

The applications are therefore allowed and the plaintiff-opposite party's suits against the applicants dismissed with costs. *Ex parte* costs will be allowed in this Court as the opposite-party put in no appearance.

Application allowed.

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APPELLATE CIVIL

*Before Mr. Justice G. H. Thomas and Mr. Justice
Ziaul Hasan*

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WARI BAKHSH SINGH AND OTHERS (DEFENDANTS-RES-
PONDENTS)*

1937
May, 7

*Under-proprietary rights—Construction of documents—Com-
promise or agreement conferring heritable non-transferable
rights—Settlement decree passed on basis of compromise—
Condition in restraint of alienation in settlement decree,
validity of—Qabiz-darmiani, meaning of.*

Where a compromise or agreement, on the basis of which a settlement decree is passed confers heritable but non-transferable under-proprietary rights upon a person, the deed of compromise or agreement can only be interpreted as conferring upon the person absolute under-proprietary rights in the village in question. The condition in restraint of alienation even although it is contained in a settlement decree is null and void and in spite of the insertion of such addition such a decree conveys an absolute right of transfer. *Case law dis-
cussed.*

The word "*Qabiz-darmiani*" means an under-proprietor in the sense in which it is used in the Oudh Rent Act (XIX of 1868 and XXII of 1886).

Messrs. *Hyder Husain, P. N. Chaudhri, Girja Shankar* and *H. H. Zaidi*, for the appellant.

Mr. *L. S. Misra* for Mr. *Radha Krishna Srivastava*, for the respondents.

THOMAS and ZIAUL HASAN, JJ.:—This is a plaintiff's appeal against the judgment and decree of the learned

*First Civil Appeal No. 53 of 1935, against the decree of Sufiyid Abid Raza, Civil Judge of Partabgarh, dated the 28th of February, 1935.

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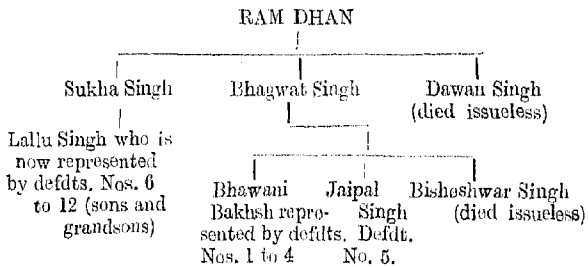
Civil Judge of Fyzabad dated the 28th of February, 1935, dismissing the plaintiff's suit.

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The plaintiff-appellant brought the suit for a declaration to the effect that the defendants are not under-proprietors in village Nurpur, pargana and district Partabgarh, and have no transferable rights in the said village.

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The plaintiff is the taluqdar of Chhatpal Garh, which is entered at no. 274 in List I and at no. 88 in List III. The village Nurpur is admittedly included in the said taluqa. In order to understand the array of defendants the following short pedigree may usefully be referred to:



On the 14th of May, 1868, Sukha Singh, the predecessor of some of the defendants obtained a decree from the settlement court against Raja Chhatpal Singh, the predecessor-in-interest of the present appellant, in respect of the whole village Nurpur, conferring upon him certain rights which are in dispute. The plaintiff's version is that the decree gave Sukha Singh non-transferable *pukhtadari* rights with liability to be ejected for disloyalty to the proprietor and failure to pay rent and that this amounts to a mere tenancy under special agreement under section 52 of the Oudh Rent Act.

The plaintiff applied in the court of the Sub-Divisional Officer for correction of revenue papers on the ground that the defendants' names had been entered by mistake in the column of under-proprietors in the village papers. The defendants opposed this application and the plaintiff's application was dismissed on

the 25th of January, 1932. The plaintiff then filed the present suit for a declaration.

The suit was contested by the defendants on the grounds that they were under-proprietors under the decree of the settlement court and that there was no restriction about transfer. They further pleaded estoppel and limitation.

The learned trial court framed the following issues:

(1) Are defendants not under-proprietors; and have they no power of transfer under the decree dated 14th May, 1868?

