APPELLATE CIVIL.

Before Macpherson and Agarwala, JJ.

TIKAIT RUP RAJ RAI

v.

TIKAIT PERMANAND RAI.*

1933.

August, 15, 16.

Jagir—Ranchi district—lex loci—rule of lineal primogeniture, whether obtains—putraputradhi tenancy in Chota Nagpur estate, incidents of.

The lex loci in the Ranchi district is one of primogeniture not only in the family of the Maharaja of Chota Nagpur himself and its offshoots but also in all the jagirs of the district which are *putraputradhi*. In the Chota Nagpur estate it is beyond all question that a *putraputradhi* tenancy is impartible, is governed by the rule of lineal primogeniture and continues so long as there exists any lineal male descendant of the grantee (or grantees) with khorposh to the widow of the last surviving male holder.

Appeal by the plaintiff.

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

Rai Guru Saran Prasad and *Shiva Shankar Prasad*, for the appellant.

S. M. Mullick and *Pande Nawal Kishore Sahai*, for the respondent.

MACPHERSON, J.—This litigation was hopeless from the start and the fact ought to have been recognized long ago.

The appeal is preferred from the dismissal of a suit for partition of the Ulatu jagir in the Ranchi thana of the same district. It was instituted by Rupraj Rai, the younger brother of the Tikait of

* Appeal from Original Decree no. 203 of 1929, from a decision of Babu Narendra Nath Chakravarti, Subordinate Judge of Ranchi, dated the 29th August, 1929.

1933.

TIKAIT RUP RAJ RAI v. TIKAIT PERMANAND RAI.

MACPHERSON, J.

Ulatu whose defence was that under the local custom of primogeniture the tenancy devolved upon the defendant.

The jagir consists of Ulatu and Sidraul. The suit was seemingly based upon the entry in the khewat of both villages where the holder of the tenure is shown as "Tikait Parmanand Rai and Rup (or Rupraj), sons of Tikait Bagh Rai, *bahissa barabar*". There is, however, a further entry (wrongly translated) in the khewat of Sidraul—"*Rupraj Rai jab farq hoga, khorposh paega*", the import of which manifestly is that the custom of the tenancy is the usual one in Ranchi of primogeniture with khorposh to the younger brother or brothers. It is also significant that the record accords the title of Tikait to the elder brother only. Oral evidence was adduced of certain collaterals of the family to the effect that Dandu Rai, brother of the grandfather of the parties, received a share in the jagir. This evidence has been disbelieved by the Court below and in our opinion has beyond question been rightly disbelieved. It is entirely inconsistent with the numerous entries in the khewat of Ulatu which show that all the tenancies of members of the family except the jagir set out in khewat no. 2 are khorposh under the jagir and with the fact that only the holder of khewat no. 2 pays rent to the proprietor, the Maharaja of Chota Nagpur. In short it is ludicrously false and the testimony in this regard of the defendant-respondent is the truth. The quotations from the various authorities which have been cited by the learned Subordinate Judge and to which may be added the Ranchi District Gazetteer which is to the like intent, also leave no room for question that the lex loci in the Ranchi district is one of primogeniture not only in the family and offshoots of the Maharaja of Chota Nagpur himself but also in all the jagirs of the district. They are *putraputradhi*—even the appellant is constrained to admit that the tenure in suit is so. In the Chota Nagpur estate it is beyond

all question that a *putraputradhi* tenancy is impartible, is governed by the rule of lineal primogeniture and continues so long as there exists any lineal male descendants of the grantee or grantees, with khorposh to the widow of the last surviving male holder.

As to the entry in the record-of-rights, it was made when the estate was under the Court of Wards in the minority of the Tikait. That it is faulty is manifest from the fact that it was the estate of the respondent and not that of both brothers that was under the Court of Wards and that the estate was released to the respondent while the plaintiff was still a minor, as would not have been the case if the estate had been that of both the brothers. It may be conjectured that the officer who prepared the khewat of mauza Ulatu, if indeed he gave any thought to the matter, had some idea that until there was separation between the brothers the younger also had some latent ownership of the jagir. The entry of equal ownership seems to have been made inadvertently, the correct entry being made in Sidraul that on becoming separate the right of the younger brother is to receive khorposh. Taking advantage of the incorrect entry, the plaintiff-appellant, apparently at the instigation of his mother and with the help of some of the discontented khorposhdars of the family, illadvisedly started the present untenable litigation. The plaintiff-appellant has no valid claim to anything more than khorposh bearing some relation to the extent of the jagir. Even his mother admits that it is the eldest son only who is the Tikait and that the others are Kuar and Lals as is the invariable custom in a *putraputradhi* jagir of the Ranchi district. A khorposh grant of land was actually given to the plaintiff but he was discontented with the amount which, as his mother stated in her evidence, is not considered sufficient. The real object of the suit seems to have been to extract a larger khorposh grant. The plaintiff

1933.

TIKAIT RUP RAJ RAI v. TIKAIT PERMANAND RAI.

MACPHERSON, J.

has no right whatsoever to a share in the jagir and his suit for partition entirely fails, the property not being governed by the ordinary Mitakshara law.

Mr. S. M. Mullick appearing for the respondent was not called upon but after judgment was delivered he referred to the decision in *Lal Gajendra Nath Sahi Deo* v. *Lal Mathurlal Nath Sahi Deo*(1). This and the other decisions are not unknown to us but indeed decisions of the courts are entirely superfluous in respect of this extremely well-known custom which it would be ludicrous to question.

I would dismiss the appeal with costs.

AGARWALA, J.—I agree.

Appeal dismissed.

FULL BENCH.

Before Wort, A. C. J., Kulwant Sahay and Fazl Ali, JJ.

1933.

August, 15, 16, 17.

DOMOO KHAN

v.

AGHA ARSHAD KHAN.*

Promissory note—advance of loan independent of the terms of note—suit based on original contract—promissory note inadmissible—plaintiff, whether entitled to succeed.

When a cause of action for money is once complete in itself whether for goods sold, or for money lent, or for any other claim, and the debtor then gives a bill or note to the creditor for payment of the money at a future time, the creditor, if the bill or note is not paid at maturity, may always, as a rule, sue for the original consideration, provided that he has not endorsed or lost or parted with the bill or note.

Sheikh Akbar v. *Sheikh Khan*(2), followed.

* Civil Revision no. 530 of 1932, against a decision of Babu R. C. Mitra, Small Cause Court Judge of Gaya, dated the 26th August, 1932.

(1) (1916) 1 Pat. L. J. 109.

(2) (1881) I. L. R. 7 Cal. 256.