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chandna tenants can be ejected at the will of the landlord—but on whether it was for the landlords to prove a local custom or usage in support of the ejectment claimed or for the chandnadars to prove a local custom or usage to defeat the suit. In my opinion the former is the true position.

I would accordingly allow the appeal and dimiss the suit with costs in all Courts.

DHAVLE, J.

COURTNEY TERRELL, C.J.—I agree.

AGARWALA, J.—I agree.

Appeal allowed.

J. C.*
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PRIVY COUNCIL.

BINDESWARI CHARAN SINGH

v.

THAKUR BAGESHWARI CHARAN SINGH.

On Appeal from the High Court at Patna.

Res judicata—Civil Procedure Code, 1908 (*Act V of* 1908), *s.* 11—*Chota Nagpur Encumbered Estates Act*, 1876 (*VI of* 1876), *s.* 12A—*Maintenance grant by owner after property restored—suit by grantee for higher maintenance—Decision on validity of grant—2nd grant in satisfaction of decree—subsequent suit for declaration that grants were invalid under s.* 12A, *whether barred.*

An estate which was administered under the Chota Nagpur Encumbered Estates Act was released to the owner on May 15, 1909. On November 17, 1909, the owner executed a maintenance grant of villages yielding an annual income of Rs. 1,300 in favour of his son by his junior wife. In 1917 the grantee instituted a suit for maintenance against his father and his sons by his senior wife claiming a maintenance grant of Rs. 4,000 a year. In this suit it was held that the grant of 1909 was not hit by s. 12A of the Act and

*PRESENT: Lord Thankerton, Sir John Wallis and Sir George Rankin.

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was valid and an additional grant of villages yielding Rs. 2,300 a year in cash and Rs. 400 in kind was decreed.

In satisfaction of the decree the owner executed a 2nd grant for the amount decreed on February 21, 1920.

On May 14, 1926, the eldest son by the senior wife instituted a suit against the grantee for a declaration that both grants were invalid under s. 12A of the Chota Nagpur Encumbered Estates Act.

Held, that the decision of the Court in the suit of 1917 on the construction of s. 12A of the Chota Nagpur Encumbered Estates Act was *res judicata* as to the validity both of the grant of 1909 and the grant of 1920 made in implement of the decree and could not be challenged in the subsequent suit.

Appeal (no. 59 of 1934) from a judgment of the High Court (July 29, 1932) which reversed a judgment of the Additional Subordinate Judge of Hazaribagh (March 31, 1928).

The facts of the case are stated in the judgment of their Lordships.

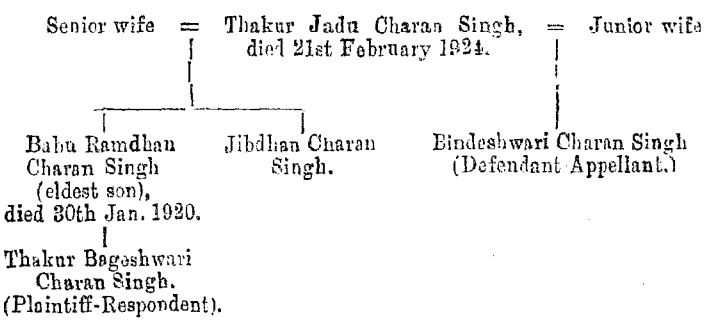
1935, October 24th and 25th. *Pringle*, for the appellant: Referred to sections 2, 3, 7, 12, 12A, 21B and 23 of the Chota Nagpur Encumbered Estates Act. The Court which heard the 1917 suit had jurisdiction either under section 23 or under the general law. Except in respect of the two classes of suits mentioned in section 12A(6) of the Act, the ordinary Civil Courts have jurisdiction to entertain suits brought against the holder of an estate on its restoration to him. The judgment in the 1917 suit, therefore, being the judgment of a Court having jurisdiction, cannot be treated as a nullity and binds the respondent until set aside by appropriate proceedings. The respondent is now barred by limitation from instituting such proceedings. There are concurrent findings that the decree in that suit was not collusive. The authorities relied on by the High Court in its judgment, properly understood, do not support it.

Dunne, K. C. and Wallach, for the respondent: The validity of the first grant may be res judicata by reason of the judgment in the 1917 suit; but that judgment does not make the validity of the second grant res judicata, as by it the appellant's maintenance was not charged on any specific property. No such charge could be created except with the sanction of the Commissioner as provided in section 12A. The decree in the 1917 suit was, moreover, collusive.

