

*Before Mr. Justice Pearson and Mr. Justice Oldfield.*

ZALIM SINGH AND OTHERS (PLAINTIFFS) *v.* UJAGAR SINGH AND OTHERS  
(DEFENDANTS).\*

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December 21

*Rent-free and Revenue-free tenures—Assessment and settlement of revenue-free land  
—Jurisdiction of Civil Court—Act XIX of 1873 (N.-W. P. Land-Revenue  
Act), ss. 82, 83, 87, 88, 89, 241.*

Certain land was settled with the defendants in this suit. The Settlement Officer having declared that the plaintiffs in this suit had acquired a proprietary right to such land under the provisions of s. 82 of Act XIX of 1873 and were entitled to hold it rent-free, the defendants applied to the Settlement Officer to assess such land and to settle it with the plaintiffs as the persons in actual possession as proprietors. This having been done by the Settlement Officer, the plaintiffs sued the defendants to be maintained in possession of such land free of revenue and for the cancelment of the Settlement Officer's order. *Held* that under s. 241 of Act XIX of 1873 the suit was not cognizable in the Civil Courts.

THE plaintiffs in this suit claimed to be maintained in possession of certain land situated in a village called Mahto, without payment of rent or revenue, by the cancelment of the Settlement Officer's order dated the 26th April, 1875. It appeared that the predecessors of the defendants, co-sharers of such village, had made a grant of this land to the predecessors of the plaintiffs; and that, as the land had been held rent-free by the original grantees and their successors for eighty years, the plaintiffs had acquired, under the provisions of s. 82 of Act XIX of 1873, a proprietary right to it. This land had been taken into account at the settlement of such village with the co-sharers in assessing the revenue payable by them. When it was decided that the plaintiffs were the proprietors of the land and entitled to hold it rent-free, the father of the defendants, a co-sharer, applied to the Assistant Settlement Officer to settle the land with the plaintiffs as the persons in actual possession as proprietors. This the Assistant Settlement Officer did, assessing the land at Rs. 15-14-0; and on appeal the Settlement Officer affirmed the order of his subordinate by an order dated the 26th April, 1875. The plaintiffs thereupon brought the present suit against the defendants, instituting it in the Mun-

\* Second Appeal, No. 636 of 1880, from a decree of Pandit Jagat Narain, Subordinate Judge of Cawnpore, dated the 31st March, 1880, reversing a decree of Maulvi Sakhawat Ali, Munsif of Akbarpur, dated the 21st June, 1878.

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sif's Court. The defendants set up as a defence that the Civil Courts could not exercise jurisdiction over the matter of the suit. The Court of first instance disallowed this defence and gave the plaintiffs a decree. On appeal by the defendants the lower appellate Court allowed the contention, and dismissed the suit. The plaintiffs appealed to the High Court.

Mr. *Chatterji*, for the appellants.

Munshis *Nanuman Prasad* and *Kashi Prasad*, for the respondents.

The judgment of the Court (PEARSON, J., and OLDFIELD, J.,) was delivered by

OLDFIELD, J.—This is a suit to be maintained in possession of eleven bighas three biswas of land without liability to pay revenue assessed on it by the Settlement Officer, by reversal of his order. Plaintiff's claim to hold this land as a rent and revenue-free grant made to plaintiffs' ancestors by Madho Singh the original proprietor. The Settlement Court has already taken up and determined under s. 82 of the Revenue Act the question of proprietary title in this land, which it has decided in plaintiffs' favour, who were declared to be proprietors under s. 82, and we are not concerned with that question now. Subsequently, however, the zamindar of the mauza, defendants' father, who had hitherto paid the revenue on this land, which was included in the general assessment of the mauza, applied in the Settlement Court that the revenue should be separately assessed on the land and settlement made of the land with the plaintiffs, who should be liable for payment of the revenue assessed. The Settlement Officer proceeded under the provisions of ss. 83, 87, 88, and 89 of the Revenue Act, and assessed revenue, to the amount of Rs. 15-14-0, on the land which he settled with plaintiffs. It is to set aside this order that this suit has been brought, and we are of opinion that it is not cognizable under s. 241 of the Revenue Act. The matter is one provided for in ss. 83, 87, 88, and 89 which were intended to include questions like the one before us, where there is a claim by the occupant of land to hold such land free from payment of revenue by him, and were meant to deal with all questions regarding the

assessment of such land and the making the settlement of it with the person in actual possession as proprietor (see s. 89). Taking this view we hold that the suit was properly dismissed, and we dismiss this appeal with costs.

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*Appeal dismissed.*

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### FULL BENCH.

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*Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Spankie, Mr. Justice Oldfield, and Mr. Justice Straight.*

RAM SARAN LAL (DEFENDANT) v. AMIRTA KUAR AND OTHERS (PLAINTIFFS).\*

*Vendor and Purchaser—Sale—Mortgage—Redemption—Condition against alienation.*

The co-sharers of a certain estate sold it to *R*. On the same day as the vendors executed the conveyance of such estate to *R* the latter executed an instrument whereby he agreed that the vendors might redeem such estate or any portion thereof, within a certain term, on repayment of the purchase-money or a proportionate share thereof, and in such case the sale would be considered cancelled; provided that the vendors paid the money out of their own pockets and did not raise it by a transfer of the property and not otherwise. The heir of one of the vendors sold his share of such estate to *A* and *A* sued *R* to redeem such share.

*Held* by the Full Bench (STUART, C. J., doubting) that the nature of the transaction between *R* and his vendors must be determined by looking at both the conveyance and the agreement, and, both those documents being regarded, the transaction between them was one of mortgage, and the vendors had a right of redemption, and the proviso in the agreement was inequitable and incapable of enforcement against them or their representatives in title.

*Held* also by PEARSON, J., that the agreement was not of the nature of a personal contract enforceable only by the original vendors and not by their representatives; that, assuming that a transfer of the property was prohibited by the agreement, *R* could not, as implied by the Full Bench ruling in *Dookhore Rai v. Hidayat-ullah* (1), treat as a nullity the sale which had been made to *A* and *A*'s right to redeem could not be reasonably denied and resisted; and that a transfer was not positively but only implicitly prohibited by the agreement, *R* merely declaring that he would not recognize the transferees as having acquired the equity of redemption or cancel his own sale-deed, and such a declaration was beyond his competence and had no legal effect.

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\* Second Appeal, No. 1224 of 1879, from a decree of J. W. Power, Esq., Judge of Gházipur, dated the 13th May, 1879, reversing a decree of Maulvi Mah-mud Baksh, Additional Subordinate Judge of Gházipur, dated the 21st December, 1878.

(1) N.-W. P. H. C. Rep., F. B., 1866-67, p. 7.