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THAKUR RAGHURAJ SINGH v. RAI BAHADUR LALA HARI KISHUN DAS

Mr. P. Kaul at present Civil Judge of Mohanlalganj at Lucknow, on the ground that the preliminary issues arising from the judgment debtor's objections were decided by him. The learned counsel for the judgment-debtor has no objection to the execution case being transferred to that officer and we think that it is advisable that the case be transferred to him especially as it was he who decided the judgment-debtor's objection in part. We therefore order that the case be transferred from the Court of the Civil Judge Sitapur to that of Mr. P. Kaul, Civil Judge of Mohanlalganj at Lucknow.

*Thomas, A. C. J. and Ziaul Hasan, J.*

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## APPELLATE CIVIL

*Before Mr. Justice A. H. de B. Hamilton and Mr. Justice R. L. Yorke*

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*March, 4.*

RAZA HUSAIN KHAN AND OTHERS (DEFENDANTS-APPELLANTS) *v.* SAIYID MOHAMMAD HUSAIN, PLAINTIFF AND ANOTHER DEFENDANT (RESPONDENTS)*

*Grant—Crown grant—Houses granted to taluqdars by a general sanad before Oudh Estates Act subject to the condition that no taluqdar should transfer them to any one not taluqdar or the heir to a taluqdar—"Taluqdar" and "heir to a taluqdar" meaning of—Construction of the grant—Houses, whether appurtenant to taluqa and to go with taluqa—Transfer of houses, limitations to—Section 3, Crown Grants Act, meaning of.*

The Kaisarbagh Palace in the city of Lucknow had been forfeited by the British Government on the annexation of Oudh. In 1861 the Government with the object of providing town residences in the capital to the taluqdars of Oudh, granted all the houses situate in the Kaisarbagh Palace to the taluqdars of Oudh by means of a general sanad issued by the Chief Commissioner of Oudh on certain conditions. One of these conditions was that no taluqdar shall transfer his share in the buildings and appurtenances thereto to any one not a taluqdar or the heir to a taluqa and that in case of breach of the above condition the grant shall be resumed by the Government.

*Held*, that the expression "heir to a taluqa" as used in the sanad means the heir apparent to such person as was then

*First Civil Appeal No. 77 of 1936, against the decree of Mr. Brij Krishna Topa, Civil Judge of Malihabad at Lucknow, dated the 31st of May, 1936.

regarded as taluqdar and since the general sanad was issued before the Oudh Estates Act of 1869 came into being, the word "taluqdar" should not be given the restricted meaning of a person entered in one of the lists prepared under section 8 of the Oudh Estates Act. In the years prior to 1869 it can only have been used in the general sense in which it is still commonly used today, namely, the owner of a taluqa. Before 1869 "taluqa" must have been an estate which had been forfeited by the Government and which was given back to landowners at the settlement and therefore, the condition contained in the general grant was that transfer could only be made by the grantee in favour of another person similarly situated as himself or in favour of his own heir-apparent or the heir-apparent of such other person.

The object of the Government being to provide town houses for the various taluqdars of Oudh though, by individual sanads houses were given to particular individuals as taluqdars, it was more or less immaterial to Government which particular family held the house, the real object being that taluqdars should hold them and not other members of taluqdar families, in other words, these houses were to go with a taluqa as an appurtenance thereto. It does not, however, follow that such Kaiser Bagh houses became an integral part of the taluqdari estate to which the Oudh Estates Act applies. The Act contains provisions as to the power of transfer of an "estate" within the meaning of the Act which would be in conflict with the limitations contained in the general sanad issued about these Kaiser Bagh houses, and the whole purpose of the grant would be defeated if transfers could be made of these houses as can be made of the taluqdari estate. Under the general sanad these houses follow the taluqa and any transfer or bequest of these houses which would have the result of putting the taluqa and the house into different hands would be a violation of the limitations on the power of transfer which formed an essential part of the grant.