(2) Is the declaratory suit in time?

(3) Have the defendants become under-proprietors by adverse possession?

(4) Is plaintiff alone entitled to sue?

(5) To what relief, if any, is plaintiff entitled?

(6) Is plaintiff estopped from questioning the under-proprietary rights of the defendants?

The trial court on issue No. 1 held that "the defendants were under-proprietors without any limitation whatsoever."

On issues Nos. 2 and 3 the trial court gave a finding in favour of the defendants.

On issue No. 4 the trial court held that the plaintiff was entitled to sue alone.

On issue No. 6 the finding is that "the plaintiff is estopped from questioning the defendants' under-proprietary right that has been acknowledged all along and if they are under-proprietors, they would be without restriction."

On issue No. 5 the trial court held that the plaintiff was not entitled to any relief and it dismissed the suit.

The sole question for decision in the appeal is whether the defendants are under-proprietors or not.

The plaintiff in proof of his title relies on the following documents:

Exhibit 5, dated 1270 Fasli (1862-63) is a copy of the lease executed by Sukha Singh in favour of Raja

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Chhatpal Singh for a period of one year in respect of village Nurpur. The amount of rent payable under it was Rs.513.

Exhibit 6, dated the 9th of May, 1865, is a copy of the agreement in case No. 1403 of 1868 decided by the court of the Settlement Officer of Partabgarh between Sukha Singh and Raja Chhatpal Singh, in which Sukha Singh had claimed under-proprietary rights in the entire village Nurpur. It is stated in this document that "Whereas the entire village Nurpur, together with *sair* and *mal* is the special *muafi haqiat* of Raja Chhatpal Singh, taluqdar of Nurpur and I, the executant, have been holding the same, with the consent of the said Raja, on the *mustajari* lease as well as by way of my *sir* land, paying Rs.513 by way of *jama*, relating to the said village, to Raja Sahib, the following conditions have been settled between me and the said Raja . . . The said Raja may get my name entered in the column of under-proprietor. I, the executant, as well as my heirs, shall continue to pay, without any objection and dispute whatever, Rs.513, the *jama* of the said village, per instalment, every year, to Raja Sahib, in case of any objection or excuse on our part regarding the payment of the said *jama* the said Raja shall have the power to himself settle the village in any way he likes or place it under direct management, to which I, the executant, as well as my heirs shall have no objection or dispute, explicitly or impliedly.

No complaint filed by me or my heirs regarding my ejectment shall be effective and cognizable by a court.

I, the executant, as well as my heirs, shall have no power to sell, mortgage and gift, etc. (the property). after my name is recorded in the under-proprietary column. If, by chance, I, the executant, and my heirs, refrain from obeying Raja Sahib then the under-proprietary right enjoyed by me and my heirs be taken to be null and void.

In short, I, the executant, as well as my heirs, shall remain loyal and obedient to Raja Sahib in the same way as I, the executant, used to do in the past."

We have quoted this document *in extenso* because the plaintiff strongly relies on it. The contention of the learned counsel is that this document clearly gives the taluqdar a right of re-entry and forfeiture and that the defendants have no powers of transfer.

Exhibit 7, dated the 9th of May, 1865, is a copy of an application made by Raja Chhatpal Singh (in re *Sukha Singh v. Raja Chhatpal Singh*, in which the claim was for an under-proprietary tenure of village Nurpur). It is stated that as Sukha Singh had executed a deed of agreement, which had been duly registered, therefore in consideration of his loyal services the Raja prayed that the name of Sukha Singh be entered in the under-proprietary column of the said village subject to the conditions in the said deed.

Exhibit A-19 is a copy of an order dated the 23rd of August, 1866, passed on the application filed by Sukha Singh, in case No. 1403 of 1868. The copy of the application has not been filed. It appears that Sukha Singh had claimed under-proprietary rights in village Nurpur. The order is to the effect that "whereas investigation in respect of this *ilaga* has not yet been made, it is therefore ordered that by sending a copy of the papers through the Sudder Munsarim the applicant be informed that at the time of an investigation of the *ilaga* investigation in this case also will be made."

