held to have been made until the sale became absolute. It was then that plaintiff's right of pre-emption arose.

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JAIKARAN RAI v. GANGA DHARI RAI

On the question of limitation the appeal must prevail. The law is art. 10, sch. ii of the Limitation Act, and the period will run from the date when the purchaser takes physical possession of the whole of the property sold,—a period which has not yet expired.

We decree the appeal and reverse the decree of the lower Court and decree the claim with costs.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr Justice Oldfield.

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BHAJAN LAL (PLAINTIFF) *v.* MOTI AND OTHERS (DEFENDANTS).*

Lambardár and Co-sharers—Mortgage of mahál by lambardár.

The lambardárs of a mahál, in order to pay revenue due by them and the other co-sharers of the mahál, transferred the mahál by conditional sale for a term of years, possession of the mahál being delivered to the conditional vendee. The mortgage-debt not having been paid within such term, the conditional vendee applied, as against the lambardárs, for foreclosure, and the mortgage having been foreclosed sued all the co-sharers including the lambardárs for possession of the mahál, alleging that the lambardárs had acted in the matter of the conditional sale, not only for themselves, but as agents of the other co-sharers. *Held* that, inasmuch as the other co-sharers had not either expressly or by implication authorised the lambardárs to enter into the particular contract represented by the conditional sale, and as they had not ratified such contract, they were not bound by the conditional sale and foreclosure.

THE facts of this case are sufficiently stated for the purposes of this report in the order of the High Court remanding the case for the trial of the issues set out in the order.

Maulvi *Mehdi Hasan* and Shaikh *Maula Bakhsh*, for the appellant.

Munshi *Sukh Ram*, for the respondent.

The Court (STUART, C. J., and OLDFIELD, J.) made the following

ORDER OF REMAND.—The plaintiff sues to obtain possession of the entire mauza after foreclosure of a conditional sale made by a deed of 13th April, 1871. This deed was executed by the

* Second Appeal, No. 1292 of 1879, from a decree of G. R. C. Williams, Esq., Deputy Commissioner of Jhánsi, dated the 2nd September, 1879, affirming a decree of J. J. McLean, Esq., Assistant Commissioner of Jhánsi, dated the 20th May, 1879.

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lambardárs of the mauza, and it is alleged they acted on the authority of the other co-sharers whom they represented as lambardárs, and the consideration of the conditional sale was a sum of Rs. 525 borrowed to pay off arrears of revenue due on the whole mauza by all the co-sharers. By the terms of the deed interest had to be paid at two per cent. per mensem on the sum of Rs. 525 borrowed, and the conditional vendee was put into possession of the mauza, and it was stipulated that the conditional vendors should be responsible for losses. Accounts were to be adjusted at the close of each year, and any surplus profits were to go to satisfy the interest and the principal debt; and in the event of there being a loss, and of the conditional vendor having to make it good, the amount of such loss was to be added to the principal debt; and in the event of the whole debt with interest not being satisfied within five years, the conditional sale should become absolute. On this deed the plaintiff, after taking proceedings to foreclose, has sued all the co-sharers for possession. The defence of the co-sharers other than the three lambardárs is that they had no knowledge of the deed in question, gave no authority to the lambardárs to enter into any contract of conditional sale, and are not bound by the deed, and that notices of foreclosure were not served on them according to law, and that no accounts were made up as required by the deed. The Court of first instance held that, although the deficiency of revenue and the means taken to supply that deficiency must have been matter of interest to all, and although the co-sharers to a certain extent supported the action of the lambardárs by allowing plaintiff to have the usufruct of the village and made no objection during eight years of his tenure, yet that it is not proved that they were aware of the terms of the mortgage, or accepted the stipulation of conditional sale, or were consulted by the lambardárs when they executed the deed, and it holds the deed in consequence not binding on them. It finds that accounts were properly audited, and inclines to hold that notice to be legally effective should have been served on all the co-sharers. The first Court decreed in favour of plaintiff for the actual shares in the mauza owned by the lambardárs. This decree has been affirmed by the lower appellate Court, but it appears to us that the decision is defective and unsatisfactory and the case should be remanded.