Section 3 of the Crown Grants Act means that the Crown is entitled to put such restrictions in a grant which a private individual could not, but the only advantage to the grantee is that the grant to him is not invalid if given by the Crown when it might be invalid if given by an individual.

Messrs. *M. Wasim, Habib Ali Khan, M. H. Qidwai* and *Mohammad Ayub*, for the appellants.

Messrs. *Ghulam Hasan* and *Ali Zaheer*, for the respondents.

HAMILTON and YORKE, JJ.:—This is an appeal by five defendants against a decision of the Civil Judge of

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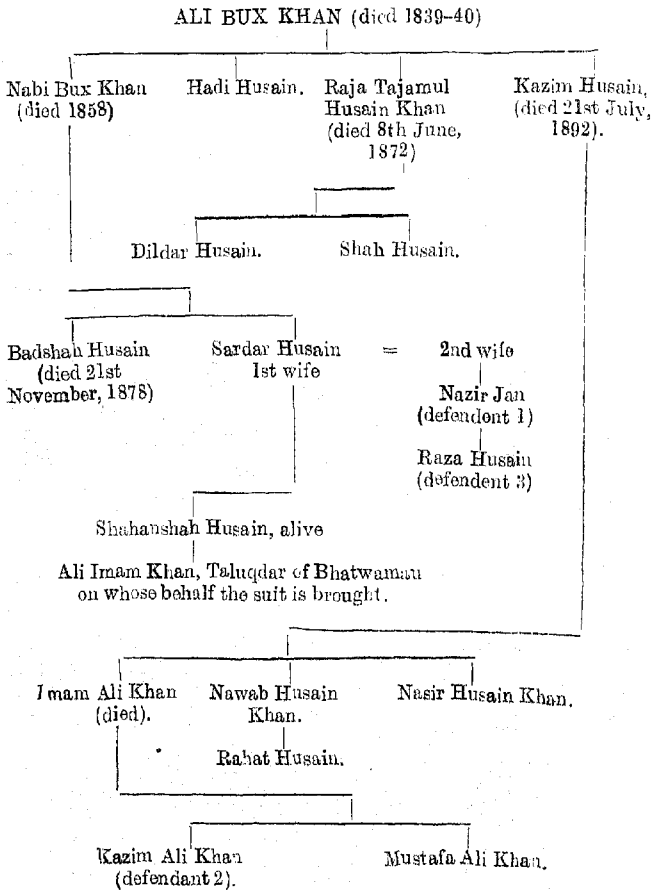
Malihabad, Lucknow, decreeing the suit of the plaintiff Syed Mohammad Husain.

Shahanshah Husain Khan who was defendant in the lower court has been made a respondent in this appeal. He is the father of the plaintiff. Defendants 1 to 3 are members of the family (in the case of defendant 1 by marriage) to which Raja Sardar Husain Khan, deceased, also belonged.

The subject-matter of the suit is a house in Kaisar Bagh, Lucknow, and Kazim Ali Khan, defendant 2, sold half the house to defendant 4 who sold it to defendant 5.

The pedigree here given is that of the family of Sardar Husain and will show how the parties other than defendants 4 and 5 are related.



The case of the plaintiff in its main features is as follows:

(1) The house in suit was the subject of a Crown grant in favour of Badshah Husain, taluqdar of Bhatwamau, either by an individual sanad or by a general sanad in favour of the taluqdars of Oudh and on the death of Badshah Husain the house passed to his brother Sardar Husain;

(2) Sardar Husain bequeathed the house to the plaintiff by a valid will exhibit 1, dated the 24th March, 1920;

(3) though Sardar Husain revoked the will as regards the house and by a codicil bequeathed half to Kazim Ali Khan and half to Musammat Nazir Jan, the codicil was in this respect invalid—

(*a*) as contravening the conditions of the grant, and

(*b*) as contravening the provisions of the Oudh Estates Act.

(4) the plaintiff as taluqdar of Bhatwamau is under paragraph 8 of the codicil entitled to the house in preference to the defendants.

