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MISSIR
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TEWARI.

KEWAJA
MOHAMMAD
NOOR, J.

That is quite different from granting a lease of bakasht land to a raiyat. The appeals are allowed and it is ordered that the plaintiffs' suit be dismissed with costs throughout. Only one set of costs will be allowed for the trial Court, and it will be distributed between the defendants first party and second party to the proportion of Rs. 1,432 and Rs. 772.

MACPHERSON, J.—I agree.

Appeals allowed.

APPELLATE CIVIL.

Before Macpherson and Dhavle, JJ.

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THAKUR KHITANARAIN SAHI

April, 14.
May, 20.

v.

SURJU SETH.*

Chota Nagpur Encumbered Estates Act, 1876 (Ben. Act VI of 1876), sections 12 and 12A—property restored to holder under section 12, sub-section (1) or (3)—section 12A, bar imposed by, whether applies to involuntary sales—released property, whether can be sold in execution of money decree without the sanction of the Commissioner—Code of Civil Procedure, 1908 (Act V of 1908), section 60.

The Chakla estate comprised of, inter alia, villages Chakla and Dadu, in which T was interested to the extent of eight annas, was from 1906 to 1920 administered under the provisions of the Chota Nagpur Encumbered Estates Act, 1876. In 1920 it was released from the provisions of the Act (except section 12A) and the enjoyment and possession of the property was restored, under the provisions of sub-section (1) or (3) of section 12, to T who was the holder thereof when the application to bring it under management was made in 1906.

* Appeal from Original Order no. 3 of 1931, from an order of Mr. Amanat Hussain, Deputy Magistrate-Subordinate Judge of Palamau, dated the 18th September, 1930.

Section 12A (1) of the Chota Nagpur Encumbered Estates Act, 1876, provides :

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"When the possession and enjoyment of property is restored, under the circumstances mentioned in the first or the third clause of section 12, to the person who was the holder of such property when the application under section 2 was made, such person shall not be competent, without the previous sanction of the Commissioner,—

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(a) to alienate such property, or any part thereof, in any way, or

(b) to create any charge thereon extending beyond his life-time",

and under sub-section (3)

"every alienation and charge made or attempted in contravention of sub-section (1) shall be void."

In 1921, however, T borrowed money on a registered bond. The creditor obtained a decree in 1929 on the basis thereof, and in execution of the decree proposed to sell the eight annas share of the judgment-debtor in villages Chakla and Dadu.

In May, 1930, the Commissioner of Chota Nagpur accorded permission to the judgment-debtor to alienate, inter alia, his share in village Dadu, no such permission having been given with regard to village Chakla. On the 13th September, 1930, the judgment-debtor filed an objection, contending, inter alia, that village Chakla could not be sold as the sanction of the Commissioner had not been obtained. The execution court overruled the objection.

Held, on appeal, (i) that the bar imposed by section 12A, Chota Nagpur Encumbered Estates Act, 1876, applied equally to involuntary sales by the court: a property is not liable to sale by the Court unless the judgment-debtor has a disposing power over it for his own benefit; the measure of liability to involuntary alienation is the power of voluntary transfer;

(ii) that, therefore, the sale of the property released under sub-section (1) or (3) of section 12 of the Act in execution of a money decree without the sanction of the Commissioner was void under section 12A of the Act read with section 60, Code of Civil Procedure, 1908.

Appeal by the judgment-debtors.

The facts of the case material to this report are stated in the judgment of Macpherson, J.

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G. C. Mukharji, for the appellants.*B. C. De*, for the respondents.

MACPHERSON, J.—This is an appeal by the judgment-debtors in an execution case in the Court of the Deputy Magistrate-Subordinate Judge of Palamau against the rejection of their objection of the 13th September, 1930, that their immoveable property which was on sale on that day and which was actually sold some days later was not saleable in execution of the decree.

The Chakla estate in which the appellants are interested to the extent of eight annas, was from 1906 to 1920 administered under the provisions of the Chota Nagpur Encumbered Estates Act, 1876 (hereinafter designated 'the Act'). In 1920 it was, with the exception of certain forest land in mauza Chakla and mauza Nagar, released from the provisions of the Act except section 12A.

As possession and enjoyment of the property was restored under the provisions of the first or third sub-section of section 12 to the appellants who were the holders thereof when the application to bring it under management was made in 1906, the petitioners are under the first sub-section of 12A

- " incompetent without the previous sanction of the Commissioner
- (a) to alienate such property, or any part thereof, in any way, or
 - (b) to create any charge thereon extending beyond his (their) life-time "

and under the third sub-section every alienation and charge made or attempted in contravention of sub-section (1) is void. Furthermore, sub-section (4) authorizes the Deputy Commissioner to inquire whether the holder of property has made or attempted to make any alienation or charge in contravention of that sub-section, and sub-section (5) provides that if

the Deputy Commissioner after such inquiry requests that the provisions of the Act be re-applied, a fresh order may be made appointing a Manager and vesting in him the management of the property.