Exhibit A-2 is a copy of proceedings dated the 5th of May, 1868, recorded by the Settlement Officer in the case of *Sukha Singh v. Raja Chhatpal Singh*. It appears that the parties put up the agreement entered into by them but the court refused to accept it on the ground that it was not in accordance with the statements made by the parties in court.

Exhibit A-20, dated the 5th of May, 1868, is a copy of an order recorded on the order-sheet of case No. 1403 of 1868 in which it is stated that "after recording the

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oral statement of the plaintiff and the reply of the defendant's agent it is plain that the plaintiff alleges that up to 1232 Fasli his *qabuliat* as proprietor remained with the Government and that at the end of 1232 Fasli Babu Gulab Singh, ancestor of the defendant, forcibly included the same in his taluqa and since then he pays Rs.500 for *jama* and the defendants' agent admits this.

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One agreement executed by Sukha Singh on a stamped paper has been filed on behalf of the defendant. Its contents are contrary to what the parties have stated. In this the word *mustajri* (by lease) is written, that is, the plaintiff holds the village as a lessee; under these circumstances it is proper to return this agreement and they may be directed to reduce the oral agreement into writing and to file the same so that the court may be able to interfere." This is really an amplification of the above order in Exhibit A-2.

Exhibit 2. dated the 14th of May, 1868, is the translation of the compromise entered into between Sukha Singh and Raja Chhatpal Singh in suit No. 1403, wherein it is stated that "as the zamindari village Nurpur has been in my (Sukha Singh's) possession as the pukhtadari village since the time it was included in the taluqa, i.e. from 1232 Fasli, on payment of Rs.513 by way of *jama*, now it has been settled between me and Raja Chhatpal Singh that the said village, along *sair* and *mal*, may remain in my possession on the old conditions and the said Raja may get my name entered in the column of *qabiz-darmini*.

I and my heirs shall continue to pay, Rs.513, the *jama* of the said village, per instalment, every year to the said Raja, but in case I, or my heirs, put forward any sort of excuse regarding the payment of the said *jama*, the Raja Sahib shall have the power to himself settle the village in any way he likes to which I and my heirs shall have no excuse or interference whatever . . ."

Exhibit 8 dated the 11th of May, 1868, is really the same document as exhibit 2, with this difference that it

is in English while exhibit 2 is in Urdu. It is stated in this document that "we are now agreed that the village may remain with him (Sukha Singh) together with *mal* and *sair* in *pucca* tenure, that his name be entered in the column of under-proprietary rights of the settlement records. I, Sukha Singh and my heirs will pay Rs.513 annually to Raja Chhatpal Singh for the village. If I or my heirs object to pay the said Rs.513 annually then Raja Chhatpal Singh is at liberty to settle the village with others or to make it *kham*. I and my heirs will possess no claim on it nor will our claim be cognizable in any court . . . After entering our names in the column of under-proprietary rights we have no power to transfer or to mortgage or to sell the village . . ."

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Ex. 3 dated the 14th of May, 1868, is a copy of judgment passed by the Settlement Officer on the basis of the compromise (exhibit 8). It is stated in this document that "this document is translated and the translation is appended to these proceedings as the parties have duly verified the agreement in my presence and there are no further claims to under-proprietary right in their mauza, I see no reason for delaying the decree.

Sub-settlement of mauza Nurpur taluqa Nurpur is subject to the terms of the agreement (i.e. exhibit 8) filed and attested by the parties and appended to these proceedings decreed in favour of the plaintiff Sukha Singh at an annual payment of Rs.513 . . .

A decree for Murrouiti passed by my predecessor in favour of some Sombansis (No. 1395) on the 21st of August last is not of course prejudiced by the above order."

It is urged by the learned counsel for the appellant that the judgment is in terms of the compromise which gave a right of forfeiture and re-entry to the landlord.