The main features of the answers of the appellants are as follows:

(1) No grant is proved and if any is to be presumed it is in favour of Raja Tajamul Husain Khan;

(2) The prohibition in the grant, if any grant be established against transfer does not extend to a bequest;

(3) The Oudh Estates Act does not apply to this house, but even if it does, the codicil nevertheless operates in favour of the defendants;

(4) The plaintiff himself not being a taluqdar or the heir of a taluqdar is in no better position than the defendants and cannot challenge the bequest in their favour contained in the codicil;

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(5) in any case Government alone, in view of the conditions of the grant, if any, can question the bequest in favour of the defendants, but if any individual can do so it is the father of the plaintiff but not the plaintiff himself; and

(6) the plaintiff not being taluqdar of Bhatwamau gets nothing under the codicil.

*Hamilton and Yorke, JJ.*

The word "taluqdar" is used by the plaintiff-respondent in the general sense of owner of a taluqa while the appellants would use it in its strict and correct legal sense, namely, a person entered in lists 1 and 2 prepared in accordance with section 8 of Act I of 1869, the Oudh Estates Act. The taluqdar would then be Badshah Husain Khan and no other.

The history of the house in suit is as follows:

This house like the Mahewa house which was the subject of a decision of their Lordships of the Privy Council reported in *Rajindra Bahadur Singh* v. *Rani Raghubans Kunwar* (1) formed part of the Kaiserbagh Palace which was forfeited by the British Government on the annexation of Oudh. The *Calcutta Gazette* of July to December, 1861, at page 3389, contains a speech of the Viceroy and Governor General in answer to an address of the taluqdars, and in that speech there is a paragraph about this Kaiserbagh Palace which runs as follows:

> "It is very desirable that intercourse between the talookdars of Oudh and the Local Government should be facilitated; you will derive benefit from the wise and friendly councils of the Chief Commissioner, and he will have advantage in frequent communication with you. I have, therefore, authorised Mr. Yule to make over to you, for your accommodation in visiting the Capital, the Palace of the Kaiserbagh, if you should desire to avail yourself of it."

We may, therefore, say that the object of the Viceroy was to turn the Kaiserbagh Palace into town houses for the aristocracy of Oudh.

(1) (1918) L.R., 45 I.A., 134(146).

Exhibit 12/P. W. 1, copy of an extract from the Government, N. W. P. and Oudh, Public Works Department Proceedings for February, 1899, contains a copy of what we may call a general sanad in favour of the taluqdars. It is to the effect that as His Excellency the Viceroy and Governor General in a durbar on the 5th day of November, 1861, that is to say, the occasion of the speech from which we have quoted, was pleased to bestow the Kaiserbagh Palace to the taluqdars of Oudh, the Chief Commissioner of Oudh granted this sanad conferring on the taluqdars and the heirs and successors to their taluqas the Kaiserbagh Palace on certain conditions including the one which is relevant in this case which runs as follows:

*Hamilton and Yorke, JJ.*

> "It is also a condition of the gift that no taluqdar shall transfer his share in the buildings and appurtenances thereto to any one not a taluqdar or the heir to a taluqa."
>
> If the present or future taluqdars were unmindful of this and other obligations, the gift would be resumed by the Government.

There is no direct evidence of the issue of this sanad, but we find it referred to in later documents filed in this record as having been issued.

Plaintiff's exhibit 34, copy of a letter of the Chief Secretary to the Government to the Commissioner of the Lucknow Division, dated the 18th of July, 1903, states that in 1861 these historical buildings (Kaiserbagh) were bestowed upon taluqdars.

Defendants' exhibit C9, order, dated 14th July, 1890, passed by the Commissioner, Lucknow Division, regarding the Kaiserbagh buildings, has the following sentence:

> "The permission to occupy quarters in the Kaiserbagh is a personal indulgence granted by the Government and the right cannot be transferred by sale, gift, lease or otherwise without the special permission of Government being first obtained."

