

THE INDIAN LAW REPORTS LAHORE SERIES.

FULL BENCH.

Before Coldstream, Bhide and Din Mohammad JJ.
DEPUTY COMMISSIONER, JHANG—Petitioner

versus

BUDHU RAM AND OTHERS—Respondents.

1936

Oct. 19, 27,
28.

Civil Reference No. 10 of 1936.

Punjab Alienation of Land Act, XIII of 1900 (as amended by Act I of 1931), sections 12, 16 (2) : Jurisdiction of Civil Court — to grant a lease up to 20 years — irrespective of encumbrances created by the owner himself.

P, a member of an agricultural tribe, had executed a mortgage of his land for 11 years from *Rabi* 1929 to *Kharif* 1940. In 1935 the Senior Subordinate Judge, Jhang, in execution of a decree against P, leased the same land to P's creditors for a period of 14½ years commencing from *Rabi* 1941. The question for determination was whether the Senior Subordinate Judge could lease P's land for any period up to 20 years, irrespective of the encumbrances created by P himself.

Held, that the order of the Senior Subordinate Judge granting the lease for 14½ years was in accordance with law, notwithstanding that the term added to that of the previous encumbrance by the owner himself would exceed 20 years. Section 16 of the Punjab Alienation of Land Act is independent of section 12 and a Civil Court can exercise its power under section 16 to the fullest extent, no matter what the owner may have done.

Deputy Commissioner, Muzaffargarh v. Joint Hindu Family of Seth Sukhdial Chander Bhan (1) and Deputy Commissioner, Muzaffargarh v. Joint Hindu Family of Tahlia Ram (2), distinguished.

(1) 1935 A. I. R. (Lah.) 56. (2) I. L. R. (1936) 17 Lah. 531.

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Case referred under section 21-A (3) of the Punjab Alienation of Land Act, by Mr. Amin-ud-Din, Deputy Commissioner, Jhang, for revision of the order of Sardar Teja Singh, District Judge, Shahpur at Sargodha, dated 13th February, 1936, affirming that of Mr. Mohammad Aslam, Senior Subordinate Judge, Jhang, dated 13th June, 1935, and granting the decree-holder mustajri of the attached land.

JEREMY, for the Government Advocate, for Petitioner.

MANOHAR LAL MEHRA, for Respondents.

DIN
 MOHAMMAD J.

DIN MOHAMMAD J.—This case has been heard by us in the following circumstances. It originally came on for hearing before Agha Haidar J., but considering that the question was one of considerable importance he recommended that the case be referred to a Division Bench. It was accordingly laid before a Division Bench composed of Jai Lal and Abdul Rashid JJ. who have, however, referred it to a Full Bench without expressing any opinion of their own.

The facts bearing on the point of law involved in this case are these. One Pathana, who is a member of an agricultural tribe, had executed a mortgage of his land for eleven years which had to run from *Rabi* 1929 and end in *Kharif* 1940. In 1935, the same land was under the orders of the Senior Subordinate Judge, Jhang, leased to the creditors of Pathana for a period of $14\frac{1}{2}$ years commencing from *Rabi* 1941. The Deputy Commissioner, Jhang, considering that the order of the Subordinate Judge was contrary to the provisions of the Land Alienation Act presented an application for revision to the District Judge to whom appeals from the orders of the Subordinate Judge lay.

The District Judge, however, did not agree with the Deputy Commissioner and dismissed the application.

It was against that order of the District Judge that the present application was presented to this Court under section 21-A (3) of the Punjab Land Alienation Act.

The only question that falls for determination in this case is whether the Subordinate Judge could lease for $14\frac{1}{2}$ years the land which had already been mortgaged by its owner for eleven years. In other words, we are called upon to decide whether a Civil Court is empowered to pass an order leasing the land of a member of an agricultural tribe for a full period of twenty years irrespective of the encumbrances created thereon by the owner himself, although the effect of the order is to extend the combined period of the temporary alienations beyond twenty years.