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In 1921 the appellants borrowed money on a registered bond and in 1922 executed a mortgage reman in respect of the same debt. The respondents obtained in 1929 a decree for 5,473 on the registered bond and in execution proposed to sell the eight annas share of the petitioners in mauza Chakla and mauza Dadhu.

The judgment-debtors filed an objection that section 12A of the Act was a bar to such a sale. This objection was rejected on 12th February, 1930, in the words

" J. D's objection disallowed. Heard pleaders "

Thereafter applications were filed by several creditors that their encumbrances be notified and the Court directed that a usufructuary mortgage being an alienation could not and that a simple mortgage, being not an alienation but falling within the category of " charge " within the lifetime of the mortgagor, could be notified.

In May, 1930, the Commissioner of Chota Nagpur accorded permission to the petitioners to alienate their eight annas share in the three mauzas Dadhu, Garenja and Semarsat. Eventually on the 13th September, 1930, when the Court would concede no further postponement, the objection was filed out of which these proceedings have arisen, setting out that the property on sale could not be sold as the decree-holder had not obtained the sanction of the Commissioner and attaching a copy of the decision of Rowland, J., dated the 23rd May, 1930, in *Ramdas v. Bhagwat Narain*⁽¹⁾. The learned Judge there set out that he was not satisfied that the Judicial Commissioner of Chota Nagpur had committed any error of

(1) (1930) 13 Ind. Cas. 538.

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law in holding that section 12A of the Act read with section 60 of the Code of Civil Procedure prevented a property released under section 12 of the Act from being sold on a money decree without the sanction of the Commissioner. The learned Subordinate Judge passed the following order on the objection :

" The judgment-debtors have filed a petition stating that the properties have been put up to sale without obtaining the permission of the Divisional Commissioner of Chota Nagpur and as such the said properties cannot be sold under section 60 of the Civil Procedure Code and 12A of the Chota Nagpur Encumbered Estates Act.

" Heard pleaders. An objection under section 47, Code of Civil Procedure, was already filed on 9th September 1929, and disallowed after hearing on 12th February 1930. Judgment-debtors then on 19th June 1930 filed a petition that they had obtained Commissioner's sanction to sell the properties and since then they always took time for payment of the money after private sale. The objection is disallowed."

The decree-holder then purchased the appellants' half of the two villages.

In support of the present appeal it is urged that under the provisions of section 12A and section 60 of the Code of Civil Procedure neither village could be sold—Chakla because the Commissioner had not granted permission and Dadhu because the permission which he granted in respect of it was for a private sale and he might have refused permission for an involuntary sale. The plea as regards Dadhu is, however, not pressed and indeed the copy of the order of the Commissioner granting permission to alienate does not show that the sanction was circumscribed in any way.

A preliminary objection that the matter is res judicata [*Mangal Prasad v. Girija Kant*(¹)] is not pressed as the question admittedly depends on whether under the statute the sale is void.

The question then is whether without the sanction of the Commissioner the sale or attempted sale of

(3) (1881) I. L. R. 8 Cal. 51, P. C.

mauza Chakla on a money decree obtained against the proprietors who are subject to section 12A is void under section 12A. In my opinion there can be no serious doubt that the answer is in the affirmative. The object of the Act of 1876 is to provide for the relief of "holders" of land in Chota Nagpur who may be in debt and whose immovable property may be subject to mortgages, charges and liens, and the method adopted is to vest the management of the property of a holder in an officer appointed by the Commissioner and termed the Manager whose function is to clear off the encumbrances after which the property is released to the "holder". For reasons of public policy the property is to be saved to the holder. But after the release the holder, it was found, frequently lost no time in nullifying all that had been done on behalf of the property by entering upon a course of extravagance or mismanagement which endangered the property. To deal with that position the Legislature in 1909 enacted section 12A. That enactment deals in sub-sections (1) to (5) with a person who was the holder both when the Act was applied to the property and when the property was released to him, and so far as the property is concerned, the enactment continues his disabilities in respect of it, practically placing him under the tutelage of the Commissioner in respect of everything but the usufruct. Without the sanction of the latter he cannot alienate the property or any part of it in any way nor create any charge upon it extending beyond his own lifetime and any such alienation or charge made or attempted is void. Manifestly the intention of the Legislature was that the property should reach the heir of the holder intact and should do so unencumbered as it had been released to the holder himself. The object of the enactment is the protection of the property itself. The disposing power of the holder is taken away entirely except in respect of the usufruct during his life-time. To employ the language of section 60 of the Code of Civil Procedure, he no longer possesses

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over the property a disposing power which he may exercise for his own benefit; he retains such a power only over the profits from the property during his life-time. The provisions of sub-sections (4) and (5) also are highly significant in this connection.