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This, however, may refer to individual sanads and not to the general sanad. Plaintiff's exhibit 33 is a copy of a letter from the Honorary Life Secretary of the British Indian Association, that is to say the Taluqdari body, to the Commissioner of Lucknow which contains the following sentence:

*Hamilton and Yorke, JJ.*

> "The Kaisarbagh is a Crown grant and the sanad contains a clause to the effect that no taluqdar shall transfer his share in the building and appurtenances thereto to any one not a taluqdar or the heir to a taluqdar."

Individual grants to which we shall refer later only prohibit transfer to any one not a taluqdar, and the reference in this letter to the prohibition of transfer to a person who is not heir of a taluqdar must, therefore, refer to the general sanad and not to any individual sanad. There is then plaintiff's exhibit 13/P. W. 1, copy of a draft of a proposed new form of individual sanad which contains the following sentences:

> "Whereas in the year 1861 all houses situate in the Kaiserbagh Palace in the city of Lucknow were granted by the Government to the various taluqdars of Oudh by means of a general sanad issued by the Chief Commissioner of Oudh on the conditions . . . that no taluqdar should transfer any share in the building and appurtenances thereto to any one not a taluqdar or the heir to a taluqa, and that in case of breach of any of the above conditions the grant should be resumed;
>
> And whereas under this grant the taluqdars of Oudh took and occupied separately the various houses in the said palace of Kaiserbagh and they and their successors-in-title have been holding the said houses on the said conditions, but individual sanads were not issued to all of them and it is not known which of the taluqdars had actually obtained individual sanads and which not . . ."

It is clear from this that those who were in the best position to know whether a general sanad had been issued, namely, Government officials on the one side and the British Indian Association on the other, were

agreed that this general sanad was issued. We find, therefore, that this general sanad was issued and we are not able to accept the contention of the learned counsel for the appellants that it is not proved that there was any grant by Government of the house in suit.

There are on the record three copies of individual sanads, plaintiff's exhibits 35, 36 and 37 of which the first in favour of the Maharaja of Kapurthala, his heirs and successors to his taluqa has been printed. The only important difference between this individual sanad and the general sanad is that no taluqdar is allowed to transfer his share to any one not a taluqdar and the words "or heir to a taluqdar" are not included. There is no evidence that any individual sanad was issued as regards the house in suit. It may be that one was issued, but in view of what is stated in exhibit 13/P. W. 1 that individual sanads were not issued to all the taluqdars, it is not certain. Once, however, the issue of a general sanad is proved, it matters little whether an individual sanad was also issued or not because neither the plaintiff nor the defendants Raza Husain Khan, Musammat Nazir Jan nor Kazim Ali can, in our opinion, be called "the heir to a taluqa" within the meaning of the sanad. In our opinion, as used in the sanad, the expression "heir to a taluqa" means the heir-apparent to such person as was then regarded as taluqdar. In this connection we may say that the general and the individual sanads were issued before the Oudh Estates Act of 1869 came into being and, therefore, the word "taluqdar" should not be given the restricted meaning of a person entered in one of the lists prepared under section 8 of the Oudh Estates Act. In the years prior to 1869 it can only have been used in the general sense in which it is still commonly used today, namely, the owner of a taluqa. Before 1869 "taluqa" must have been an estate which had been forfeited by the Government and which was given back to landowners at the

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settlement. In our opinion, therefore, the condition contained in the general grant was that transfer could only be made by the grantee in favour of another person similarly situated as himself or in favour of his own heir-apparent or the heir-apparent of such other person.

