

CIVIL REFERENCE.

Before Tek Chand J.

RAM LAL SINGH AND OTHERS—Petitioners

versus

NANAG RAM—Respondent.

Civil Reference No. 24 of 1929.

1929

Nov. 4.

Punjab Alienation of Land Act, XIII of 1900—whether provisions contravened, when no new right created by a compromise effected in 1904 on antecedent title existing since 1899—Mortgagee giving up part of the mortgaged property—whether amounts to a new alienation.

In 1899 X mortgaged without possession 10 *biswas* of land to Y, it being agreed that Y (mortgagee) would get possession of the mortgaged property if default was made in payment of interest. One year later, in June 1900, the Punjab Alienation of Land Act came into force and the tribe to which X (mortgagor) belonged, was notified as an "agricultural tribe" under the Act. X having made default, Y sued for possession as mortgagee of the 10 *biswas* in 1904 and, under a compromise decree, was given possession of 7½ *biswas*. In 1929, on an application by X's sons, the Deputy Commissioner applied to the High Court to revise the decree of 1904 on the ground that it contravened the provisions of the Act, as Y, who was not a member of an agricultural tribe, had been put in possession of the land as mortgagee without any limit of time.

Held, that the decision of the question depended upon whether the compromise, and the decree passed thereon in 1904, amounted to a new alienation.

And that in such cases the test is whether the compromise proceeded on the assumption that there was an antecedent title of some kind in the parties and the agreement acknowledged and defined what that title was; or whether, by virtue of that agreement some new rights came into existence, so as to amount to a fresh transfer of the rights by one party to another.

Khunni Lal v. Gobind Krishna Narain (1), followed.

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Held, on the facts of this case, that the compromise and decree of 1904 did not amount to a fresh alienation and the provisions of the Punjab Alienation of Land Act were not contravened in any way.

Held further that the mere relinquishment by a promisee of a portion of his pre-existing rights does not amount to a new alienation.

Milkhi v. Bishen Das (1), relied upon.

Debi Sahai v. Ramji Lal (2), and *Karori Mal v. Ramji Lal* (3), referred to and distinguished.

Case referred by J. S. Thompson, Esquire, Collector, Gurgaon, with his No. 1463 of 15th June 1929, for orders of the High Court.

MOTI SAGAR and GULLU RAM, for Petitioners.

JAGAN NATH AGGARWAL, MEHR CHAND MAHAJAN and SHAMAIR CHAND, for Respondent.

TEK CHAND J. TEK CHAND J.—This is a reference under clause 2 of section 21-A of the Punjab Alienation of Land Act, by the Deputy Commissioner, Gurgaon, asking this Court to consider in revision the proceedings in a decree passed by the District Judge, Gurgaon, on the 29th July, 1904, and to modify that decree, if necessary.

The admitted facts are that one Har Narain *Rajput* was the original owner of 10 *biswas* of land. Out of this area he had, before 1899, mortgaged 5 *biswas* with Lad Khan, etc. *Meos*. and the remaining 5 *biswas* with Baharu Mal the present respondent. On the 13th June 1899, Har Narain executed a fresh deed of mortgage in favour of Baharu Mal of the entire 10 *biswas* for Rs. 8,000 out of which Rs. 3,000 was to be paid to Lad Khan, etc., prior mortgagees of half of the land. This mortgage was, in the first instance, without possession and the mortgage money

(1) 8 P. R. 1913.

(2) 56 P. R. 1918.

(3) (1921) I. L. R. 2 Lah. 53 (F.B.).

was to carry interest at fourteen annas *per cent. per mensem*, payable six-monthly. It was, however, stipulated that if default was made in payment of interest for two successive half-years the mortgagee would be entitled to take possession of the mortgaged property. There was a further stipulation that if the mortgagor failed to redeem the mortgage within eight years the mortgagee would become the owner of the property.

In June 1901 the Punjab Alienation of Land Act came into force, under section 10 of which the term as to mortgage by way of conditional sale was held to be illegal. This matter was brought to the notice of the Deputy Commissioner and he, by his order dated the 10th May, 1904, struck out the aforesaid condition. There is no dispute now relating to this term.

