanpur Ladauki was allotted to the share of Nur Begam and Wazir Begam; and Haidar Shah, who was brought on the record as one of the legal representatives of Nur Begam, acquired a $\frac{2}{5}$ ths share out of $\frac{8}{15}$ in the aforesaid village. It is this share which he mortgaged to the plaintiff's predecessor in title on the 10th of February, 1904, and it is this share the sale of which is sought by the plaintiffs in enforcement of that mortgage.

The defendants of the 4th party objected to this part of the claim and urged that the $\frac{14}{192}$ share purchased by them should be exempted from the decree on the ground that their vendors had already purchased it before the execution of the mortgage deed of the 10th of February, 1904, and Haidar Shah had no title in respect of it at the date of the mortgage.

The court below has accepted this contention and exempted a $\frac{14}{192}$ share in the village of Hasanpur Ladauki from the claim. The plaintiffs dispute the correctness of this part of the lower court's decision and have preferred this appeal. The only question which we have to decide is whether Amir Muhammad owned the abovementioned share at the date of the auction sale at which the vendors of the defendants of the 4th party purchased it and whether they validly acquired that share. If they did so, Haidar Shah was not competent to mortgage it and the plaintiffs are not entitled to have it sold.

It must be borne in mind that when Amir Muhammad mortgaged a $\frac{1}{8}$ th undivided share in the village he did not own that share, as his father was alive. It was only after the death of his father that he acquired a share in the village as one of his heirs. The extent of the share so acquired was less than that mortgaged. By virtue of section 43 of the Transfer of Property Act, the mortgage in favour of Sant Lal and Moti

Lal operated on the share acquired by the mortgagor. It is probable that the mortgagees were aware of the fact that Sardar Bahadur Mir Khan was alive at the date of the mortgage and that his son, the mortgagor, had no share in the property. If this were so, it would be difficult for the mortgagees to invoke in aid the provisions of section 43. There is, however, no evidence on the record that they have knowledge of the absence of their mortgagor's title, and the fact remains that they obtained a decree for the sale of the share mortgaged to them, and the court which passed the decree must be deemed to have accepted the position that the mortgage attached to the share.

It is now settled law that the mortgagee of an undivided share takes the security subject to the rights of the co-sharers of his mortgagor to obtain a partition, and if a partition be effected by the mortgagor and his co-sharers fairly and without fraud, and the mortgaged share is allotted to some other co-owner, the mortgagee is not entitled to enforce his security on the share so allotted. The leading case on the point is that of *Byjnath Lall v. Ramooddeen Chowdry* (1), decided by their Lordships of the Privy Council. The principle laid down in this ruling was followed in a number of cases, many of which are cited on p. 318 of Shaphard and Brown's Edition of the Transfer of Property Act (7th Edition). It is immaterial whether the partition was made by the Revenue authorities, or by the Civil Court, or by arbitration, or by private arrangement, and it is not necessary that the mortgagee should have been a party to the partition. It is one of the incidents of a mortgage of an undivided share that the mortgagee cannot follow his security into the hands of a co-sharer of the mortgagor who has obtained the mortgaged share upon partition. Of course, if the partition is tainted with fraud or if in making the partition the encumbrance was taken into account and the partition was made subject to the encumbrance, the result will be different, but in the absence of fraud or the circumstance mentioned above the mortgagee's remedy is against the share or property which the mortgagor has obtained under the partition. In the present case there is no suggestion of fraud or

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unfairness, nor is it alleged that in the partition which took place regard was had to the mortgage in favour of Sant Lal and Moti Lal. Therefore those mortgagees were not entitled to enforce their mortgage on the village of Hasanpur Ladauki which under the final decree for partition was allotted to the shares of Nur Begam and Wazir Begam alone. The difficulty which arises in this case is due to the fact that a decree for sale had already been passed in favour of the mortgagees before the date of the final decree for partition, and it is urged that the court executing the decree could not go behind it and sell property which the decree had not directed to be sold. After giving the matter my best consideration I think that this argument is untenable. If before the actual auction sale the property sold had ceased to be the property of the mortgagor and had become the property of his co-sharers, and the latter had acquired it free from the mortgage, the share so acquired could not be sold under the mortgage and the fact of a decree having been obtained by the mortgagee against the mortgagor cannot affect the interests obtained by the co-sharers under the partition. Where property has devolved on a third person by operation of law, and the decree for sale is not binding on him, the existence of the decree and a sale in pursuance of it cannot convey his rights to the purchaser at the sale. As before the actual sale in the present case Amir Muhammad Khan had ceased to own any share in the village of Hasanpur Ladauki, it could not be sold as his property and the purchasers did not acquire any share in that village. Haidar Shah was, therefore, competent to mortgage the share which he inherited from his mother Nur Begam, and the plaintiffs are entitled to a decree for the sale of that share.

