

## LETTERS PATENT APPEAL.

*Before Tek Chand and Din Mohammad JJ.*

SARBULAND AND ANOTHER (DEFENDANTS)

Appellants

*versus*

PREM DAS (PLAINTIFF) Respondent.

Letters Patent Appeal No. 135 of 1929.

*Punjab Alienation of Land Act, XIII of 1900, sections 3 (2), 14, 21A (1) and (2): Sale contravening the provisions of the section—Suit by sons of vendor dismissed by Civil Court—Copy of decree sent to Deputy Commissioner under Section 21A (1)—Failure of Deputy Commissioner to take action under section 21A (2)—whether decree of Civil Court becomes final—Section 14: Scope of.*

A notified agriculturist sold his land to a non-agriculturist vendee and delivered possession to the latter. The sons of the vendor brought a suit in a Civil Court impeaching the sale by their father as being, *inter alia*, contrary to the provisions of the Punjab Land Alienation Act. The District Judge, on appeal held that the sale did contravene the provisions of section 3 (2) of the Act, but instead of himself deciding what the effect of this finding on the case was, he dismissed the suit, and sent a copy of his decree to the Deputy Commissioner under section 21 A (1) of the Act. The latter, instead of taking action under section 21 A (2), proceeded under section 14, and converting the sale into a mortgage ordered that the vendee be dispossessed. A suit by the vendee for recovery of possession was dismissed by the trial and appellate Courts, but was decreed on second appeal to the High Court by a Single Bench. On appeal under the Letters Patent:—

*Held*, that where a sale in contravention of section 3 (2) of the Punjab Alienation of Land Act becomes the subject of litigation in a Civil Court and the latter adjudicates upon the dispute and passes a decree, a copy of which is sent to the Deputy Commissioner under section 21 A (1) of the Act, the only course open to the Deputy Commissioner is to take action under section 21 A (2) and if such action is not taken, the decree of the Civil Court becomes final between the parties and cannot be held to be a nullity.

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*Darya Ditta v. Mana Singh* (1), followed.

*Held also*, that section 14 of the Punjab Alienation of Land Act deals with those cases only in which the dispute as to the validity of the alienation has not been taken to a Civil Court, and that Court has not passed a decree in connection therewith. The action taken by the Deputy Commissioner, under that section, was therefore *ultra vires* and could not in any way affect the decree passed by the District Judge.

*Held further*, that if in the exercise of its jurisdiction, a Court makes a mistake, the wronged party can only take the course prescribed by law for setting matters right, and if that course is not taken, the decision, however wrong, cannot be disturbed.

*Malkarjun v. Narhari* (2), followed.

*Letters Patent Appeal from the decree passed by Bhide J. in C. A. No. 756 of 1928 on 19th July, 1929, reversing that of Mr. L. Middleton, District Judge, Attock at Campbellpur, dated 14th December, 1927 (affirming that of Lala Mani Ram Khanna, Subordinate Judge, 4th Class, Campbellpur, dated 13th June, 1927) and decreeing the plaintiff's suit.*

R. C. SONI, for Appellants.

DEV RAJ SAWHNEY, for Respondent.

TEK CHAND J.—In December, 1896, Samundar Khan, father of defendants-appellants, mortgaged with possession his occupancy rights in the land in dispute to Prem Das. About ten years later, on the 25th March, 1906, Samundar Khan executed a sale-deed of the same occupancy rights in favour of Prem Das for Rs. 1,000. Mutation of the sale was duly sanctioned in the name of the vendee.

Some years later Samundar Khan died, and after his death his sons, Sarbuland and Ghulam Zakria, on

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(1) 60 P. R. 1909.

(2) (1901) I. L. R. 25 Bom. 337 (P.C.).