The contention raised on behalf of the Deputy Commissioner is that section 16 (2) of the Land Alienation Act bars the course adopted by the Subordinate Judge and that that section cannot be read alone but should be interpreted in the light of sections 6, 11 and 12 of the Act. Section 6 deals with the forms of mortgages permitted under the Act, section 11 treats of leases and farms by the owners themselves and section 12 imposes certain restrictions on the powers of the owners in respect of such leases and farms. The argument advanced on behalf of the Deputy Commissioner is that inasmuch as no mortgage or lease can be granted by the land owner himself for a period exceeding twenty years and the power of the Court to grant a lease is also restricted to a period of twenty years under sub-section 2 of section 16, if the power has once been exercised by the land owner,

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the Court is bound to respect it and to take into account the period for which the private lease has already been granted. It is consequently urged that the order of the Subordinate Judge is opposed to the provisions of the law, as, taken along with the mortgage granted by the owner himself, the effect of the order is to burden the land with two temporary alienations which when combined extend beyond twenty years.

In support of this contention, reliance is placed on two judgments of this Court reported as *Deputy Commissioner, Muzaffargarh v. Joint Hindu Family of Seth Sukhdial Chandar Bhan* (1), *Deputy Commissioner, Muzaffargarh v. Joint Hindu Family of Tahlia Ram* (2). In *Deputy Commissioner, Muzaffargarh v. Joint Hindu Family of Seth Sukhdial Chandar Bhan* (1) Skemp J. in a case where in the execution of two different decrees of a Civil Court leases had been allowed for a double period of twenty years, one commencing after the other, held that this was not permissible under the law. The main reason on which that judgment was based was that as the owner could himself not encumber his land in any way for a period exceeding twenty years, the Court also was debarred from doing so, inasmuch as the Court could not exercise a right greater than the owner himself. The same principle was re-affirmed by a Division Bench of this Court composed of Sir James Addison and Abdul Rashid JJ. in *Deputy Commissioner, Muzaffargarh v. Joint Hindu Family of Tahlia Ram* (2) and the observations made by Skemp J. were approved. I have no hesitation in saying that those judgments do not afford any help in the determination of this case.

(1) 1935 A. I. R. (Lah.) 56.

(2) I. L. R. (1936) 17 Lah. 531.

Here the order of the Subordinate Judge standing alone does not contravene the provisions of any law. The problem that is to be solved in this case is whether the order of a Civil Court which is otherwise valid is invalidated on account of anything done by the owner himself previous to the passing of the order, and for this problem there is no solution in those judgments. As the law stands, the Court does not suffer under the same disability as the owner and while the powers of the owner have been expressly limited by the language used in section 12, no such restriction has been imposed on the Court under section 16 (2). It is well recognised that a right vested in a Court cannot be curtailed or circumscribed within any limits by mere inferences depending on individual inclinations or interpretations, and if it is intended to do so, it must be done in unequivocal terms. Such unambiguous expression being clearly lacking in this case, to my mind, a curtailment of the right of the Civil Court acting under section 16 (2) cannot be inferred from surrounding circumstances alone.

It may be useful to remember in this connection that sub-section (2) of section 16 was for the first time inserted by an Amending Act in 1931, apparently to remedy the defect in the principal Act brought to light by a judgment of this Court, which laid down that as the law then stood, the restriction of twenty years did not apply to leases granted by a Civil Court, see *Wir Bhan-Jiwan Das v. Surain Singh* (1). At the time of the enactment of this sub-section it cannot be imagined that it was not present to the mind of the Legislature that cases would arise where during the currency of a temporary alienation by the owner, a