It is urged that the final decree for partition was an invalid decree having been passed by the Civil Court. I do not think this is a valid contention. The decree has been submitted to by all the co-sharers and it would not be unreasonable to regard the partition as one made by the co-sharers themselves. Such a partition would have the same effect as a partition made by a court.

For the above reasons I am of opinion that Haidar Shah was competent to mortgage the share in question and that the court below was wrong in exempting it from the claim. I would accordingly allow the appeal, and varying the decree of the court below, make a decree for the sale of 14/192 share in Hasanpur Ladauki in addition to the other property ordered by that court to be sold. The appellants will have their costs of this appeal. The defendants of the 4th party should be allowed six months from this date for payment of the mortgage money.

SULAIMAN, J. :—This appeal arises out of a suit for sale on foot of a mortgage deed. The facts of this case which are sufficient to explain the points which arise for determination in the appeal may be briefly stated as follows :—One Sardar Bahadur Mir Khan was the owner of considerable property including a 19 biswa share in village Hasanpur Ladauki. He had three wives, eight sons, and eight daughters. On the 7th of March, 1886, one of his sons, Amir Muhammad, during the life-time of his father, mortgaged a one-eighth share in Mauza Hasanpur Ladauki along with other properties to Sant Lal and Moti Lal. It is admitted that at the time of this mortgage Amir Muhammad had no interest in this village at all. His father, however, died soon after. Amir Muhammad and two of his brothers then mortgaged the whole of the 19 biswa share in village Hasanpur Ladauki to the Bank of Upper India, which obtained a preliminary decree for sale in 1895. After this, in 1896, Nur Begam, one of the widows, and Wazir Begam, one of the daughters, instituted a suit for recovery of their share in the estate of Sardar Bahadur by partition, and they made the Bank of Upper India a party, but not Sant Lal and Moti Lal. A preliminary decree for partition was passed on the 17th of February, 1898, and this was followed by a final decree for partition on the 18th of July, 1903. Under this latter decree the whole of the village Hasanpur Ladauki, along with other property, was allotted to Wazir Begam and the heirs of Nur Begam. Haidar Shah, one of the sons of Nur Begam, mortgaged the share in herited by him from his mother to Lachman Prasad, whose representatives are the present plaintiffs.

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In the meantime, in the year 1900, Sant Lal and Moti Lal had instituted a suit for sale on foot of their mortgage deed of 1889 against Amir Muhammad, making the Bank of Upper India also a party. Although the trial court held that the mortgage of the properties belonging to Sardar Bahadur was perfectly void, and as there was no allegation even of erroneous representation, much less proof of it, section 43 of the Transfer of Property Act did not help the mortgagees, it nevertheless passed a decree for sale, directing that the Bank should have priority as regards the properties mortgaged to it. After this Sant Lal and Moti Lal obtained a final decree for sale, and then purchased at auction a one-eighth share in Hasanpur Ladauki on the 20th of July, 1903; and subsequently their widows transferred the same to the defendants 4th party, who are the contesting respondents in this appeal.

The defendants 4th party have, under a decree for possession, recovered 14 *sihams* out of 192 in the 19 biswas share and claimed its exemption from the present claim. The learned Subordinate Judge has exempted this share, holding that Sant Lal and Moti Lal were entitled to the benefit of section 43 and could hold the share inherited by Amir Muhammad from his father liable for their mortgage money, and he has further held that inasmuch as Sant Lal and Moti Lal had previously obtained a decree for sale, the partition decree could not affect their rights.

In the grounds of appeal to this Court the finding of the court below on the question of the erroneous representation by Amir Muhammad and the applicability of section 43, Transfer of Property Act, have not been challenged, and I am, therefore, not prepared to allow that question to be re-opened, especially as it is a mixed question of law and fact.

The second question raised in this appeal is by no means free from difficulty. The partition suit and the mortgage suit were going on side by side and independently of each other. The final decree for sale was passed before the final decree for partition, but the auction sale took place subsequent to the partition decree. Was the mortgage decree subject to the partition decree or was it the reverse? To answer this question

it will be necessary to consider the principles governing the rights of co-owners in joint property.

