

APPELLATE CIVIL.

Before Sir Shadi Lal, Chief Justice and Mr. Justice Harrison.

SEWA RAM (PLAINTIFF)—*Appellant,*

versus

UDEGIR (DEFENDANT)—*Respondent.*

1921

July 28.

Civil Appeal No. 821 of 1919.

Custom—Religious institutions—Dohli tenure, explained—sale of mortgage by Dohlidar—is absolutely void and can be impeached by the Dohlidar's successor.

Held, that the *Dohli* tenure is a rent-free grant of a small plot of land by the village community for the benefit of a temple, mosque or shrine, or to a person for a religious purpose. So long as the purpose for which the grant is made is carried out it cannot be resumed, but should the holder fail to carry out the duties of the office the proprietors can eject him. A tenure of this kind cannot be alienated by sale or mortgage, and any such alienation by the *Dohlidar* is absolutely void and can be impeached by the *Dohlidar's* successor.

Second appeal from the decree of Khar Bahadur Khawaja Tasaddag Hussain, District Judge, Gurgaon at Hissar, dated the 10th January 1919, affirming that of Sardar Ali Hussain Khan Kazilbash, Senior Sub-ordinate Judge, Gurgaon, dated the 9th July 1918, dismissing plaintiff's claim.

SHAMAIR CHAND and SAGAR CHAND, for Appellant.

NEMO, for Respondent.

The judgment of the Court was delivered by—

SIR SHADI LAL, C. J.—On the 24th January 1902, the defendant's father, Mangal, who was the *Dohlidar* of the land in dispute, mortgaged it to the plaintiff for Rs. 1,000. The mortgage was a usufructuary one, but it appears that subsequently it was discovered that the *Dohlidar* had no right to alienate the property by sale or mortgage and the

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mortgage was, therefore, replaced by a lease for 17 years in lieu of the same consideration for which the mortgage was effected. The lease was granted on the 17th August 1906, but the transaction remained inoperative for nearly 12 years. It was not until the 24th April 1918 that the lessee brought the present action for possession of the property and the question for determination is whether the *Dohli*dar was entitled to make this alienation.

The learned District Judge holds that the transaction, though nominally a lease, was in essence a usufructuary mortgage and we see no valid ground for dissenting from that conclusion. It is to be observed that the terms of this so-called lease are almost identical with those of the usufructuary mortgage, which it superseded because the *Dohli*dar had no right to mortgage the property, and there can be no doubt that the mere fact that the present transaction is called a lease does not preclude the Court from determining that in reality it is a mortgage.

The *Dohli* tenure is a peculiar kind of tenure to be found in the south-eastern districts of the Punjab. It is a rent-free grant of a small plot of land by the village community for the benefit of a temple, mosque or shrine, or to a person for a religious purpose. In the revenue records the proprietary body are recorded as the owners of the property, and the grantee is recorded as a tenant in the column of cultivation. So long as the purpose, for which the grant is made, is carried out, it cannot be resumed, but should the holder fail to carry out the duties of his office, the proprietors can eject him and put in some one else under a like tenure.

It is beyond dispute that tenure of this kind cannot be alienated by sale or mortgage, and there can be little doubt that any alienation of that character, if made by the *Dohli*dar, would be absolutely void. This being the case, we are not prepared to accept the contention that the present *Dohli*dar, who is the son of the alienor, is precluded by any rule of law from impeaching the alienation made by his father. As the transaction was altogether void, we consider that even the alienor could have successfully pleaded in answer to the plaintiff's suit that the latter could not enforce it in a Court of law. There is, therefore, no reason why the defendant should

not be able to impeach the alienation, more especially when we remember that the office of a *Dohlidar* is similar to that of a trustee, and that it is open to one trustee to impeach the validity of an alienation made by his predecessor.

For the foregoing reasons we are of opinion that the *Dohlidar* had no right to make the alienation relied upon by the plaintiff, and that the defendant is not precluded from impeaching its validity. We accordingly affirm the decree of the lower appellate Court and dismiss the appeal.

Appeal dismissed.

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