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CHAUDHURI  
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NARAIN  
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SAHU.

contention fails, and as no other point is pressed, I would dismiss this appeal with costs to defendant No. 3 throughout the litigation.

COUTTS, J. I agree.

*Appeal dismissed.*

## APPELLATE CIVIL.

*Before Coutts and Macpherson, J.J.*

1921.

August, 4.

MUSSAMMAT SHAHZADI BEGUM

v.

MUSSAMMAT KOKILA.\*

*Bengal Land Revenue Sales Act, 1857 (Bengal Act XI of 1857), section 54—'incumbrance', whether includes a tenure intermediate between the proprietor and the mukarraridar.*

It is competent for a proprietor who has granted a *mukarrari* of his whole share to create an intermediate tenure between himself and the *mukarraridar*.

Therefore, where the proprietor granted to his wife, in lieu of dower, the right of collecting rent from the *mukarraridar*, held, that this was an incumbrance within the meaning of section 54 of the Bengal Revenue Sales Act, 1859.

*Raj Kumar Majumdar v. Probal Chandra Ganguli*(1), applied.

*Bibi Jarao Kumari Saheba v. Hanifuddin Akand*(2) referred to

The facts of the case material to this report were as follows :—

M. Khairat Ahmed, the owner of a 6-annas 8-dams share in Mouza Mai Fatehpur, died, leaving two widows

\* Appeal from Appellate Decrees Nos. 283 and 284 of 1920, from a decision of G. Rowland, Esq., District Judge of Gaya, dated the 25th February 1920, confirming a decision of Babu Nirmal Chandra Ghose, Munsif of Gaya, dated the 11th June, 1919.

(1) (1904-1905) 9 Cal. W. N. 656.

(2) (1909-1910) 14 Cal. W. N. 389.

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Dargahan and Jamilan, two sons Fazlur Rahman and Mokhtar Ahmed, and one daughter Kulsum. Jamilan sued for her dower and purchased the 6-annas 8-dams share in execution of the decree which she obtained. Subsequently there was a family settlement by which a 2-annas 11-dams 4-kauris share was allotted to Fazlur Rahman. The latter granted a *mukarrari* of his share to his then wife, Mussammat Kokila, in lieu of dower. A separate account was opened for this share and it was sold for arrears of revenue and purchased by Warasat Hussain, who transferred it to Shahzadi Begum in 1908.

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On the 7th January, 1919, Shahzadi Begum instituted rent suit No. 2 of 1919 against Ghulam Rasul Khan and others for the recovery of *mukarrari* rent from 1323 to the *Asin kist* of 1326F. The defendants denied the plaintiff's right to the rent and pleaded that the rent was payable to Mussammat Kokila. They accordingly deposited the rent in Court and a notice under section 149, Bengal Tenancy Act, was served on Mussammat Kokila.

Mussammat Kokila thereupon instituted Title Suit No. 24 of 1919, against Shahzadi Begum on the 6th March, 1919, claiming the amount in deposit as due to her.

The two suits were heard together. The title suit was decided in favour of Mussammat Kokila and the rent suit was dismissed.

From the decision in both suits Shahzadi Begum appealed and the appeals were dismissed. She then preferred the present appeals, No. 283 of 1920 in the title suit, and No. 284 of 1920 in the rent suit.

*Sultan Ahmed*, for the appellants.

*Md. Hasan Jan* and *Md. Ishfaq*, for the respondents.

COURTS, J.—These two appeals arise out of two suits, one for rent brought by Musst. Shahzadi Begum against Ghulam Rasul Khan and others in which the

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defendants contended that the rent was payable to Musst. Kokila, a *mukarraridar* under Musst. Shahzadi, the other a suit brought by Musst. Kokila against Musst. Shahzadi claiming the rent which had been deposited by Ghulam Rasul and others in the rent suit.