When a property is joint and undivided and belongs to a number of co-sharers, every such co-sharer has a right to joint possession of it together with an inherent right to enforce a partition and get his share divided off from the rest. His right to a severance of his share by partition must, in the absence of a contract to the contrary, always exist, as he cannot against his will be compelled to hold the property in common.

There can of course be no objection to his transferring his undivided share even before partition. Such transferee will acquire his right to joint possession, coupled with the right to enforce a partition and saddled with the liability to have his own share partitioned off by the other co-sharers. When, therefore, a mortgagee takes a mortgage of an undivided share of a co-sharer, he takes it subject to the right of the other co-sharers to enforce a partition in spite of his mortgage. This is a necessary result of the very incidents of joint ownership. The effect of the partition is simply to substitute a definite and separate part for an undivided share in the joint whole, and thereby to transfer the lien to that portion which the mortgagor has obtained in substitution of what he had mortgaged. It was the right and interest of the mortgagor in the whole estate which had been mortgaged, and if after partition his right, instead of being represented by an undivided share in the whole, comes to be represented by a separate and divided share, the charge ought to attach to this separated share.

In the leading case of *Byjnath Lall v. Rammoodeen Chowdry* (1), which set at rest the previous conflict of opinion, their Lordships of the Privy Council laid down that the owner of an undivided share has power to pledge his own undivided share, but he cannot by so doing, affect the interest of the other sharers in them, and that the persons who took the security took it subject to the right of those sharers to enforce a partition and thereby to convert what was an undivided share of the whole into a defined portion held in severalty. If a

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(1) (1874) L. R., 1 I. A., 106 (119).

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mortgagee assented to a partition which had been fairly and conclusively made, it could not be doubted "that the mortgagee of the undivided share of one co-sharer who has no privity of contract with the other co-sharers, would have no recourse against the lands allotted to such co-sharers; but must pursue his remedy against the lands allotted to his mortgagor, and as against him, would have a charge on the whole of such lands. He would take the subject of the pledge in the new form which it had assumed." The mortgagee being "content to accept what has been allotted in substitution of the undivided interest as the fair equivalent of it, their Lordships are of opinion that not only he has a right to do so, but that this, in the circumstances of the case, was his sole right, and that he could not successfully have sought to charge any other parcel of the estate in the hands of any of the former co-sharers. There is, therefore, no question here of election, or of the time when the election was made."

The same principle, though in a different form, is embodied in section 44 of the Transfer of Property Act, which gives to the transferee of an undivided share the transferor's right to joint possession or other common or part enjoyment of the property, as well as the right to enforce a partition of the same, but also subject to the conditions and liabilities affecting the share transferred. And the same principle has been consistently followed in all cases where subsequent to the mortgage of an undivided share, the mortgagor's share has been divided off by a partition, which was fair and without fraud, the courts holding that the mortgagee's only remedy was to proceed against the new form which the equity of redemption has assumed.

In *Hem Chunder Ghose v. Thako Moni Debi* (1) a co-owner had mortgaged his undivided share in certain land which had been jointly held with another; and subsequently to the mortgage, by a decree in a partition suit to which the mortgagee was not a party, the mortgaged property was allotted to the other owner, other property in substitution being allotted to the mortgagor. In a suit by the mortgagee to recover the sum due on the mortgage by sale of the mortgaged property, it was held that the mortgagee could not proceed against the mortgaged

(1) (1893) I. L. R., 20 Calc., 583.

property which had, on partition, been allotted to another, but that he should be allowed to proceed against that which had been allotted as substitute to the mortgagor.

In *Amolak Ram v. Chandan Singh* (1) one Naubat Ram mortgaged 5 biswas share in village Muzaffra and other properties to Mukand and Munna, who were co-sharers in the village. In a partition between the mortgagor and the mortgagees, the mortgagor got other villages in substitution for his share in Muzaffra, and mortgaged them to subsequent mortgagees. The subsequent mortgagees in execution of their decree for sale purchased these other villages. The original mortgagees obtained a decree for sale of the 5 biswas share in Muzaffra and other properties and assigned the decree to one Lachmi, with a stipulation that he was not to proceed against Muzaffra. In a subsequent suit it was held that the villages purchased by the subsequent mortgagees were liable to be sold in execution of the decree on the first mortgage. The subsequent mortgagees having paid up the whole amount sued for contribution against Muzaffra. It was held that even apart from the fact that at the time of partition both parties to the mortgage had intended that the mortgage should not be enforced against Muzaffra, the old mortgage could not after the partition be enforced against the five biswas share in Muzaffra which had passed out of the share of the mortgagor, and that therefore there could be no claim for contribution against it.

