

APPELLATE CIVIL.

1883
February 2.*Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Tyrrell.*

MAHTAB KUAR (DEFENDANT) v. THE COLLECTOR OF SHAH-JAHANIUR AS MANAGER OF THE ESTATE OF FAKHR-UD-DIN KHAN, DECEASED, ON BEHALF OF AJUB-UN-NISSA AND OTHERS (PLAINTIFF)*

Mortgage—Usufructuary mortgage—Redemption—Interest—Regulation XV of 1793, ss. 3, 4, 10, 11—Stat. 13 Geo. III, c. 63, s. 30—Act XXVIII of 1855, s. 7—Novation of contract—Recital of mortgage.

J, the usufructuary mortgagee for Rs. 1,250 of certain land, of one-ninth of which he had purchased the equity of redemption, in 1854 gave usufructuary mortgage of the land to *N* for Rs. 2,700 of which Rs. 1,950 represented the mortgage-money of the land he held as mortgagee, and Rs. 750 of the land he held as proprietor. By the instrument of mortgage it was provided that the mortgagee should take all the profits in lieu of interest, and the mortgage should be redeemable on payment by the mortgagor of the principal money. In 1880 *F*, the representative of the original mortgagor in respect of eight-ninths of the land, sued, with reference to Regulation XV of 1793, for possession of the land, on the ground that the mortgage had been redeemed, as the principal money and interest at twelve per cent. had been received out of the profits, and claimed an account. *N* set up as a defence that the provisions of that Regulation were not applicable, as after its repeal by Act XXVIII of 1855 the mortgagor had agreed not to claim an account. This agreement, he alleged, was contained in the *wajib-ul-arz* of 1871.

Held that the *wajib-ul-arz* did not contain a new contract, or ratification of the old contract of 1854, between the parties, but merely a recital of the mortgage, and therefore *F* was entitled to an account.

Held also that the account should be calculated on eight-ninths only of the land.

Observations by STUART, C. J., on Regulation XV of 1793 and Stat. 13 Geo. III, c. 63. *Shah Mukhan Lal v. Srikrishna Singh* (1) and *Badri Prasad v. Murlidhar* (2) referred to.

This was a suit for redemption of mortgage. On the 17th December, 1844, Usan Singh, the owner of one-third, Gauhar Singh and Hulasi Singh, the owners of one-third, and Dharmi, the owner of one-third of twenty biswas of a certain village, situated in the Shahjahanpur district, gave Zalim Singh and Jiwan Singh in equal moieties a usufructuary mortgage of the village for Rs. 3,900 for a term of fourteen years. Under the terms of the instrument of

* First Appeal No. 121 of 1880, from a decree of Maulvi Zain-ul-abdin Khan, Subordinate Judge of Shahjahanpur, dated the 20th July, 1880.

(1) 3 B. L. R., P. C., 44.

(2) I. L. R., 2 All. 593 : S. C. L. R., 7 Ind. App., 51.

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mortgage, the mortgage was redeemable on payment of the principal sum without interest on the expiration of the term. On the 30th October, 1846, Zalim Singh sub-mortgaged ten biswas of the village to Muhammad Fakhr-ud-din, for Rs. 1,950, for the unexpired term of the principal mortgage, *viz.*, twelve years, and gave the sub-mortgagee possession. After this the village was partitioned by Jiwan Singh, the original mortgagee of ten biswas, and Muhammad Fakhr-ud-din, the sub-mortgagee of ten biswas, and the northern patti of the village fell to the share of Jiwan Singh, and the southern to that of the sub-mortgagee, and both parties obtained separate possession. Subsequently Jiwan Singh and Zalim Singh each acquired by purchase a one-ninth share of the northern patti. On the 27th October, 1854, Jiwan Singh sub-mortgaged the northern patti of the village and his one-ninth share of that patti to one Nanku Lal for a term of three years for Rs. 2,700. The material portion of the instrument of mortgage was as follows:—"I have mortgaged and pawned for three years, for Rs. 2,700, half of which is Rs. 1,350, as per detail given below, *viz.*, the right of a mortgagee in lieu of Rs. 1,950, and the right of a purchaser in lieu of Rs. 750, to Nanku Lal, banker at Sháhjahánpur. I have received the whole of the mortgage-money from the aforesaid mortgagee, and having appropriated and taken the same, I have put the mortgagee in possession and occupancy of the mortgaged property. The whole of the profits of the mortgaged property I have set apart as interest of the mortgage consideration, so that, up to the term of mortgage, I, the mortgagor, shall not have claim to profits, nor the mortgagee a claim to interest. After the expiry of the term, I shall pay the whole of the mortgage-money to the said mortgagee, and having obtained the redemption of the mortgaged property, take possession."

