APPELLATE CIVIL

Before Sir Syed Wazir Hasan, Knight, Chief Judge

MIRTUNJAI BAKHSH SINGH (PLAINTIFF-APPELLANT) *v.* HINGA AND OTHERS (DEFENDANTS-RESPONDENTS)* 1933 *August, 28*

Custom—Plaintiff owner of land—Structures made by defendant on that land—Plaintiff, whether entitled to superstructure—English Maxim quicquid plantutor solo, solo cedit, *application of.*

There exists in the United Provinces a rule as a part of the customary law that the ownership of a superstructure may exist in one person and the ownership of the soil in another. The view held in India is that there is no rule of law that whatever is affixed or built on the soil becomes a part of it and is subjected to the same rights of property as the soil itself. The maxim of English Law, namely *quicquid plantutor solo, solo cedit,* has at the most only a limited application in India. *Chandi Singh* v. *Saiyed Arjumand Ali* (1), *Ruttonji Edulji Seth* v. *The Collector of Tanna* (2), distinguished. *Narayan Das Khettry* v. *Jotindra Nath Roy Chowdhury* (3), *Thakoor Chunder Poramanic* v. *Ram Dhoree Bhattacharjee* (4), relied on.

Where, therefore, the plaintiff is found to be the owner of the land on which certain structures made by the defendants stand he is not entitled in law to those structures.

Mr. *Ram Bharose Lal,* for the appellant.

Dr. *Zafar Husain,* for the respondents.

HASAN, C.J.:—This is the plaintiff's appeal from the decree of the Subordinate Judge of Bara Banki dated the 24th of October, 1931, partly modifying the decree of the Munsif of Ramsanehighat, dated the 3rd of August, 1931.

The sole point argued in the appeal is that the plaintiff having been found to be the owner of the land on which certain structures made by the defendants stand is also entitled in law to those structures. In

*Second Civil Appeal No. 35 of 1932, against the decree of M. Humayun Mirza, Subordinate Judge of Bara Banki, dated the 24th of October, 1931, modifying the decree of Babu Tirbeni Prasad, Munsif of Ramsanehighat Bara Banki, dated the 3rd of August, 1931.

(1) (1899) 2 O.C., 280. (2) (1867) 11 M.I.A., 313.
(3) (1927) L.R., 54 I.A., 218. (4) (1866) 6 Suth. W.R., 228.

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support of the contention reliance was placed upon the maxim of English Law *quicquid plantutor solo, solo cedit.*

In *Chandi Singh* v. *Saiyed Arjumand Ali* (1) Messrs. Deas and Spankie, Judicial Commissioners of Oudh, held, with reference to the case of *Ruttonji Edulji Seth* v. *The Collector of Tanna* (2) and numerous other decisions of the High Court at Allahabad, that the ejectment of a tenant from his holding extinguishes his right to the trees which he had planted on it during the continuance of his tenancy. The learned Judicial Commissioners quoted the following passage from the decision of their Lordships of the Judicial Committee in *Ruttonji Edulji Seth* v. *The Collector of Tanna* (2):

> "The trees upon the land were part of the land, and the right to cut down and sell those trees was incident to the proprietorship of the land."

The case, however, before me is not of trees standing on the land which belongs to the plaintiff, but of a superstructure which has been found to have been constructed by the defendants. It has recently been decided by their Lordships of the Judicial Committee in *Narayan Das Khettry* v. *Jotindra Nath Roy Chowdhury* (3) that the maxim of English Law, namely *quicquid plantatur solo, solo cedit* "has at the most only a limited application in India." Their Lordships held that if the plaintiff's case was based upon a conveyance of the land the house would pass with the land to the purchaser; but the case before their Lordships was not based upon a conveyance and so also is not the present case. As observed by their Lordships of the Judicial Committee the view held in India is "that there is no rule of law that whatever is affixed or built on the soil becomes a part of it and is subjected to the same rights of property as the soil itself." In my opinion there exists in these provinces a rule as a part of the customary

(1) (1899) 2 O.C., 280. (2) (1867) 11 M.I.A., 313.
(3) (1927) L.R., 54 I.A., 218.

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law that the ownership of a superstructure may exist in one person and the ownership of the soil in another. In the judgment of their Lordships of the Judicial Committee just now referred to the following passage from the judgment of Sir BARNES PEACOCK in the case of *Thakoor Chunder Poramanic* v. *Ram Dhoree Bhattacharjee* (1) is quoted with approval:

> "We have not been able to find in the laws or customs of this country any traces of the existence of an absolute rule or law that whatever is affixed or built on the soil becomes a part of it, and is subjected to the same rights of property as the soil itself."

This pronouncement was made by Sir BARNES PEACOCK in the year 1866 and since then nothing has happened, in my opinion, in the state of laws or customs of these provinces which would have the effect of reducing in any manner the force of the observations then made by Sir BARNES PEACOCK.

The appeal therefore fails and is dismissed with costs.

Appeal dismissed.

APPELLATE CIVIL

Before Sir Syed Wazir Hasan, Knight, Chief Judge and Mr. Justice H. G. Smith

HAR DAYAL SINGH AND OTHERS (DEFENDANTS-APPELLANTS) *v.* RAJA RAM SINGH AND OTHERS (PLAINTIFFS-RESPONDENTS)*

1933 *August*, 29

Mortgage—Usufructuary mortgage—Redemption—Clog on the equity of redemption—Deed full of covenants advantageous to mortgagee with no benefit to mortgagor—Rate of interest not mentioned—Covenant that redemption shall not take place within 55 years, whether constitutes clog—Mortgagee not exercising his powers under the deed, effect of.

Where a usufructuary mortgage deed does not indicate any rate of interest, but is full of covenants all advantageous to

*Second Civil Appeal No. 64 of 1932, against the decree of M. Ziauddin Ahmad, Subordinate Judge of Sultanpur, dated the 21st of December, 1931, confirming the decree of Babu Maheshwar Prasad Asthana, Munsif of Amethi at Sultanpur, dated the 8th of September, 1931.

(1) (1866) 6 Suth. W.R., 228.