In *Venkatram Iyer v. Esumsa Rowthen* (2) the defendant No. 1 had mortgaged to the plaintiff a decree in his favour and against defendants Nos. 2 to 9. Certain creditors of the defendant No. 1 attached the decree, but the defendant No. 1 executed his decree and realized the decretal amount, which was deposited in court. The plaintiff sued to recover his mortgage money from the amount in deposit. It was held that "there are numerous authorities in support of the position that the mortgagee is entitled to a charge upon the property which through no fault of the mortgagee has taken the place of the mortgaged property."

In *Muthia Raja v. Appala Raja* (3) a son, who was living

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(1) (1902) I. L. R., 24 All., 483.

(2) (1909) I. L. R., 33 Mad., 429.

(3) (1910) I. L. R., 34 Mad., 175.

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separate from his father and a brother, executed a mortgage of his $\frac{1}{3}$ share; subsequent to this a private partition was effected between the father and the sons. The brother brought a suit for a declaration that the land allotted to him was free from the mortgage, and asked for possession. It was held that he was entitled to a decree for the declaration sought and for possession.

In *Shahabzada Mahomed Kazim Shah v. R. S. Hills* (1), it was conceded that after a partition has been effected against the mortgagor the mortgagee is entitled to regard his mortgage as attaching to the property allotted to his mortgagor in substitution for the security on the mortgagor's undivided share in the property generally; and that the security is shifted, as the result of the partition, from the undivided share of the mortgagor on to the property directed to be conveyed to him under the decree. And it was further held that if the property allotted to the mortgagor under the partition decree is made subject to any charge then such charge has priority over the mortgage.

In *Hakim Lal v. Ram Lal* (2) the same rule was applied, and MOOKERJI, J., in his elaborate judgment has illustrated in what manner the substituted security can be ascertained in case the partition decree leaves it undetermined.

The same rule has been laid down in a number of other cases reported in the various volumes of the Indian Cases which it is not necessary to enumerate.

It may, therefore, be taken to be a well settled principle of law that after a partition the mortgagee's only remedy is to proceed against the substituted security and not to follow the original share mortgaged in the hands of the other co-sharers with whom he had no privity of contract. It has still to be considered whether the fact of the partition having taken place subsequent to the passing of a final decree for sale would make any difference. It was strongly contended on behalf of the respondents that the effect of the passing of a decree absolute for sale under the old section 89 of the Transfer of Property Act was to extinguish the mortgage security altogether, as provided by that section, and that the only remedy left to the mortgagee was to execute the decree as it stood. It was also contended

(1) (1907) 1 L. R., 3 Cal., 388.

(2) (197) 6 C. L. J., 43.

that the execution court would have no power to go behind the decree and direct the sale of property other than that mentioned in the decree. And it was pointed out that in cases where the mortgage was confined to only a fraction of the share of the mortgagor in the undivided estate, and there was nothing in the partition decree to fix the exact equivalent of that share, the execution court may have to try almost a new partition suit in order to be able to ascertain the substituted equivalent of the share mortgaged.

In my opinion, if the effect of the partition is looked upon as converting what was an undivided share of the whole into a defined portion held in severalty, it will be manifest that the charge must shift on to the new substitute. Though the interest of the mortgagor gets transformed into a new form, it must nevertheless continue to be liable for the mortgage debt.

The mortgage of an undivided share was subject to the rights of the other co-sharers to enforce a partition and get their shares separated off. How could their rights be affected in any way by the mere circumstance that the mortgagee has behind their backs obtained a decree for sale against his mortgagor? If a mortgagee, before he obtains a decree for sale, is bound to submit to a substitution of the mortgaged property effected by partition, he will have to do the same even after his decree. Of course, the same result may not follow in case of a foreclosure decree, or where the property has been sold away before partition; for in these cases the mortgagor would cease to have any interest at all at the time of the partition, and in order to make the partition effective the persons in whom the interest has become vested might have to be made parties. But so long as the equity of redemption remains in the mortgagor and has not passed out of his ownership, and the only right acquired by the mortgagee is to put to sale the undivided share of the mortgagor, a conversion of the mortgaged property would merely make the mortgage liability attach to the new substitute.