*Hamilton and Yorke, JJ.*

The learned counsel for the appellants has urged that we should presume that if any grant was made as regards the house in suit it was made in favour of Raja Tajamul Husain. Who Raja Tajamul Husain was can best be seen from the plaintiff's exhibit 7, a decision of the Judicial Commissioner of Oudh. It is sufficient for us to say that though the taluqdar was Badshah Husain, as regards the management of his estate he remained in the background and Raja Tajamul Husain, his uncle, was in the limelight. The learned counsel has suggested that, therefore, the Government must have made a mistake and have given this house by a grant to Raja Tajamul Husain instead of to Badshah Husain. By the general grant it was Badshah Husain and not Raja Tajamul Husain who could have got this house, and as we have said no individual grant about this house is forthcoming. The authorities cannot but have known that it was Badshah Husain who got the sanad which affected the landed estate as opposed to the house and we think, therefore, that any mistake as to who should get the individual sanad to the house was so unlikely that we can say it is impossible that it should have occurred. The mere fact that Tajamul Husain was created a Raja shows nothing for he may have got the title because of any personal service which he may have rendered. Defendants' exhibit C11 is a map of the Kaiserbagh without any date and in the part of the Kaiserbagh which forms this house appear the words "Tajamul Husain Khan of Bhatwamau" and the same words appear on the map exhibit C10 about the same house. We see no reason for presuming from this evidence that any grant was made to Raja Tajamul

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Husain. The person who prepared this map in all probability went to the house, saw Tajamul Husain there and put his name as if he was the real owner and not the manager of the Bhatwamau estate.

The learned counsel for the appellants has urged that this prohibition of transfer must not be taken as including prohibition of a bequest. The general and the individual sanads are not statutes and were drawn up so long ago as 1861 and 1865 when Oudh was governed more by rules than by codified law, and the meaning attached to them we have already shown from the letter by the Commissioner of Lucknow, namely, that all alienation to a non-taluqdar be it by gift or otherwise was forbidden without the sanction of the Government. We think we should take the word "transfer" in a more general sense than that given to it either by the Oudh Estates Act of 1869 or the Transfer of Property Act.

*Hamilton and Yorke, JJ.*

After the death of Badshah Husain Khan, his brother, Sardar Husain Khan, had to bring a suit about all the taluqdari estate of Bhatwamau and also this house and the decision of the Judicial Commissioner of Oudh is exhibit 7. The defendant in that suit was Kazim Husain Khan and, after his death, Imam Ali Khan who were respectively grandfather and father of defendant No. 2. The suit of the plaintiff was successful and he got this house as appertaining to the taluqa. The written answer to that suit is not on the record so we do not know what was alleged by the then defendant, but there is nothing to indicate that a defence was then set up that Raja Tajamul Husain Khan had obtained the house from a grant by the Government.

On the 24th of March, 1920, Sardar Husain who had by now obtained this house as an appurtenance to the taluqa executed a will exhibit 1 by which he left his entire property taluqdari and non-taluqdari to the plaintiff Ali Imam Khan because Shahenshah Husain, father of Ali Imam Khan, and son of the testator, had been

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convicted of forgery. On the 25th of April, 1923, Sardar Husain executed a codicil exhibit C12 and the part of it which referred to the house is as follows:

*Hamilton and Yorke, JJ.*

*Paragraph* 3—"That Kazim Ali Khan is at present residing at Kaiserbagh in the house of me the declarant, therefore, I give half portion of this house at Kaiserbagh to Kazim Ali Khan aforementioned and the remaining half to my last wedded wife Musammat Nazir Jan, mother of Raza Husain Khan, which after her (Musammat Nazir Jan's) death shall devolve upon Raza Husain Khan without the coparcenership of any one else. Each of the two portions shall devolve on the lines of Kazim Ali Khan and Raza Husain Khan generation after generation and my other heirs shall have no right of any kind, at any time, to the said house."

*Paragraph* 8—"That if, on account of any legal defect or on account of any other reason, the paragraphs in favour of Kazim Ali Khan and Mustafa Ali Khan and Rahmat Husain Khan and Musammat Nazir Jan, wife of me the declarant, be held to be unenforceable by a competent court then in that case my younger son, Raza Husain Khan, shall become the owner of all the properties, namely, mauzas Sandupur, Bhadewan, Katuri Khurd and the house at Kaiserbagh and that if on account of any legal defect, Kazim Ali Khan and Raza Husain Khan may not get the house at Kaiserbagh, then after me the taluqdar of Bhatwamau shall get the said property."