Subsequently Muhammad Fakhr-ud-din, the sub-mortgagee of the southern patti of the village, purchased the whole of Zalim Singh's interest in the village, and the remaining proprietary right in the village. The proprietary right in the village acquired by Jiwan Singh by purchase was subsequently put up for sale in execution of a decree and was purchased by one Madho Singh. Thus at the time of the framing of the *najib-ul-ars* of the northern patti of the village in 1871 Muhammad Fakhr-ud-din had become owner of eight-ninths

of that patti and the representative of Zalim Singh one of the original mortgagees of the village. The *wajib-ul-arz* of the northern patti of the village, framed in 1871, contained the following clause:—"The entire mahál is held under a sub-mortgage from Jiwan Singh, original mortgagee, and Muhammad Fakhr-ud-din has become the representative of the original mortgagors in respect of eight-ninths of the mahál and Madho Singh of one-ninth: the mortgage is dated the 27th October, 1854, and is for three years: the terms of the mortgage are that the entire profits of the property have been assigned in lieu of interest, and therefore the mortgagor has no claim to profits or the mortgagee to interest for the term of the mortgage: after the expiration of the term of the mortgage the mortgagor shall pay the mortgage-money and redeem the property." Nanku Lal and Muhammad Fakhr-ud-din were, apparently, parties to this *wajib-ul-arz*. In May, 1880, Muhammad Fakhr-ud-din having in the meanwhile died, and the estates left by him having been taken under the superintendence of the Court of Wards, the Collector of Sháhjahánpur, as manager of the estates, instituted the present suit on behalf of the widow and sons and daughters of Muhammad Fakhr-ud-din, against Jiwan Singh, one of the original mortgagees, and Mahtab Kuar, widow of Nanku Lal, who had also died in the meantime. The suit was based on the mortgage of December, 1844. The plaintiff claimed possession of eight-ninths of the northern patti of the village, as proprietor, and of one-ninth as mortgagee, alleging that the principal amount of the mortgage, Rs. 1,950, together with interest at Rs. 12 per cent. per annum, had been satisfied out of the profits of the property, and that a certain sum as the profits for six years previous to the institution of the suit were payable to him, and praying that an account might be taken, and whatever sum might be found payable to him for those years might be awarded to him, or if anything was found due by him, a decree for redemption might be passed in his favour, subject to the payment of whatever might be found to be due by him. The defendant Mahtab Kuar set up as a defence that, although the mortgages of December, 1844, and October, 1854, were made before the passing of Act XXVIII of 1855, yet the plaintiff was not entitled to an account, inasmuch as after the passing of that Act the

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mortgagor had entered into an agreement, contained in the *wajib-ul-ars* of the patti, that the usufruct of the property should be allowed in lieu of interest. The Court of first instance disallowed this defence, holding that the *wajib-ul-ars* did not contain any such agreement as set up by the defendant, but merely a recital of the terms of the mortgage of October, 1854; and it gave the plaintiff a decree for possession of the property and for certain mesne profits. The defendant Mahtab Kuar appealed to the High Court, contending that according to the agreement contained in the *wajib-ul-ars* the plaintiff was not entitled to an account; and that the Court of first instance, in making up the account, had erred in calculating profits on the whole ten biswas of the patti, inasmuch as one-ninth of the patti had become the property of Jiwan Singh.

Munshis *Hanuman Prasad* and *Kashi Prasad*, for the appellant.

The *Senior Government Pleader* (*Lala Jaula Prasad*), for the respondent.