Exhibit A-3 dated the 14th of May, 1868, is a copy of the decree passed on the basis of the above compromise, which shows that "the plaintiff's claim to sub-

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settlement of the entire mauza Nurpur is decreed at an annual payment of Rs 513 and the plaintiff will pay chaukidar's and patwari's dues and all other village expenses."

Exhibit 23 dated the 21st of August, 1867, is a copy of judgment passed by the Settlement Officer in the case of *Durga Singh v. Raja Chhatpal Singh*, in which Durga Singh had claimed under-proprietary rights. It is said in the judgment that "the *patta* which is equally admitted sets at rest the point regarding plaintiff having an interest in the land or not. The matter of possession is in doubt. Eshri's possession is admitted, the Durga's is either denied but as Eshri is a plaintiff (illegible) need not be now considered." In the concluding portion of the judgment it is stated that "I have not thought it worth while to quarrel with the wording of the claim which is for under-proprietorship. Strictly speaking this term is used of those who claim a right springing from and remaining out of proprietary right. To such a right plaintiffs have no pretension. I have held under-proprietorship to mean here a subordinate title and privileged tenure."

It may be noted that this judgment was passed before the passing of the Oudh Rent Act of 1868.

The learned counsel has further referred to exhibits 10, 13, 14, 15 and 16 to show what Sukha Singh's successors understood by the agreement, which was entered into between Sukha Singh and the taluqdar.

Exhibit 10 is a translation of the lease executed by Lallu Singh, son of Sukha Singh, in favour of Bhawani Bakhsh Singh. It is stated that "whereas, I, the executant, have no power of transfer in village Nurpur, nor is there any way to pay off the debts; whereas I, the executant, prior to his filing the suit, filed an application in the court of the Deputy Commissioner to the effect that the executant's share be given to Bhawani Bakhsh Singh, the said co-sharer, under a lease, so that he, having paid and cleared off the debts due from me,

the executant, may hold possession of the executant's property and have his debts satisfied."

It appears that the rent had got into arrears, therefore Lallu Singh executed a lease in which he stated that he had no power of transfer in village Nurpur. Bhawani Bakhsh Singh mentioned in this document is the predecessor-in-interest of defendants Nos. 1 to 4.

It appears that Lallu Singh mortgaged some property to Dunia Singh and exhibit 13 is a copy of the plaint in the suit brought by the mortgagee against the mortgagor.

Exhibit 14 dated the 17th of January, 1922, is the written statement filed by Lallu Singh, the mortgagor in the suit. In paragraph 2(e) it is stated that "it is not admitted that the property mortgaged is under-proprietary tenure." In paragraph 11 it is stated that "the property mortgaged is the *qabzadari haqiat* and is non-transferable, which, under no circumstance whatever, is liable to sale. Hence the plaintiff's suit is fit to be dismissed."

Exhibit 15 is the statement of Lallu Singh made in that suit, in which he stated that "I have no power to transfer the land in view of the compromise that was arrived at between the taluqdar and myself (i.e. his predecessor)."

Exhibit 16 is the judgment in suit, in which it was held that under the terms of the mortgage-deed the mortgaged property was transferable and the defendant could not raise the question of invalidity of the deed.

On the strength of these documents the contention of the learned counsel for the appellant is that the terms of the compromise (exhibit 8) should be considered as a whole.

The learned counsel relied on the case of *Raja Rameshar Bakhsh Singh v. Sankata Bakhsh Singh and others* (1) for the authority that as the compromise gave

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(1) (1914) 1 O.L.J., 389(396).

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the landlord a right of re-entry the tenure was not an under-proprietary tenure. He also relied on a decision of the late Court of the Judicial Commissioner of Oudh reported in *Musammam Janki Kunwar v. Babu Mitra Sen Singh and others* (1), wherein it was held that "a tenure, which is not transferable, cannot be treated as under-proprietary; but a superior proprietor can confer under-proprietary title on a person for life without any power of transfer." It was urged that the position of Sukha Singh was that of a lessee. Reference was also made to a case of *Pirtha Singh v. The Hon'ble Sir Raja Mohammad Ali Mohammad Khan Bahadur and another* (2). This case in our opinion is clearly distinguishable from the present case.