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It is indeed suggested by Mr. B. C. De on behalf of the decree-holder that either by deliberate omission or by overlooking the necessity for such a provision the Legislature has actually failed to forbid an involuntary or Court sale of the property, and he points to sub-section (6) as indicating that the Legislature where it intended to bar suits did so explicitly and to the provisions of the Chota Nagpur Tenancy Act, 1908, section 46 of which places restrictions on the transfer of their rights by raiyats and section 47 of which goes on to place restrictions on sales of raiyats' rights under order of Court.

Now sub-section (6) substantially bars against all holders [and not merely the class covered by sub-sections (1) to (5)] suits on a promise to pay a debt and on a ratification of a promise or contract of a holder to whom property has been released, where the promise or ratification is subsequent to release and the debt was contracted or the promise and contract was made during "management". It deals with revival of old commitments and wipes it out by barring a suit upon them. In the earlier sub-sections where new commitments are dealt with, the Legislature took an equally efficacious though different course by prohibiting alienation, which includes sale, by the holder of his immovable property. It did not desire to prohibit a suit on a charge on the property such as is permissible under section 12A (1) (b), but when the suit has been successful, the bar to all alienation is to come in to prevent a proposed sale in execution of the decree just as it would prevent a sale or attempted sale by private contract, the remedy against the judgment-debtor, if any, being perhaps, as in the case of the

incumbent of a ghatwali tenancy similarly circumstanced, the appointment of a receiver of the usufruct of the property during the holder's life-time.

Then I fail to see how any inference can be drawn from the analogy of the provisions as to raiyati tenancies in the Chota Nagpur Tenancy Act, 1908. Sections 46 and 47 do not completely overlap and in any case, as has frequently been remarked, the Legislature was in that instance determined to take no risks that its intention should be misunderstood or misinterpreted. It cannot be inferred from the absence of a double-barrelled provision in the Encumbered Estates Act which deals with much more sophisticated classes, that the Legislature did not intend to prohibit a sale by the Court of the property of the holder. To my mind the Legislature provided in the earlier sub-sections of section 12A against such a sale by reasonable and necessary implication and in view of section 60 of the Code of Civil Procedure it was superfluous to provide specifically against an indirect sale of the property. Property is not liable to sale by the Court unless the judgment-debtor has a disposing power over it for his own benefit. The measure of liability to involuntary alienation is the power of voluntary transfer. The latter is taken away from the holder by the statute so far as sale or attempted sale of the property is concerned and the exercise of it is rendered void. Full ownership is cut down—the holders power of disposition for his own benefit is restricted to the profits accruing within his life-time. There is, as already indicated, ample precedent in Chota Nagpur in the enactments prohibiting on grounds of public policy the transfer, save in exceptional circumstances, of raiyati holdings, and in the law governing ghatwali tenancies which also cannot be sold on a decree against the incumbent for his debt. Then the whole purpose of the enactment would be frustrated if by indirect means—it would ordinarily also be collusively—the holder could effect the alienation which he is forbidden to make directly.

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It may be pointed out in addition that there is of course no equity in favour of creditors who know quite well how little security the statute leaves them in respect of advances to disqualified borrowers definitely subject to section 12A.

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In my opinion the Subordinate Judge had no jurisdiction to sell the petitioners' share in mauza Chakla. The appeal must be allowed in respect of it and the sale be set aside to that extent. The appellants are entitled to their costs—pleader's fee two gold mohurs.

DHAVLE, J.—I agree.

Appeal allowed.

APPELLATE CRIMINAL.

Before Terrell, C. J. and Rowland, J.

LEDA BHAGAT

v.

KING-EMPEROR.*

1929.

June 28,
July 2.

Criminal Trial—prosecution story disbelieved in essential details—court, whether can rely on a part of story for convicting the accused—reasonable inference drawn from facts proved—duty of offering alternative inference rests on accused.

Where the prosecution story is disbelieved as to its essential details, it is still open to the Court to rely on a part of the story for the purpose of convicting the accused.

Ram Prasad Mahton v. King-Emperor(1), followed.

Phatali Singh v. King-Emperor(2), not followed.

Where a set of facts is proved from which, having regard to human experience, only one reasonable inference can be

* Criminal Appeal no. 94 of 1929, against a decision of H. R. Meredith, Esq., r.c.s., Judicial Commissioner of Chota Nagpur, dated the 28th March, 1929.

(1) (1919) 4 Pat. L. J. 289.

(2) (1918) Cal. W. N. (Pat.) 288.