The Court (STUART, C. J., and TYRRELL, J.) delivered the following judgments:—

TYRRELL, J.—The first plea cannot be allowed to prevail. I have given mature consideration to the terms of the *wajib-ul-ars* of 1871, read with the original deed of mortgage executed by Jiwan Singh on the 27th October, 1854; and I am satisfied that no new contract, or ratification of an old contract, was therein intended to be made, or was in fact made in the sense contended for by the appellant. That is to say, I cannot hold that the parties to that administration-paper agreed in 1871 to set up and give validity to the terms of the mortgage-deed of 1854, providing that the mortgagor could not claim an account, which were invalid under the law then in force, and which were to the effect that all the profits of the mortgaged estate, how-much-so-ever they might be, should be taken by the mortgagee in lieu of interest. The paragraph of the *wajib-ul-ars* on which the appellant relies, beginning with the words “the mortgage is for three years with this declaration,” and ending with “nor the mortgagee to interest,” is, in my judgment, no more than a recitation of the terms of the old deed by way of description and identification of that deed. It was not seriously contended that without novation or ratification

of this portion of the contract of 1854, its terms could now have valid operation under the relief afforded in such matters by Act XXVIII of 1855; and indeed the 7th section of that Act is conclusive against any such suggestion. That section provides that "nothing hereinbefore contained shall prejudice or affect the rights or remedies of any person, or alter the liabilities of any person, in respect of any act done or contract entered into previously to the passing of this Act."

The second plea has force in so far as it questions the correctness of the account adopted by the Court below in respect of the amount of profits to be taken into account to the credit of the loan of Rs. 1,950 with regard to which the present suit is brought. It is obvious that when Jiwan Singh purchased the rights and interests of his mortgagors in the one-ninth of the ten biswas which he held in mortgage from them he became absolute owner of the profits of that one-ninth portion of the ten biswas, and the sum total of the profits available for the payment of lawful interest and for reduction of the principal debt of the mortgage became to that extent diminished. In other words one-ninth of the profits went into the pocket of Jiwan Singh and after him into that of his alienee the ancestor of the defendants Bhup Singh, Kunjan Singh and Bhola Singh, while eight-ninths remained to the credit of the mortgage account. This being so, it is plainly improper and unjust to the appellants, who holds that one-ninth share of Bhup Singh and his brothers as her sole security for her advance thereon of Rs. 750 under the deed of the 27th October, 1854, that all the profits of the ten biswas should be appropriated to the account of the Rs. 1,950 debt secured on Jiwan Singh's mortgagee estate alone in the ten biswas. Indeed this position was admitted in terms by the plaintiffs-respondents in their petition filed in this case in the Court below on the 28th June, 1880, when they pleaded that "Bhup Singh being the purchaser of the right of Jiwan Singh mortgagor is bound by the terms of the mortgage made by Jiwan Singh, while the plaintiffs are not bound by the mortgage-deed of Mahtab Kuar, wherein the own proprietary right of Jiwan Singh has been specifically mortgaged for Rs. 750 in 1854;" and again, "the plaintiffs have demanded from the defendant mortgagee the mesne profits of their share only, and they have not claimed those

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of the share of Bhup Singh defendant, and if Bhup Singh is included among the plaintiffs, then the claim for the mesne profits of this share must be added."

On this principle the decree of the Court of first instance must be amended: and so far allowing this appeal I would direct that an account be made in this office calculated on eight-ninths only of the ten biswas in question, and that a decree be framed accordingly with costs in proportion to the result.

STUART, C. J.—This is an appeal from a decree of the Subordinate Judge of Sháhjahánpur in a suit for redemption from mortgage, dated 27th October, 1854. This decree so far as it allows the rate of interest to be charged in the account between the parties, as to which we were much pressed on behalf of the appellant, is, as I shall presently show, clearly right, although in other respects it must be corrected.

The case is as follows:—One Jiwan Singh, who was the mortgagee of a ten-biswas share in a certain patti, and also the owner by purchase of another share in another patti, made on his part on the 27th October, 1854, a mortgage of such his mortgage and purchased rights in these terms:—

"I have mortgaged and pawned for three years, for Rs. 2,700, half of which is Rs. 1,350, as per detail given below, *viz.*, the right of a mortgagee in lieu of Rs. 1,950 and the right of a purchaser in lieu of Rs. 750 to Nanku Lal, banker at Sháhjahánpur: I have received the whole of the mortgage-money from the aforesaid mortgagee, and having appropriated and taken the same, I have put the mortgagee in possession and occupancy of the mortgaged property. The whole of the profits of the mortgaged property I have set apart as interest of the mortgage consideration, so that, up to the term of mortgage, I, the mortgagor, shall not have claim to profits nor the mortgagee a claim to interest. After the expiry of the term, I shall pay the whole of the mortgage-money to the said mortgagee, and having obtained the redemption of the mortgaged property, take its possession." The relative position of the parties thus determined appears, notwithstanding the term of three years agreed on, to have continued till the 15th January, 1871, when the *wajib-ul-arz* was verified and recorded; the portion of that administration-paper