On the other hand, the defendants in support of their title rely on the following documents:

Exhibit A-2, is a copy of the proceedings dated the 5th of May, 1868, in which under-proprietary rights were claimed.

Exhibit A-20 dated the 5th of May, 1868 is a copy of an order recorded on the order sheet in which it is said that "one agreement executed by Sukha Singh on a stamped paper has been filed on behalf of the defendant. Its contents are contrary to what the parties have stated. In this the word "*mustajri*" (by lease) is written, that is, the plaintiff holds the village as a lessee, under these circumstances it is proper to return this agreement and they may be directed to reduce the oral agreement into writing and file the same so that the court may be able to interfere."

Exhibit 2 dated the 11th of May, 1868, is the compromise in which it is stated that "it has been settled between me and Raja Chhatpal Singh that the said village along with *sair* and *mal* may remain in my possession on the old conditions and the said Raja may get my name entered in the column of *qabiz-darmiani* as distinguished from *mustajri* lease.

(1) (1919) 6 O.L.J., 696.

(2) (1925) 13 O.L.J., 126.

Exhibit 3 is a copy of judgment dated the 14th of May, 1868, decreeing the sub-settlement of mauza Nurpur in favour of Sukha Singh.

Exhibit A-4, dated the 18th of March, 1869, is the khewat of proprietors in respect of village Nurpur, and in the column of shares of proprietors it is stated that the share of Sukha Singh was to the extent of 5 annas 4 pies, Bhagwat Singh 5 annas 4 pies and Dawan Singh 5 annas 4 pies and the total revenue payable was Rs.513. It is clear from this paper that these men are not entered as lessees but as proprietors.

In exhibit 8 (i.e. the agreement) it is stated that "we are now agreed that the village may remain with him together with *mal* and *sair* in *pucca* tenure". The word *pucca* needs an explanation. Agarwal in his Commentary on the Land Revenue Act has said that "if the profits or loss fell on the zamindar, he was considered to have held *pucca* even though he was out of rent collecting possession and the taluqdar or chakledar's own servants collected rents. If the profits or loss did not fall on zamindar, he was deemed to have held *kachcha*".

It is thus clear that Sukha Singh pleaded for sub-settlement and stated that he was holding the village *pucca*. He, therefore, in our opinion got a decree for under-proprietary rights.

Exhibit A-5 is an extract of paragraphs 1 and 2 of the *wajib-ul-arz* of village Nurpur. In this Sukha Singh Bhagwat Singh and Dawan Singh are given as proprietors of 5 annas 4 pies each in village Nurpur. In paragraph 1 it is stated that "Formerly this village was held by Raja Chhatpal Singh. Accordingly after investigation of title of zamindari the Government granted the same as *qabiz-darmiani* (tenure). Now we, *qabiz-darmianis* (i.e. Sukha Singh Bhagwat Singh and Dawan Singh) are in proprietary possession and enjoyment of this village . . ." There is no suggestion in this document that Sukha Singh was a lessee.

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Exhibit A-6 is a copy of *jamabandi* of the village in dispute. In column 2 under the heading of the "name of cultivated field" it is stated as *sir* of Sukha Singh . . . *qabiz-darmirani* (under-proprietor). If Sukha Singh was a lessee, it would not have been shown as his *sir*.

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Exhibit A-7 dated the 31st of January, 1894, is an extract from Mahalwar statement of mahal Nurpur. In the column of remarks it is stated that "The whole mohal is held by under-proprietors, servants of the taluqdar who bestowed on them the village in under-proprietary right. They obtained a decree against Babu Chhatpal Singh on 14th May, 1865. They paid to superior proprietor Government revenue Rs.325, malikana Rs.188, total Rs.513." This entry was made during the second settlement and after the passing of the Oudh Rent Act.