On the 11th of May, 1923, Sardar Husain died and Kazim Ali Khan and Musammat Nazir Jan, defendant 1, together with Raza Husain, defendant 3, took possession of the house. As we have stated, on the 12th of February, 1930, Kazim Ali Khan sold his half to defendant 4 who on the 15th of February, 1933, sold that same half to defendant 5.

We must now refer to that decision of their Lordships of the Privy Council in *Rajindra Bahadur Singh* v. *Rani Raghubans Kunwar* (1) about the Mahewa house which is as follows:

"The house in the Kaiserbagh at Lucknow. The right to the possession of this house does not depend upon the

(1) (1918) L.R., 45 I.A., 134(146).

sanad of 1861, which was granted to Girwar Singh upon the surrender by him to the Government of the sanad of 1859, which had been granted to Gajraj Singh. The house in the Kaiserbagh was not included in the sanad of 1861. It is common ground that a house in the Kaiserbagh was allotted by the Government to Girwar Singh in 1864 or 1865 for his use as the taluqdar of taluqa Mahewa. That house was demolished when the Canning College was built, and in place of it another house, the house now in dispute, was allotted by the Government to Balbhaddar Singh for his use as the taluqdar of the taluqa Mahewa. No sanad relating to the house has been produced, nor has it been proved that any sanad relating to the house was granted. But it may be inferred from the fact that the house was allotted to Balbhaddar Singh for his use as taluqdar of Mahewa that such right to possession of it as he had passed not to his widow but to his successor in the taluqdari of Mahewa."

In following this decision of their Lordships of the Privy Council we must guard against the danger of following it so blindly that in reality instead of following it we misapply it. We note that their Lordships decided that such right to possession of it as Girwar Singh had in 1864 or 1865 passed to his successor in the taluqdari of Mahewa because the house had been granted to Girwar Singh for his use as taluqdar of taluqa Mahewa. This appears to us to mean no more than that the house followed the taluqdari landed estate. As no sanad was produced in that case the effect of any conditions contained in the sanad could not be considered. We think, therefore, that that decision will only guide us as regards the house in suit here in so far as there is nothing in the sanad against it. We have already shown that the object of Government was to provide town houses for the various taluqdars of Oudh and though, by individual sanads, houses were given to particular individuals as taluqdars, it was more or less immaterial to Government which particular family held the house, the real object being that taluqdars should hold them and not other members of taluqdar families, in other words, these

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*Hamilton and Yorke, JJ.*

houses were to go with a taluqa as an appurtenance thereto. It does not follow, in our opinion, that such Kaiserbagh houses became an integral part of the taluqdari estate to which the Oudh Estates Act applies. That estate is defined in section 2 of the Oudh Estates Act and is composed of the taluqa or immovable property acquired or held by a taluqdar or grantee in the manner mentioned in section 3, section 4 or section 5, and the other immovable property in respect of which a taluqdar or grantee or his heir or legatee or a transferee referred to in section 14 has a separate, permanent, heritable and transferable right, and in respect of which he has made a declaration in accordance with the provisions of section 32A of this Act. This house was not acquired in the manner mentioned in section 3, section 4 or section 5 nor has any declaration been made in accordance with the provisions of section 32A of the Oudh Estates Act.

Further, the Act contains provisions as to the power of transfer of an "estate" within the meaning of the Act which would be in conflict with the limitations contained in the general sanad issued about these Kaiserbagh houses, and the whole purpose of the grant would be defeated if transfers could be made of these houses as can be made of the taluqdari estate. The learned counsel for the respondents has urged that to apply the provisions of the Oudh Estates Act to this house would be the logical result once this house was found to be an appurtenance to the taluqa, but, in our opinion, it would not. We think that under the general sanad this house followed the taluqa and any transfer or bequest of this house which would have the result of putting the taluqa and the house into different hands would be a violation of the limitations on the power of transfer which formed an essential part of the grant.