The only point decided by the lower appellate Court is whether the co-sharers other than the lambardárs were parties to the mortgage-deed, and on this point all that the Judge says is:—"I decide it adversely to the plaintiff-appellant, because, although there may be reason to suspect after the mortgage-deed had been executed the other co-sharers may have become cognizant of the transaction, there is no trustworthy evidence to show that they were parties to it, the deed itself being altogether silent on the subject. Indeed, the careless and perfunctory nature of the proceedings on mutation of names, when the plaintiff-appellant's name was entered as mortgagee of the whole estate bears out the contention of the other co-sharers that the lambardárs acted on their own responsibility without reference to them." Now, it is not disputed that the co-sharers other than the lambardárs were not parties to the deed, in the sense that their names are not entered in the deed, but the point is whether they were parties to the transaction as being represented by the lambardárs who had their authority to make the contract in question. On this point the finding of the lower appellate Court is entirely obscure and indistinct. The first point to be determined is whether the lambardárs had the exprsss authority of the co-sharers to make the particular contract represented in the deed, or a general and full authority to make any and every arrangement necessary for the purpose of obtaining money to pay arrears of revenue; if they had such authority their act will be binding on the co-sharers. But there is another question which the lower appellate Court has altogether ignored. It should be ascertained if the co-sharers became fully aware of the terms of the deed after its execution, particularly the terms as to the rate of interest and condition of foreclosure, accepted those terms and took benefit under them, for in that case they could not now repudiate the deed, although the deed may have been executed without their authority. In deciding these questions due consideration should be given to the admitted facts that the money was borrowed to pay a debt of revenue due by all the co-sharers, that the deed was witnessed by the patwári of the village and was registered, and that the mortgagee was put in possession under its terms of the whole estate and remained in possession for eight years. We remand the case for trial of the

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issues indicated, and also of a third issue whether any debt remained unsatisfied at the end of the year of grace and allow ten days for objections.

The lower appellate Court (Mr. G. Adams) found on the first issue, *viz.*, "Whether the lambardárs had the express authority of the co-sharers to make the particular contract represented in the deed, or a general or full authority to make any and every arrangement necessary for the purpose of obtaining money to pay arrears of revenue;" that "it was on the whole improbable that the lambardárs should have had such authority as was specified in the issue, and there was certainly not evidence to show that they had such authority." On the second issue, *viz.*, "Whether the co-sharers became fully aware of the terms of the deed after its execution, particularly the terms as to the rate of interest and condition for foreclosure, and accepted those terms and took benefit thereunder," the lower appellate Court found as follows:—"As to these points there is no evidence of value. The co-sharers certainly assented to the mortgage, but whether before or after execution of the deed is not shown. The rate of interest is common in this district, and they may very probably have been aware of it, though from what I know of the carelessness of the people of this district with regard to the incurring of debt, I think it quite possible that many of the co-sharers may never have concerned themselves as to the terms of the deed. In the absence of evidence I must find that the co-sharers did not become fully aware of the terms of the deed after its execution. In deciding the above issues I have fully considered the facts noted by the High Court, *viz.*, the reason for which the debt was incurred, the witnessing of the deed by the patwári, its registration, and the surrender of possession to the mortgagee. All these, however, are of much less weight than they would be regarding a village in one of the long-settled districts. Here joint responsibility, though it exists, has very seldom been enforced, and is but imperfectly understood by the people, while joint action by a large body of co-proprietors is very rare. The witnessing of the deed by the patwári and its registration do not, in my opinion, tend in any degree to show that the co-sharers accepted the terms of the conditional sale. The quiet surrender of possession to the mortgagee is very intelligible. The co-sharers could easily

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be made to understand that in case of failure in payment of arrears of revenue they would be completely ejected from possession by Government, and would therefore be perfectly ready to admit possession by a mortgagee, which for the time being would leave them in very much the same position as before. Reckless as they are in all matters concerning debt, they may have for a time found little to object to in the possession of the village by the mortgagee. They held their fields as before and paid even less to him than they had before paid to Government. There is, however, nothing to show that they ever became fully aware of the terms of the conditional sale until the mortgagee proceeded to foreclose." On the third issue, *viz.*, "Whether any debt remained unsatisfied at the end of the year of grace," the lower appellate Court found that the debt was not satisfied at the end of that period.

On the return of these findings the High Court (STUART, C. J., and OLDFIELD, J.), accepting them and disallowing the objections taken thereto by the appellant, dismissed the appeal.

APPELLATE CRIMINAL.

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Before Mr. Justice Straight.

EMPRESS OF INDIA *v.* SITA RAM RAI.

Abetment of Theft—Receiving stolen property—Joint undivided Hindu family—Act XLV of 1860 (*Penal Code*), *ss.* 379, 411.

A Hindu, intending to separate himself from his family, emigrated to Demerara as a coolie. After an absence of thirty years he returned to his family, bringing with him money and other moveable property which he had acquired in Demerara by manual labour as a coolie. On his return to his family he lived in commensality with it, but he did not treat such property as joint family property but as his own property. *Held*, that such property was his sole property, and his brother was not a joint owner of it, and could properly be convicted of theft in respect of it.

It is irregular to convict and punish a person for abetment of theft, and at the same time to convict and punish him for receiving the stolen property.

IN 1879 one Tunsi returned from Demerara to his native village in the Ballia district, after an absence of thirty years, bringing with him property, consisting chiefly of Government currency