The judgment of the Judicial Committee was delivered by—

LORD THANKERTON—This is an appeal from a decree of the High Court of Judicature at Patna dated the 29th July, 1932, which reversed a decree of the Additional Subordinate Judge of Hazaribagh dated the 31st March, 1928, and decreed the plaintiff-respondent's suit with costs.

The following pedigree shows the relationship of the parties:—



Thakur Jadu Charan Singh was the owner of an impartible estate in the District of Hazaribagh. On his death intestate in 1924 the respondent succeeded to the estate, his father having died in 1920.

The management of the estate was vested in a manager appointed under section 2 of the Chota Nagpur Encumbered Estates Act (VI of 1876) from 1894 until the 15th May, 1909, when it was released

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and made over again to Jadu Charan, in accordance with the provisions of the Act. The estate was again vested in a manager under the Act on the 24th July, 1921, and it is still under management.

On the 17th November, 1909, Jadu Charan executed a maintenance grant in favour of the appellant, transferring to him villages and lands yielding an annual income of Rs. 1,300. Doubt being entertained as to whether, in view of the provisions of section 12A of the Act, the sanction of the Commissioner to the grant should have been obtained, the appellant, on the 4th March, 1916, sought the sanction of the Commissioner, but this was refused by an order dated the 26th April, 1916.

Section 12A provides as follows:—

"12A.—(1) 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—

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

(*b*) to create any charge thereon extending beyond his lifetime.

(2) If the Commissioner refuses to sanction any such alienation or charge, an appeal shall lie to the Board of Revenue, whose decision shall be final.

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

The present appellant, having attained majority on the 4th September, 1917, instituted suit no. 117 of 1917 in the Court of the Subordinate Judge of Hazaribagh against Jadu Charan and his brothers Ramdhan and Jibdhan, claiming a maintenance grant of the yearly value of Rs. 4,000—he being already in possession under the grant of 1909 of properties yielding an income of Rs. 1,200 in cash and Rs. 100 in kind—and maintaining that the sanction of the Commissioner was not necessary. All three defendants filed written statements, the present respondent's father,

in particular, contesting the suit. On the 12th November, 1919, the Subordinate Judge decreed the suit and ordered and decreed that :—

" it be declared that the plaintiff is entitled to get as maintenance grant from the defendant no. 1 properties yielding an income of Rs. 3,500 in cash and Rs. 500 in kind annually and it be further declared that the grant made to the plaintiff by his father on Kartik Sudi 5, 1966 S. is legally valid and after leaving out the khorposh properties so obtained by the plaintiff, he do get additional properties in maintenance from the defendant no. 1 yielding an annual income of Rs. 2,300 in cash and Rs. 400 in kind."

Defendant no. 2, the present respondent's father, who had not appeared at the trial, applied for a rehearing under Order IX, Rule 13, of the Code of Civil Procedure, but the application was rejected. On the 21st February, 1920, Jadu Charan, defendant no. 1, in implement of the order of the Court, executed and registered a maintenance grant to the present appellant of further properties yielding an income of Rs. 2,300 in cash and Rs. 400 in kind. This grant was filed in Court and entered, as satisfaction of the liability of defendant no. 1, on the 27th February, 1920.

The respondent's father having died on the 30th January, 1920, the respondent became the owner of the impartible estate, which again came under the Encumbered Estates Act on the 24th July, 1921. The respondent instituted the present suit, through his representative and next friend, the manager of the estate, on the 14th May, 1926, and impleaded as defendants the appellant and the mortgagee of some of the properties in suit. In the plaint the respondent asked for a declaration that the two maintenance grants of 1909 and 1920 are illegal and invalid and not binding on him, and asked for possession and mesne profits. The suit was defended by the appellant, and the following issues, settled in the suit, are relevant to this appeal :—

4. Are the judgment and decree passed in suit no. 117 of 1917 collusive?

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5. Are (*sic*) the findings in suit no. 117 of 1917 of the Subordinate Judge of Hazaribagh operate as *res judicata* in the present suit?

7. Are the grants dated 17th November, 1909 (Kartik Sudi 5 of 1966 Sambat) and dated 21st February, 1920, affected by section 12A of the Encumbered Estates Act?

Although the question of collusion is maintained in the respondent's case, it could not be seriously pressed in view of the concurrent findings of the Courts below, but their Lordships desire to point out that collusion is not the appropriate term to apply to the obtaining of a decree by a fraud on the Court; the terms of the issue suggest that the Court was implicated in the matter.