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the 10th January, 1921, instituted a suit against Prem Das for possession of the land alleging (1) that the sale was not binding on them as the occupancy tenancy was ancestral and Samundar Khan had sold it without consideration or legal necessity, and (2) that the sale was contrary to the provisions of the Punjab Alienation of Land Act, the vendor Samundar Khan being a *Hattar Rajput*, which is a notified agricultural tribe in this district, and the vendee Prem Das a non-agriculturist. Prem Das denied the ancestral nature of the tenancy and urged that the transaction had been effected for consideration and necessity. He further pleaded that *Hattars* were not *Rajputs* and that, therefore, the Punjab Alienation of Land Act did not apply. On the 6th of August, 1923, the Subordinate Judge dismissed the suit as time-barred so far as the share of Sarbuland was concerned and decreed it as regards the share of Ghulam Zakria. On appeal Ghulam Zakria's suit also was dismissed by the District Judge, Mr. Forbes, on the 3rd March, 1924. On the evidence the learned Judge held that the sale of 1906 had been effected for consideration and necessity and could not be challenged by the plaintiff on that ground. He further found that *Hattars* were a branch of *Rajputs*, and, therefore, he expressed the opinion that the alienation contravened the provisions of the Punjab Alienation of Land Act. But instead of himself deciding what the effect of this finding on the case was, he dismissed the suit, ordering that a copy of his decree be sent to the Deputy Commissioner under section 21-A (1) of the Punjab Alienation of Land Act.

A copy of the decree was accordingly sent to the Deputy Commissioner, but he, instead of taking action under sub-section (2) of section 21-A and moving the

High Court to revise the decree of the District Judge so as to make it consistent with the Act, took cognizance of the matter himself and, purporting to act under section 14, passed an order on the 8th June, 1925, converting the sale into a mortgage for twenty years, ending the 25th March, 1926, on which date the sons of the vendor could recover possession without any payment. In pursuance of this order the appellants took possession of the land in March, 1926.

It may be mentioned here, that it appears to have been overlooked that Prem Das was, in any case, entitled to remain in possession under the mortgage of 1896 which had been effected long before the Alienation of Land Act had been enacted, and which he could have fallen back upon in the event of the sale of 1906 being set aside. That mortgage was never redeemed, and the learned counsel for the appellant frankly conceded that for this reason at least the dispossession of Prem Das in March, 1926, without payment of the mortgage-money, was illegal.

On the 20th November, 1926, the present suit was brought by Prem Das for recovery of possession of the land on the ground that the Deputy Commissioner had no power to himself alter the decree of the District Judge and that his order and the consequent dispossession of the plaintiff were illegal and *ultra vires*. This contention did not find favour with the Subordinate Judge, who dismissed the suit. His decision was affirmed by the District Judge, but on second appeal the learned Judge in Chambers took a different view. He held that the only course open to the Deputy Commissioner was to apply to the High Court under sub-section (2) of section 21-A, within two months of the

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date on which he was informed of the decree of Mr. Forbes, and that he having failed to do so the decree had become final and conclusive between the parties. The learned Judge accordingly decreed the plaintiff's suit. He, however, granted a certificate to the defendants for a further appeal under clause 10 of the Letters Patent.

It is beyond dispute that on the finding that the vendor was a member of a notified agricultural tribe and the vendee was a non-agriculturist, the sale as such could not take effect under section 3 (2) of the Punjab Alienation of Land Act, and if the matter had not been the subject of litigation in Civil Courts in 1921-24, the Deputy Commissioner would have had full power to convert the sale into a mortgage for a period not exceeding twenty years under section 14 of the Act. But, as already stated, the sons of the vendor had instituted a suit in the Civil Court impeaching the sale, *inter alia*, on the ground that the sale contravened the provisions of the Act, and the parties had joined issue on this point. The learned District Judge, Mr. Forbes, while holding that the alienation contravened the provisions of the Act, had dismissed the suit. It is conceded that the effect of this decree, unless it was set aside on appeal or revision by the High Court, was that the sale was binding on the plaintiff. It is also conceded that it was open to the appellants to appeal to the High Court against the decree of the District Judge, and it was equally open to the Deputy Commissioner, to whom the District Judge himself had sent a copy of the decree, to take action under sub-section (2) of section 21-A to have the decree altered by the High Court so as to make it consistent with the Act. But neither the appellants nor the Deputy Commissioner chose to

adopt the course prescribed by law. The position, therefore, is that the decree of Mr. Forbes stood unaltered by a higher Court.