The mortgagor made default in payment of interest for two successive half-years, and on the 29th June, 1903, the mortgagee instituted a suit for possession of the entire 10 *biswas*, in lieu of Rs. 10,121-14-0 which was stated to be the amount due as principal and interest on foot of the mortgage. In this suit a decree was passed by the District Judge on 29th July, 1904, on a compromise which had been presented to him by both the parties. The terms of this compromise were that the mortgagee relinquished his claim in respect of 2½ *biswas* of the mortgaged property and was given possession as mortgagee of 7½ *biswas* in lieu of Rs. 9,662-8-0, out of which Rs. 3,000 was to be paid by the decree-holder, Baharu Mal, to Lad Khan, etc., the prior mortgagees of five *biswas*. This decree was duly executed and Baharu Mal has since been shown in the revenue papers as the person in possession as mortgagee.

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About twenty-five years later, on the 27th May, 1929, the sons of Har Narain filed an application before the Deputy Commissioner alleging that the decree of the 29th July, 1904, contravened the provisions of the Punjab Alienation of Land Act, inasmuch as it put the decree-holder, who is not a member of an agricultural tribe, in possession of land without any limit of time. It was contended that as the Act was in force in 1904, the mortgagee could be given possession for a period of twenty years only, at the expiry of which the principal and interest ought to be considered to have been full paid off. This contention found favour with the learned Deputy Commissioner and he has applied to this Court under section 21-A of the Punjab Alienation of Land Act to revise the decree.

At the commencement of the hearing Mr. Jagan Nath for the respondent raised a preliminary objection that this reference was barred by time, having been made more than two months after the Deputy Commissioner was informed of the decree. He wanted to base his argument upon certain proceedings before the revenue authorities which were stated to have taken place before 1921 and which indicated that the former Deputy Commissioners had full knowledge of the decree. Mr. Jagan Nath asked for time to file an affidavit, accompanied by certified copies of the revenue proceedings on which he relied. He stated that if the Deputy Commissioner had summoned his client before making the reference, all the relevant materials would have been placed before him to show that the reference was barred by time. If I had thought that the reference was sound on the merits, I would have been constrained to order further enquiry with a view to determine whether the

reference was made within limitation. But after hearing full arguments from Mr. Moti Sagar for the petitioners and Mr. Jagan Nath for the respondent I am of opinion that the revision must fail on the merits, and that no useful purpose would be served by ordering an enquiry into the question whether the former Deputy Commissioners had knowledge of the decree.

Both counsel agree that the decision of the real point involved in the reference depends on the question, whether the compromise and the decree passed thereon amounted to a new alienation, or whether they merely gave effect to antecedent rights which existed under the mortgage transaction of 1899. The law on the point is authoritatively laid down by their Lordships of the Privy Council in the well known case of *Khunni Lal v. Gobind Krishna Narain and another* (1) and is to the effect that in such cases the Court has to see whether the compromise proceeded on "the assumption that there was an antecedent title of some kind in the parties and the agreement acknowledged and defined what that title was" or whether, "by virtue of this agreement, some new rights came into existence."

Now a reference to the terms of the mortgaged deed of 1899 and the proceedings of 1904 clearly shows that in the suit of 1904 the mortgagee sought the assistance of the Court to enforce a right which had been conferred on him by the mortgage transaction, and the decree merely gave effect to it. His right to recover possession as mortgagee was not affected by the subsequent enactment of the Punjab Alienation of Land Act and the Court in enforcing it did not in any way contravene its provisions. All that happened was that instead of obtaining possession of ten *biswas*

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to which the mortgagee was admittedly entitled, he, by mutual consent, got $7\frac{1}{2}$ *biswas* only, relinquishing the remaining $2\frac{1}{2}$ to the mortgagor. Similarly, he abandoned his claim with respect to a portion of the amount which he had stated in the plaint was due to him on foot of the mortgage. It is not denied that the other conditions in the compromise were materially and substantially the same as in the original mortgage transaction. There can be no doubt that the mere relinquishment by a promisee of a portion of his pre-existing rights does not amount to a new alienation. If authority is needed for this obvious proposition it will be found in *Milkhî v. Bishen Das and another* (1).

Mr. Moti Sagar relied principally on certain observations in *Debi Sahai v. Ramji Lal* (2), but he conceded that that ruling is no longer good law after it had been expressly disapproved by the Full Bench in *Karori Mal etc. v. Ramji Lal etc.* (3). Moreover the facts of that case were materially different from those of the one before me.

For the foregoing reasons I dismiss this revision. The petitioners must pay the costs of the respondent in this Court.

N. F. E.

Revision dismissed.

(1) 8 P. R. 1913.

(2) 56 P. R. 1918.

(3) (1921) I. L. R. 2 Lah. 53 (F.B.).