The learned Subordinate Judge held that the findings in the suit of 1917 did operate as *res judicata* and that, in accordance therewith, section 12A did not affect the grant of 1909 or the grant of 1920, as the latter was executed by way of carrying out the order in the judgment and decree in that suit. He therefore dismissed the present suit. On appeal, this decision was reversed by the High Court, for reasons which render it convenient to restate the provisions of section 11 of the Code of Civil Procedure, viz.—

> "No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court."

The judgment of the High Court was delivered by Agarwala, J., with whom James, J. concurred, and, with reference to the 1909 grant, it appears to their Lordships that the learned Judges have disregarded the express prohibition of section 11. They clearly hold that the question of the validity of the 1909 grant in view of section 12A of the Encumbered Estates Act was directly and substantially in issue and was decided in the 1917 suit and that the

similarity of the parties satisfied the condition of section 11 of the Code, but Agarwala, J. then states :—

"Reverting to the question of the operation of the doctrine of *res judicata* on the grant of 1909, the point for determination is whether the decision in the 1917 suit can render valid a transaction which sub-section 3 to section 12A declares to be void ... ... Now the third sub-section of section 12A declares that an alienation or charge made without the previous sanction of the Commissioner is void, that is to say, it is void *ab initio*. The grant of 1909 was in my opinion still-born and the decision in the suit of 1917 could not impregnate it with life. I therefore hold that we are not bound to treat the grant of 1909 as valid merely by reason of the conclusion as to its validity arrived at by the learned Subordinate Judge in the 1917 suit."

Truly the third sub-section of section 12A renders void any transaction to which it is applicable, but the question as to whether it applies to a particular transaction entitles the Court to consider the construction of the section and the determination of its applicability rests with the Court. The decision of the Court in the suit of 1917 determined that the section had never applied to the transaction of 1909, and it is difficult to follow the reasoning of the learned Judge which allowed him not only to express a strong contrary view as to the applicability of the section, which he was entitled to do, if he so chose, but to try anew the issue as to its applicability—in face of the express prohibition in section 11 of the Code. In support of his view, the learned Judge refers to the opinion of Sir George Rankin, then Chief Justice, in *Tarini Charan Bhattacharya* v. *Kedar Nath Haldar*,(1) and to certain other cases, but these lend no support to the reasoning of the learned Judge.

With regard to the 1920 grant, the learned Judge, taking the view—rightly, as their Lordships think—that the suit of 1917 was brought under the Code of Civil Procedure, states,

"The only effect of the decree in that suit was to declare the appellant to be entitled to obtain from Jadu Charan properties

(1) (1928) I. L. R. 56 Cal. 723, 726.

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yielding an annual income of Rs. 4,000. But Jadu Charan was incompetent to give effect to the decree unlesss the Commissioner sanctioned a transfer or charge under section 12A."

It is not clear how far this view is based on the learned Judge's opinion as to the 1909 grant, but, in any event, their Lordships are clearly of opinion that the learned Subordinate Judge was right on this point, and that the decision in the suit as to the construction of section 12A is *res judicata* as to the validity of the grant of 1920 which was made in fulfilment of the obligations of that decision.

Their Lordships are therefore of opinion that, in view of the decision in the suit of 1917, it is not open to the respondent to challenge the validity of the grants of 1909 and 1920, and that they are binding on him, and they will, accordingly humbly advise His Majesty that the appeal should be allowed, that the judgment and decree of the High Court should be set aside and that the judgment and decree of the Additional Subordinate Judge of Hazaribagh should be restored. The respondent will pay to the appellant his costs of this appeal and in the High Court.

Solicitors for the appellant:—*W. W. Box & Co.*

Solicitor for the respondent:—*The Solicitor, India Office.*

PRIVY COUNCIL.

*J. C.** 1935.

November, 28.

THAKURAIN KUSUM KUMARI

v.

DEBI PROSAD DHANDHANIA.

On Appeal from the High Court at Patna.

Sonthal Parganas Settlement Regulation, 1872 (*III of* 1872), *section* 6—*Interest* pendente lite *and interest on decree —Code of Civil Procedure*, 1908 (*Act V of* 1908), *section* 34 *and Order XXXIV, rule* 4(*1*)—*subsequent interest, meaning of.*

*Present: Lord Alness, Lord Roche and Sir George Lowndes.