Coming then to the will of Sardar Husain in favour of the plaintiff of the whole taluqdari and non-taluqdari

property of the testator, it may be urged that the bequest of the house was in a way contrary to the limitations of the grant in that it was to a person who at the time was not a taluqdar nor even the heir-apparent of a taluqdar seeing that Shahenshah Husain was still alive. On the other hand, the bequest of the taluqdari estate made Ali Imam Khan taluqdar after Sardar Husain, using of course the word "taluqdar" in the sense used, in our opinion, in the sanad and not in the strictly legal sense defined by the Oudh Estates Act. Ali Imam Khan having obtained the taluqdari property he was entitled to this house because the practical effect of the will was to carry out the terms of the grant, but even if it be held that the bequest of the house by the will was against the conditions of the grant, he obtained the house by virtue of the terms of the grant as soon as he obtained the taluqdari estate.

*Hamilton and Yorke, JJ.*

Having reached this point, the case of the plaintiff proceeds on an alternative. (*a*) The codicil about the house in favour of defendants 1 to 3 was invalid as being contrary to the terms of the grant, and also because the codicil was not valid under the provisions of the Oudh Estates Act and, therefore, the plaintiff is entitled to a decree whether he is entitled to the house by virtue of the will or because the will gave him the taluqdari estate. In the alternative (*b*) the codicil as regards the house in favour of the defendants 1 to 3 being invalid as contravening the terms of the grant, under paragraph 8 the plaintiff is entitled to the house.

The learned Civil Judge has held that the codicil in favour of defendants 1 to 3 was invalid because it contravened the provisions of the Oudh Estates Act—

(*a*) because the executant died within three months of its execution;

(*b*) because it is not in favour of a privileged class within the meaning of section 13A of the Oudh Estates Act; and also

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(*c*) because the house is not transferred in favour of a taluqdar or the heir to a taluqdar; and

(*d*) because the Kaiserbagh property is the subject matter of a grant by Government and goes with the taluqa and the conditions of the sanad are broken.

*Hamilton and Yorke, JJ.*

We do not think it necessary to decide what meaning should be attached to the expression "a younger son" in section 13A of the Oudh Estates Act as we have held that the terms of the grant govern the powers of a testator as regards this house and not the provisions of the Oudh Estates Act. We agree with the learned Civil Judge as regards his findings (*c*) and (*d*), namely, that the bequest in favour of defendants 1 to 3 was invalid under the grant. None of the defendants 1 to 3 are persons to whom the terms "taluqdar" or "the heir to a taluqa" as contained in the general sanad can be said to apply.

We must here consider the contention of the appellants that the plaintiff has no *"locus standi"* because only the Government can take advantage of any remedy that is open for breach of the conditions of the grant or at most if any one besides the Government has a right, Shahenshah Husain, father of the plaintiff, is that person. The learned counsel for the appellants has called our attention to *Rampher Singh* v. *Ram Khelawan Singh and others* (1); *Hirday Behari* v. *Parag Tiwari* (2) and *Musammat Bhagwati and another* v. *Raghubar Dayal* (3).

In the first case certain members of the zamindari body had a heritable but not a transferable right in a village and were to pay to the taluqdar Government revenue and a certain portion of the proceeds by virtue of a decree passed on a compromise. The plaintiff's father who was one of the decree-holders sold a certain share of his holding to the defendant and the plaintiff brought a suit for possession of that share alleging that his father

(1) (1899) 2 O.C., 252. (2) (1903) 14 O.C., 144.
(3) (1935) O.W.N., 1134.

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was not authorised to transfer the share as it was not transferable. It was held that it was not open to the plaintiff to question the transfer because the restriction on the right of transfer was intended for the benefit of the taluqdar and his heirs and not of the decree-holders and their heirs. The second case was one where the plaintiff held certain lands under a decree of the settlement court granting "*kabzadari*" without the right of transfer, but he mortgaged them with possession to the defendant and he subsequently brought a suit to recover possession on the ground that the mortgage being of an occupancy holding was invalid. It was held that the condition forbidding transfer was only for the benefit of the superior-proprietor and also that the plaintiff was not entitled to the assistance of the court in undoing his own act.