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relied on by the appellant being as follows:—"The mortgage is for three years with this declaration as to mortgage, that the entire profits of the mortgaged property have been assigned in lieu of interest on the mortgage-money, so that up to the term of mortgage, I, the mortgagor, shall have no claim to profits nor the mortgagee to interest." The mortgage, it will be observed, was made before the change of the law as to interest effected by Act XXVIII of 1855, the legal rate at the date of the mortgage being one per cent. per mensem or twelve cent. per annum, and it is, therefore, claimed by the plaintiff not only that the principal mortgage debt had been paid off, but that a large sum of surplus money remains to be accounted for by the defendant-appellant. It is contended, however, in support of the first reason of appeal, that the effect of the above entry in the *wajib-ul-arz* was to create a novation of contract, and as that novation took place in 1871 the law abolishing the usury laws applies, and that therefore the defendant was not bound to account for any portion of the profits which, as evidenced by the *wajib-ul-arz*, were wholly assigned in lieu of interest on the mortgage-money. This, however, is to take an entirely mistaken view of the meaning and effect of the *wajib-ul-arz*. An extract from that paper is printed on page 4 of the appendix of evidence on behalf of the appellant, and it contains a reference to the mortgage in the following terms:—"Whereas the entire property in this mahál is held under a sub-mortgage by me on behalf of Jiwan Singh, the first mortgagee, and now under equity of redemption of the original owners, Fakhr-ud-din Khan, son of Kalai Khan, owns eight shares, and Madho Singh, son of Gyan Singh, one share, as representatives of the original mortgagors, (and) under the mortgage-deed, dated the 27th October, 1854, and registered on the same date, which the agent of the landlord, the mortgagee, has produced, the mortgage is for three years with this declaration as to mortgage, that the entire profits of the mortgaged property have been assigned in lieu of interest on the mortgage-money, so that up to the term of mortgage, I, the mortgagor, shall have no claim to profits nor the mortgagee to interest. After the expiry of the term of mortgage, I shall pay the whole of the mortgage consideration and obtain the redemption of the mortgaged property." It is quite clear that this is a mere recital of the mortgage made in 1854 as

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still existing and operative, and not in the least intended as a new or revised contract in any sense; the words "I shall pay" meaning I shall continue to pay as heretofore, and then the reason of the recital of the mortgage in this *wajib-ul-arz* is shown by the following sentence, which comes immediately after the extract I have read:—

"So long as the property is under mortgage, proceedings shall be taken according to the conditions contained in paragraph 2 of the village administration-paper of mauza Udohra, pargana Jamore. After redemption of the mortgage, we, Fakhr-ud-din Khan and Madho Singh, mortgagors, shall pay, out of the entire income of the *khatisa* mahál, the revenue assessed by Government, in the Government treasury, through our agent, by fixed and usual instalments. In the event of failure to recover Government arrears, we shall recover, under the provisions of the law in force, by means of auction-sale, &c." It is thus quite clear that these provisions in the *wajib-ul-arz* were intended as a mere engagement on the part of the mortgagors for the Government revenue, and that the mortgage of 1854, which still formed a charge upon the estate, the only mortgage it refers to, had to be taken into account in the recorded arrangement. There is nothing therefore to interfere with the computation of interest as interest legally chargeable by law previous to the Act of 1855 coming into force, which was not until the 1st of January, 1856. We have then to consider what was the law respecting interest in mortgage transactions when this mortgage was made; that appears to have been the law provided by Regulation XV of 1793. Reference was made at the hearing, on behalf of the respondent, to s. 30 of the English Act of Parliament, 13 Geo. III, c. 63, passed in 1773, and it was suggested that under that enactment the mortgage in the present case was absolutely null and void, and could not, therefore, be the foundation of any suit. And no doubt it would have been so if the parties to that contract had been British subjects of the English Crown, for to persons who answer to that description, s. 30 of the Act in question alone applies, natives of India being at that time only such subjects in an indirect and modified sense, although it is different now; all persons, whether European or Native, in what are now Her Majesty's Indian dominions, and of which she is Empress, being directly amenable to the English Crown and

Government. But it was not quite so in 1773, and the expression in s. 30, "no subject of His Majesty," can only mean no British subject.