Mr. Soni urged that the decree was nonetheless a nullity, as it gave effect to a sale which contravened the provisions of the Alienation of Land Act. This contention is, however, without force. This point was considered by the Chief Court in *Darya Ditta v. Mana Singh* (1), where Clark C. J. ruled that a decree passed in violation of the terms of section 3 (2) of the Act was not a nullity. The learned Chief Judge observed that "the decree was open to appeal or revision, but unless set aside, it cannot be treated as a nullity. *It was not a decree passed without jurisdiction.*" It was also pointed out in that case that under the Act, as originally passed in 1900, there was no remedy against a final decree passed by a Civil Court upholding a permanent alienation of land in contravention of the provisions of the Act, and in order to remove this defect the Legislature in 1907 enacted section 21-A, which makes it obligatory on every Civil Court passing a decree, involving a permanent alienation of his land by a member of an agricultural tribe, to send a copy of its decree to the Deputy Commissioner, and it further empowers the Deputy Commissioner to move the superior appellate or revisional Civil Court to revise the decree so as to bring it in conformity with the Act.

There can be no doubt that the course laid down in sub-section (2) of section 21-A is the only one, that is open to the Deputy Commissioner, whose attention has been drawn to a decree passed by a Civil Court, which appears to give effect to a permanent alienation

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of land which had been effected in contravention of the provisions of the Act, and if he fails to take action, in the manner prescribed therein, the decree stands. Obviously section 14 has no application to such a case. It deals with those cases only in which the dispute as to the validity of the alienation has not been taken to a Civil Court and that Court has not passed a decree in connection therewith. The action of the Deputy Commissioner taken under section 14 in this case, therefore, was clearly *ultra vires* and could not in any way affect the decree passed by Mr. Forbes in favour of the respondent.

It is unfortunate that the District Judge, Mr. Forbes, made a mistake in dismissing the defendant's suit, but as observed by Lord Hobhouse in *Malharjun v. Narhari* (1). "In doing so the Court was exercising its jurisdiction. It made a sad mistake, it is true; but a Court has jurisdiction to decide wrong as well as right. If it decides wrong, the wronged party can only take the course prescribed by law for setting matters right; and if that course is not taken the decision, however wrong, cannot be disturbed." Here, as shown already, neither the appellants, who were the wronged party, appealed, nor the Deputy Commissioner, on whom the Legislature has conferred a special *locus standi* to move the higher Civil Court for the revision of the decree, took action in the manner prescribed in section 21-A. The decree, therefore, remains unaltered. The order passed by the Deputy Commissioner under section 14 was passed without jurisdiction and being *ultra vires* and manifestly illegal, has no legal effect.

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(1) (1901) I. L. R. 25 Bom. 337 (P.C.).

For the foregoing reasons I am of opinion that the decision of the learned Judge in Chambers is correct and must be upheld. In this view of the case it is not necessary to consider the further question decided by the learned Judge whether the plaintiff had acquired an indefeasible right to the land by adverse possession.

I would accordingly dismiss the appeal, but having regard to all the circumstances would leave the parties to bear their own costs.

DIN MOHAMMAD J.—I agree.

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*Appeal dismissed.*

#### LETTERS PATENT APPEAL.

*Before Tek Chand and Abdul Rashid JJ.*

MOTI RAM-DIWAN CHAND (DECREE-HOLDER)

THROUGH BELI RAM (ASSIGNEE) Appellant

*versus*

DHANNA SINGH-HAVELI RAM

(JUDGMENT-DEBTOR) Respondent.

**Letters Patent Appeal No. 41 of 1933.**

*Civil Procedure Code, Act V of 1908, Order XXI, rule 16: Transfer of Decree—after it has been sent for execution to another Court—Application for execution by assignee—to which Court to be made—Waiver—if application is made to wrong Court without objection.*

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A decree obtained from the Court of the Senior Subordinate Judge of Amritsar against a firm of Hafizabad, district Gujranwala, was transferred for execution to the Court of the Subordinate Judge at Hafizabad. After an infructuous application for execution the decree-holder assigned the decree to B. R. and the latter applied to the Court at Hafizabad for execution reciting the fact of the assignment to him. On 16th February, 1925, the Court issued notice to the judgment-debtor and the latter appeared before the Court and raised numerous