The case of Musst. Shahzadi is that she purchased 2-annas 11-dams 4-kauris of village Mai Fatehpur in 1916 from Warasat Husain who had in the previous year purchased it at a revenue sale. It appears that this 2-annas 11-dams 4-kauris was part of a 6-annas 8-dams share in the village which belonged to M. Khairat Ahmed. When Khairat Ahmed died he left two widows, Dargahan and Jamilan, two sons, Fazlur Rahman and Mokhtar Ahmed and one daughter Kulsum. Jamilan one of the widows sued for dower, and having got a decree purchased Khairat Ahmed's 6-annas 8-dams share at an auction sale. Subsequently there was a family settlement by which Fazlur Rahman got a 2-annas 11-dams 4-kauris share and later he granted in lieu of dower what has been called a *mukarrari* of this to his then wife Musst. Kokila. Afterwards a separate account was opened for Fazlur Rahman's share and what happened was that the share was sold for arrears of revenue and purchased by Warasat Husain who transferred it to Shahzadi Begum in 1916.

The main question in the suit and the only question with which we are now concerned, is whether by the revenue sale the interest which Fazlur Rahman conveyed to his wife Kokila and which has been called a *mukarrari* was annulled or not. Admittedly section 54 of Act XI of 1859 applies to the present case. This section runs as follows:—

"When a share or shares of an estate may be sold under the provisions of section 13 or section 14, the purchaser shall acquire the share or shares subject to all incumbrances and shall not acquire any rights which were not possessed by the previous owner or owners."

And the point here is whether the so-called *mukarrari* granted by Fazlur Rahman to Kokila is an

incumbrance within the meaning of this section or not. Both the Courts below have found that it is an incumbrance and it is against this finding that Shahzadi Begum has appealed in both cases.

Now what was granted by Fazlur Rahman to his wife Kokila was not really a *mukarrari*; it was merely a right to collect rent from the existing *mukarraridars* whose *mukarrari* covers the whole share and what is contended by the learned Government Advocate is that it is not an incumbrance on the land but merely a personal right not affecting the land and consequently not such an incumbrance as is referred to in the section. It is true that in *Bibi Jarao Kumari Saheba v. Hani-fuddin Akand* (1) there is a remark at the end of the judgment which goes to support this contention, but this remark is purely *obiter* and in my opinion it is not the correct view of the law. The same question was fully discussed in regard to a *patni* tenure in *Raj Kumar Majumdar v. Probal Chandra Ganguli* (2). In that case it was held that the existence of a *patni* tenure does not bar the proprietor from creating an intermediate tenure between himself and the *patnidar* and exactly the same reasoning applies to the case of a proprietor and a *mukarraridar*. It may be that the tenancy which is created is not a *mukarrari* tenure but it is certainly in my opinion an incumbrance. It is urged that having granted *mukarrari* of the whole share all that remains in the proprietor is his proprietary right and when he leases any portion of this proprietary right he is merely parting with a portion of such right and not creating an incumbrance. This argument would be correct if the proprietor was selling a portion of his proprietary right, but in the present case what was done by Fazlur Rahman was not to part with his proprietary right but merely in consideration of an annual rent of Rs. 29 to give to his wife the right of collecting rents from the *mukarraridars*. This to

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(1) (1909-1910) 14 Cal. W. N. 389. (2) (1904-05) 9 Cal. W. N. 655.

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my mind is clearly an incumbrance and in my opinion the view which has been taken by the Courts below is correct.

I would accordingly dismiss these appeals with costs.

MACPHERSON, J.—I agree. The only rights which a purchaser of a separate account at revenue sale acquires by his purchase are, under section 54 of the Bengal Revenue Sales Act, 1859, those which the owner of the separate account possessed at the time of the sale. In this instance, the rights of the previous owner were affected by the limitation which Fazlur Rahman had put upon them in 1906 in favour of his then wife, the present respondent; the purchaser accordingly secured them subject to the same limitation. I also agree that it comes within the term "incumbrance" expressed in section 54.

*Appeals dismissed.*

## APPELLATE CIVIL.

*Before Courts and Macpherson, J.J.*

RAMDHANI LAL

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*August, 4.*

*v.*

CHAIRMAN OF THE PATNA MUNICIPALITY.\*

*Bengal Municipal Act, 1884 (Bengal Act III of 1884), section 238—"within 15 days", meaning of.*

The notice referred to in section 238 of the Bengal Municipal Act, 1884, must be served within 15 days from the time when the building is commenced and not within 15 days from the time when the Municipality has notice of the building.

\* Appeal from Appellate Decree No. 795 of 1913, from a decision of R. L. Ross, Esq., District Judge of Patna, dated the 16th May, 1913, reversing a decision of Babu Monindra Nath Mitra, Munsif of Patna, dated the 23rd December 1912.