*Hamilton and Yorke, JJ.*

The last case was one where the interest of a grantee under a heritable non-transferable grant for maintenance was attached and sold in execution of a money decree against him. It was held that the restriction against alienation was intended for the benefit of the grantor and a transfer by the grantee was not therefore absolutely void but was only voidable at the option of the grantor.

The difference between such cases and the present one is only that the grantor was the Crown and not a private individual, but learned counsel for the respondents argues that the existence of section 3 of the Crown Grants Act makes all the difference. That section reads as follows:

> "All provisions, restrictions, conditions and limitations ever contained in any such grant or transfer as aforesaid shall be valid and take effect according to their tenor. any rule of law, statute or enactment of the Legislature to the contrary notwithstanding."

In our opinion this means that the Crown is entitled to put such conditions in a grant which a private individual could not, but the only advantage to the grantee is that the grant to him is not invalid if given by the Crown when it might be invalid if given by an individual. We

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*Hamilton and Yorke, JJ.*

do not think this section confers on a grantee the right to sue if he had no such right had the grant in his favour been made by an individual. Had this grant been made by an individul we consider that neither the plaintiff nor even his father could sue in view of the decisions of this Court to which we have referred. We consider, however, that if any private individual could sue, it would be the plaintiff and not his father because by virtue of the grant this house follows the taluqdari estate of which the plaintiff and not his father has become the owner. Were it not, therefore, for paragraph 8 of the codicil we think that the remedy open to the plaintiff would be to call the attention of the Government to the contravention of the terms of the grant and to move the Government to forfeit the house and then to apply for its restitution to him. As regards the case of the plaintiff as based on paragraph 8 of the codicil, it is really a claim for a declaration that on a correct construction of paragraph 8 of the codicil the bequest takes effect in his favour and not in favour of defendants 1 to 3 and for consequential relief in the form of possession against all the defendants. The meaning of paragraph 8 is, in our opinion, quite clear, namely, after rejecting those persons who because of legal defect or on account of any other reason are held not to be entitled to the house by a competent court, the legatee shall be the first person who is not so rejected. Kazim Ali Khan, Musammat Nazir Jan and Raza Husain Khan too are not entitled to this house because they are not taluqdars or heirs to a taluqa in the meaning to be attached to those words in the general sanad. There is then left the taluqdar of Bhatwamau who is not under the same disability. The learned counsel for the applicants has not put forward any argument as regards this paragraph 8 of the codicil beyond saying that the plaintiff is not the taluqdar of Bhatwamau. We agree that if "taluqdar" is to be taken to mean taluqdar in the sense in which the word is used in the Oudh Estates Act,

he is not the taluqdar for the one and only taluqdar of Bhatwamau was Badshah Husain Khan whose name appears in lists 1 and 2. After his death there was not and could not be a second taluqdar of Bhatwamau. We have, however, already stated that this definition of "taluqdar" dates from 1869 when the Oudh Estates Act was passed and in construing the sanad we must construe it in the sense in which "taluqdar" could and must have been used before 1869. We think it was used as it is commonly used now in the sense of the proprietor of the Bhatwamau estate. That estate is still in existence and the owner of it is the plaintiff by virtue of the will executed in his favour by Sardar Husain. Consequently the person who is entitled to the house by virtue of paragraph 8 of the codicil is the plaintiff and he is entitled against the defendants to possession of this house. As that part of paragraph 8 of the codicil which takes effect is the bequest of this house to the taluqdar of Bhatwamau, namely, the plaintiff, the question of forfeiture by Government does not really come into the case at all.

*Hamilton and Yorke, JJ.*

For these reasons, therefore, we uphold the decision of the learned Civil Judge and we dismiss the appeal with costs.

*Appeal dismissed.*