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The argument of the learned counsel for the Deputy Commissioner, who made the present application was based mainly on the assumption that the powers of an executing Court under section 16 of the Punjab Alienation Act must be taken to be subject to the same restrictions as those imposed on the powers of a member of an agricultural tribe in making an alienation voluntarily. I am unable to find any support for this argument in the plain language of section 16. One of the cardinal rules of interpretation of statutes is that an enactment must be interpreted according to its plain language and it is not for the Court to speculate as to the intention of the Legislature where the language is plain. A case not provided for in a statute cannot be dealt with merely because there seems to be no reason why it should have been omitted and the omission may appear unintentional. (*Cf.* Maxwell on Interpretation of Statutes 7th edition, page 12). In the present instance, I am not even sure that this is a case of unintentional omission; for there are other differences also between the powers of a Court acting under section 16 and those of a private individual as will be pointed out hereafter. There is nothing in the language of section 16 to show that the powers of the executing Court in respect of mortgages are subject to the restrictions laid down in section 12. The section does say that if a mortgage is effected it shall be in one of the forms mentioned in section 6, but it makes no reference to section 12.

There is, moreover, doubt in my mind as to whether there has been any contravention of the provisions of section 12 at all in this case even if that section were applicable. The land in dispute was originally mortgaged from 'Rabi 1929' to 'Kharif

1940' and in 1935. the Senior Subordinate Judge, Jhang, ordered it to be mortgaged in execution of a decree from 'Rabi 1941' to 'Rabi 1955.' It will be observed that no definite dates are given for the commencement and the termination of the periods of the mortgages and the interpretation thereof is not free from difficulty. I take it that the interpretation should be uniform and if 'Rabi 1929' means the commencement of Rabi 1929 then 'Kharif 1940' should also mean the 'commencement of Kharif 1940.' If so, there was clearly an interval between the period of the two mortgages. But even if 'Rabi 1929 to Kharif 1940' is to be taken to mean 'from the commencement of Rabi 1929, to the termination of Kharif 1940,' there will, I think, still be an interval between the two periods. For 'Kharif 1940' cannot be taken to extend beyond December, 1940, or at the most perhaps a month or two later, while 'Rabi 1941' cannot be taken to commence till about October in the year 1941. This is apparently the sense in which the second mortgage was taken to have been effected for a period of $14\frac{1}{2}$ years. For the second mortgage was ordered to take effect from 'Rabi 1941 to Rabi 1955,' and if this means 'from the commencement of Rabi 1941 to the end of Rabi 1955,' the period would come to $14\frac{1}{2}$ years. There was thus an interval of some months at least between the periods and from this point of view there was in my opinion no contravention of the provisions of section 12. The learned counsel for the Deputy Commissioner argued that a second mortgage of this kind was not permissible even if there was an interval between the two periods and that a member of an agricultural tribe cannot throughout his life make alienations of his land, even with intervals, for periods aggregating in all to more than

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20 years. No authority was cited in support of the interpretation and it seems to me too far-fetched to need any discussion.

It may be pointed out, further that the powers of an executing Court acting under section 16 differ from those of a member of an agricultural tribe in certain other respects also. For instance, a member of an agricultural tribe is at liberty to make a permanent alienation of his land, without any restriction, in favour of another member of the same tribe or of a tribe in the same group, or even in favour of a non-agriculturist with the sanction of the Deputy Commissioner. But no such power is conferred on the executing Court by section 16, which absolutely prohibits the sale of land belonging to a member of an agricultural tribe. It was accordingly held by a Division Bench of this Court in *Mirza v. Jhanda Ram* (1), that a Court or a Receiver had no power to sell such land in insolvency proceedings even in favour of an agriculturist owing to the provisions of section 16 of the Punjab Alienation of Land Act.

The Legislature may have had good reasons for making a distinction as regards the restrictions imposed on the powers of an executing Court and on those of a member of an agricultural tribe in making voluntary transfers. In any case, the Courts have to construe a statute according to its plain language as pointed out already and if the intention of the Legislature was different to what has been held above it is for the Legislature to give effect to it by expressing it in clear and unambiguous language.

A. N. C.

(1) I. L. R. (1931) 12 Lah. 387.