Exhibit A-8 is an extract from the *jamabandi* prepared at the recent settlement in respect of village Nurpur for the years 1891-92. In the third column under the heading of the "Name of cultivator together with his parentage, caste and residence" it is entered as "Sir land of Bhawani Bakhsh Singh, Dawan Singh and Lallu Singh, son of Sukha Singh".

Exhibit A-9 is the *pukhtadari* khewat of the second settlement of village Nurpur and Bhawani Bakhsh Singh, Dawan Singh and Lallu Singh are shown in possession of 5 annas and 4 pies each.

This was the state of affairs up to the time of the second settlement.

Exhibit A-12 dated the 8th of January, 1916, is an application of the taluqdar under section 185 Act No. III of 1901 for realisation of revenue on account of arrears of village Nurpur. In paragraph 1 of the application it is stated that "the plaintiff is the superior proprietor and the defendants are the under-proprietors (*qabid-darmianis*) of village Nurpur, taluqa Chhatpal Garh." It is important to note that it is

nowhere mentioned in this application that the defendants were the lessees.

Exhibit A-15 is the *pukhtadari* khewat of the village in dispute during the third settlement and under the heading of the "name of the co-sharers with their parentage, caste and residence and the share of each co-charer" it is entered "*pukhtadari*, heritable and transferable" and the names of the sons of Lallu Singh with their respective shares are mentioned in it. It is important to note that the rights are treated as transferable.

Exhibit A-17 dated the 3rd, 21st April/23rd May, 1929, is an order on the order-sheet in case no. 180 relating to assessment of rent on *pukhtadars*. In the absence of any objections the names of the respondents were entered as *pukhtadars*.

Exhibit A-16 is an extract from Mahalwar assessment statement of mahal Khas, mauza Nurpur and in the remark's column it is stated that "this mahal is owned by the Court of Wards Chhatpal Garh and is held in *pukhtadari* by six Thakurs who are indebted."

Exhibit 4 is the statement of *pukhtadari* rents relating to under-proprietors showing that one of those six Thakurs was Bhawani Bakhsh Singh, who paid Rs.195 as *malikana* dues.

It is thus clear from the above documents that in the third settlement the defendants were recorded either as *qabiz-darmianis* or as under-proprietors.

In our opinion the words "*qabiz-darmiani*" mean an under-proprietor in the sense in which it is used in the Oudh Rent Acts (XIX of 1868 and XXII of 1886).

As stated above exhibit 2 is the Urdu compromise or agreement between Sukha Singh and Chhatpal Singh, and exhibit 8 is the English translation of it as contained in the settlement file. The English translation omits certain Urdu phrases and is not verbatim, but there is no question as to its accuracy. It may safely be said that non-transferable *qabiz-darmiani* (under-proprietary) rights were agreed between the parties and Sukha

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Singh was liable to be ejected for disloyalty to the proprietor and for failure to pay rent. We do not think it is necessary to discuss the point at greater length for in paragraph 2 of the plaint it is stated that "the defendants within the said mauza are *pukhtadars* with heritable and non-transferable rights in respect of the property in suit... under a decree dated the 14th of May, 1868, of the Court of the Settlement Officer of Partabgarh on the basis of a compromise dated the 11th of May, 1868". It is thus clear that Sukha Singh got heritable but non-transferable under-proprietary rights under the compromise.

The next question for decision is whether the restraint of rights gave the defendants only tenancy rights under special agreement or whether it was void and the defendants are under-proprietors with full powers of transfer. The plaintiff relied on the cases of *Kalka Singh and another v. Suraj Bali Lal and others* (1) and *Pirtha Singh v. The Hon'ble Sir Raja Moham-mad Ali Mohammad Khan Bahadur and another* (2).

On the other hand the defendants relied on the following cases:

Lal Sripat Singh v. Lal Basant Singh (3), *Faiyaz Husain Khan v. Nilkanth and another* (4), *Gaya Din Singh v. Syed Mumtaz Husain and Fida Husain* (5) and *Lal Sripat Singh v. Lal Basant Singh* (6).