It is well known that the money or property given by Government in substitution for the lands taken up under the Land Acquisition Act is charged in favour of the mortgagee, who had

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his claim upon the property so taken. Similarly, the charge on the proceeds of sale of the mortgaged property for arrears of revenue or of rent is provided for by section 73 of the Transfer of Property Act. And the puisne mortgagee's claim to a charge on the surplus proceeds of a sale under a prior mortgage is well recognized. Again, in cases where under a Revenue Court partition new mahals have been formed, execution courts have often had to determine the equivalent of the mortgaged share, or ascertain its new nomenclature even though the identity of the mortgaged property remains unchanged. In all such cases the execution court, strictly speaking, has to go behind the letter of the decree, but in substance it is still executing the decree against the rights and interest of the mortgagor in the mortgaged property which has assumed a new form.

I can well realize the difficulty which an execution court may have to face in trying to ascertain the equivalent substitute of the mortgaged property, where the partition decree leaves it undetermined. But the difficulty is no less than what the original court would have had to face if the question had arisen before the decree. It is merely the stage at which the inquiry is to be made that is altered, and not that the difficulty is enhanced in any way. I can conceive of endless difficulties that may arise, and great hardships to which mortgagees may be put, under certain circumstances. But if persons who take mortgages of undivided shares are sufficiently prudent and diligent and make inquiries about their mortgagor's interest before putting it up for sale, many of the difficulties will be easily avoided.

In this view of the law it is clear that when on the 20th of July, 1903, a 1/8th share in Hasanpur Ladauki was put up for sale and purported to be sold as against Amir Muhammad, the latter had, in consequence of the previous partition decree, ceased to have any interest in that village at all. I am, therefore, constrained to hold that the mortgagor's right in that village having become extinguished, the auction purchasers acquired no rights whatsoever. Their representatives, the defendants 4th party, cannot, therefore, resist the plaintiffs' claim based on a mortgage executed by one of the persons who obtained the partition decree.

By THE COURT.—The appeal is allowed, the decree of the court below is varied and a decree is made in favour of the plaintiffs for the sale of 14/192 share in Hasanpur Ladauki, in addition to the property ordered by the court below to be sold. The appellants will have their costs of this appeal.

The defendants of the 4th party are allowed six months from this date for payment of the mortgage money.

Appeal allowed.

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MUHAMMAD RUSTAM ALI KHAN AND OTHERS (DEFENDANTS) v.

MUSHTAQ HUSAIN AND OTHERS (PLAINTIFFS).

[On appeal from the High Court of Judicature at Allahabad.]

Waqfnama—Grantor changing proprietary possession to that of a mutawalli—Appointment of trustees without transfer of ownership—Possession as managers and superintendents to protect waqf property—Injunction by Deputy Commissioner in respect of property out of his jurisdiction—Disqualification of registering officer as having "interest" in objects of endowed property but who has acted in good faith—Defect in procedure—Punjab Court of Wards Act (Punjab Act II of 1903), sections 11 and 12—Registration Act (III of 1877), sections 17, 87, and rule 174 of rules made under section 69.

A Muhammadan landholder, with property partly in Karnal and partly in Muzaffarnagar, on the 25th of August, 1908, executed a waqfnama, or deed of charitable trust, dedicating specific property to religious purposes. The terms of the deed were "I was the lawful owner of the property. I had power in every way to transfer the same. By virtue of the said power I divested myself of the connection of ownership and proprietary possession thereof and placed it in the proprietary possession of God, and changed my temporary possession known as proprietary possession into that of a mutawalli (superintendent)." The grantor resided at Karnal in the Punjab, but finding that the Deputy Commissioner was about to place him and his property under the Court of Wards he went to Muzaffarnagar out of the jurisdiction of the Deputy Commissioner of Karnal, who on the 30th of August, 1908, under sections 11 and 12 of the Court of Wards Act 1903, issued an injunction restraining him from executing any deed of alienation of his property. The waqfnama was notwithstanding, on the 1st of September, 1908, registered by the Sub-Registrar of Muzaffarnagar. On the 9th of November, 1908, the grantor executed a further document appointing trustees to be superintendents after his death of the charity to which his property had been dedicated under the deed of the 25th of August, 1908. The grantor died on the 26th of December, 1908, and on the 8th

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* Present :—Lord BUCKMASTER, Lord DUNEDIN, Sir JOHN EDGE and Mr. AMER ALI.