We must, therefore, find the law in operation as to interest in such a case as the present elsewhere. Notwithstanding the Act of Geo. III, no change appears to have been made in the law as to interest among natives of the country till 1793, the people up to that time being left free to their contracts in this respect. But by Regulation XV of 1793, s. 10, it was provided as follows:—"In cases of mortgages of real property, executed prior to the 28th day of March, 1780, in which the mortgagee may have had the usufruct of the mortgaged property, whether he shall have held it in his own possession or not, the usufruct is to be allowed to the mortgagee in lieu of interest, agreeably to the former custom of the country (provided it shall have been so stipulated between the parties), until the above mentioned date, subsequent to which the same interest is to be allowed on such mortgage-bonds and also on all bonds for the mortgage of real property which have been entered into on or since that date, or that may be hereafter executed, as is allowed on all other bonds which have been and may be granted on or posterior to such date, and no more; and all such mortgages are to be considered as virtually and in effect cancelled and redeemed, whenever the principal sum, with the simple interest due upon it, shall have been realized from the usufruct of the mortgaged property subsequent to the 28th day of March, 1780, or otherwise liquidated by the mortgagor." And then by s. 11 of the same Regulation it is provided, in regard to the accounts that are to be taken in cases of mortgages specified in s. 10, that "the mortgagee is to be required to deliver in the accounts of his gross receipts from the property mortgaged, and also of his expenditure for the management or preservation of it. The mortgagee is to swear, or (if he be of the description of person whom the Courts are empowered to exempt from taking oaths) to subscribe a solemn affirmation that the accounts which he may deliver in are true and authentic. The mortgagor is to be permitted to examine the accounts, and after hearing any objections he may have to offer, or any evidence that either party may have to adduce respecting them, the Court is to adjust the account." There cannot be a doubt that such is the law

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to be applied to the present case, the words "simple interest" meaning, according to ss. 3 and 4 of the same Regulation, interest at the rate of twelve per cent. per annum, the meaning of the Regulation being thus briefly summed up in the judgment of the Privy Council in the case of *Shah Makhan Lal v. Srikrishna Singh* (1). "The mortgagee may retain his pledge until he has received out of it his debt with interest at twelve per cent.," the contract not being absolutely invalid, much less void, but its legal effect as to the interest being to reduce the amount of the rents and profits received by the mortgagee to an allowance of twelve per cent. out of such rents and profits, the excess in that respect being imputable towards payment of the principal sum. An illustration supporting this view of the law will be found in the judgment of the Privy Council in *Badri Prasad v. Murli-dhar* (2) affirming a judgment by Oldfield, J., and myself. We had held in that case that there was no contract, nor anything in the nature of a contract, for interest at all, but merely for a particular sum which was to go towards the expense of collections, and that there was to be no account of mesne profits during the time of the mortgagee's possession. This view was affirmed by their Lordships of the Privy Council who, in their judgment, remarked :—"Their Lordships must by no means be taken to decide that if the amounts received by the mortgagees had been fluctuating, they might not have been bound to file the statutory accounts. Those accounts might have been necessary to enable the Court to decide on the validity of the contract set up." The validity of the contract in the present case could only be so ascertained, that is to say, the profits are to be allowed so far as they are below or do not exceed twelve per cent.; but, *quoad ultra*, they must be disallowed, the excess being imputed towards the principal debt, and the Subordinate Judge, taking this view of the law, has given a decree to the plaintiff for redemption of mortgage without payment of any portion of the mortgage consideration, by dispossession of the defendant-appellant. So far as to interest, with respect to which it is sufficient to add that the Subordinate Judge is clearly right.

But another question has been raised also bearing on the account to be taken in this case, and this question is stated in the

(1) 2 B. L. R., P. C., 44.