In the case of *Lal Sripat Singh v. Lal Basant Singh* (3), it was held that a condition in restraint of alienation of an absolute estate even although it is contained in settlement decree is null and void, and in spite of the insertion of such addition, such a settlement decree conveys an absolute right of transfer.

In the case of *Faiyaz Husain Khan v. Nilkanth and another* (4), there was a compromise decree with the stipulation that the plaintiff and his heirs would remain

(1) (1917) 5 O.L.J., 80.

(3) (1914) 1 O.L.J., 421.

(5) (1907) 10 O.C., 136.

(2) (1925) 13 O.L.J., 126.

(4) (1900) 4 O.C., 163.

(6) (1918) 21 O.C., 180.

in possession but have no power of transfer to a stranger. It was held that the condition in restraint of alienation was void.

In the case of *Gaya Din Singh v. Syed Mumtaz Husain* (1), it was held that where a decree of a settlement court was based on a compromise which contained restrictions as to alienation, such conditions were void and inoperative.

In the case of *Lal Sripat Singh v. Lal Basani Singh* (2), their Lordships of the Privy Council laid down that "where a decree declared a person entitled to a certain legal status but added words which totally nullified the previous declaration, held that the subsequent words limiting the rights which under the law attach to such status should be ignored and that so long as he retains that status he will be entitled to all those rights which attach to it. Under a settlement decree a person was declared an under-proprietor (*qabiz-darmani*) 'without right to transfer' held, that the subsequent words could not take away the under-proprietor's right to transfer his interest which was a necessary incident of his legal status." There are in our opinion some distinguishing features from the present case as the compromise in the case before their Lordships did not contain the words "without the right of transfer" but the court added them. The above observations no doubt support the contention of the respondents.

The cases of *Sarju Din Pandey v. Kamla Singh and another* (3), *Pirthipal Singh v. Ganesh Din Singh and another* (4), *Nageshwar Sahai, Kunwar v. Mata Prasad, Kunwar* (5) and *Teja Singh and another v. Moti Singh and another* (6), are also to the same effect.

We have carefully examined the deed of compromise or agreement and we find that it can only be interpreted as conferring upon the respondents absolute under-proprietary rights in the village in question. The

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(1) (1907), 10 O.C., 136.

(3) (1915) 3 O.L.J., 187.

(5) (1922) 25 O.C., 189.

(2) (1918) 21 O.C., 180.

(4) (1922) 9 O.L.J., 649 P.C.

(6) (1924) 27 O.C., 350.

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condition in restraint of alienation even although it is contained in a settlement decree is null and void and that in spite of the insertion of such addition such a decree conveys an absolute right of transfer. We accordingly hold that the decree in question conferred upon the respondents full under-proprietary rights with regard to village Nurpur, and the respondents have complete right to transfer the whole or any portion of their under-proprietary rights in the tenure in spite of the insertion of the clause forbidding them to do so.

We might add that it was further contended on behalf of the respondents that the decree of the Settlement Officer cannot be referred back to show that the respondents were not under-proprietors and in support of his contention the learned counsel relied on the cases of *Bipin Chandra Chatterji v. Dewan Singh* (1) and *Faqir Bakhsh Singh v. Uderaj Singh* (2). These cases undoubtedly support the above contention.

The learned Civil Judge has held that the plaintiff is estopped from questioning the defendants' under-proprietary rights as he has acknowledged all along that they were under-proprietors. He has further held that the suit is not within time. In view of the above finding it is not necessary for us to discuss these questions, but we may add that we do not agree with the findings of the learned Civil Judge on these questions.

We are, therefore, of opinion that the decision of the learned Civil Judge on Issue No. 1 is correct and dismiss the appeal with costs.

Appeal dismissed.

(1) (1925) 2 O.W.N., 894.

(2) (1929) I.L.R., 5 Luck., 186.