(2) I. L. R., 2 All. 593 : S. C. L. R., 7 Ind. App., 51.

second reason of appeal before us, in which it is contended that the lower Court was wrong in crediting the profits of the whole ten biswas towards the discharge of only Rs. 1,950, leaving out the item of Rs. 750, and that therefore the whole sum total of these two items, amounting to Rs. 2,700, should be taken into account. It is further contended in this plea that deduction should also be allowed on account of Bhup Singh and others in the same right. All this must be allowed, and so far the decree appealed against must be amended, and an account taken and a decree prepared as proposed by Tyrrell, J., with proportionate costs.

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Decree modified.

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

MAHIP SINGH AND ANOTHER (DEFENDANTS) v. CHOTU (PLAINTIFF)*

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March 6.

Landholder and tenant—Perpetual injunction to restrain ejection of tenant—Jurisdiction—Act XII of 1831 (N.-W. P. Rent Act), s. 95—Act I of 1877 (Specific Relief Act), s. 56, (b) and (f).

A tenant, on whom a notice of ejection had been served under the N.-W.P. Rent Act, 1881, and whose suit to contest his liability to ejection, brought under that Act, had failed, sued in the Civil Court for a perpetual injunction to prevent his ejection, basing his suit on an agreement that he should not be ejected so long as he paid a certain rent. *Held* that the suit was not maintainable, the jurisdiction of the Civil Court being excluded by s. 95 of the Rent Act and by s. 56, (b) and (f), of the Specific Relief Act.

THIS was a suit for a perpetual injunction to restrain the defendant from ejecting the plaintiff from certain land. The suit was instituted in the Court of the Munsif of Jaunpur. It appeared that the land was cultivated by the plaintiff, Chotu, as a sub-tenant of one Ram Ratan, the tenant of the land. The latter distrained the crops on the land. Chotu contested the legality of the distraint in the Revenue Court, and an agreement was entered into by the parties, by which, it was alleged, Ram Ratan agreed not to eject Chotu so long as he paid Rs. 14 per annum as rent. After the death of Ram Ratan his heirs mortgaged the land to Mahip Singh and Bhola Singh. The mortgagees served a notice of ejection on Chotu under s. 36 of the N.-W. P. Rent Act, 1881. Chotu objected, and his objection was disallowed under s. 39 on the 18th

* Second Appeal No. 959 of 1882, from a decree of W. Barry, Esq., Judge of Jaunpur, dated the 16th May, 1882, affirming a decree of Babu Lalita Prasad, Munsif of Jaunpur, dated the 11th March, 1882.

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August, 1881. The effect of the order under s. 39 was to determine the tenancy unless the landlord authorized the tenant to continue in occupation of the land. Chotu subsequently brought the present suit against the heirs of Ram Ratan and the mortgagees for a perpetual injunction to restrain them from ejecting him from the land, basing the suit on the agreement mentioned above. The Court of first instance gave the plaintiff a decree, which, on appeal by the mortgagees, the lower appellate Court affirmed. The mortgagees thereupon appealed to the High Court, contending that under the circumstances the Civil Courts were not competent to grant the injunction sought.

Munshi *Kashi Prasad*, for the appellants.

Munshi *Hanuman Prasad*, for the respondent.

The judgment of the Court (STUART, C. J., and OLDFIELD, J.), after stating the facts, continues as follows:—

JUDGMENT.—We are of opinion the appeal must prevail. Whether we consider the terms of the Specific Relief Act on the subject of perpetual injunctions or those of the Rent Act, it is clear that the Civil Court cannot give an injunction of the nature sought. It has not jurisdiction over the subject-matter to which the injunction refers, its jurisdiction being excluded by s. 95 of the Rent Act, and expressly or impliedly by (b) and (f) of s. 56 of the Specific Relief Act. We reverse the decrees of the lower Courts and decree the appeal, and dismiss the suit with all costs.

Appeal allowed.

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March 6.

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

JOGUL KISHORE (PLAINTIFF) v. SHIB SAHAI AND ANOTHER
(DEFENDANTS)*

Hindu Law—Grandson—Interest in ancestral property—Right to enforce partition.

In a joint Hindu family governed by the Mitakshara law a grandson has by birth a vested interest in ancestral property, which entitles him to enforce

* Second Appeal No. 395 of 1882, from a decree of H. G. Keene, Esq., Judge of Meerut, dated the 13th January, 1882, affirming a decree of Rai Bakhtawar Singh, Subordinate Judge of Meerut, dated the 10th November, 1881.