

For the foregoing reasons I would accept this appeal in part, and grant the plaintiffs-appellants a decree for Rs.3,000 against Samar Nath defendant-respondent No.1; but would dismiss their claim for partition of the properties in suit. As none of parties has succeeded in full, I would leave them to bear their own costs in both Courts.

The plaintiffs-appellants shall not be entitled to execute the decree for Rs.3,000, until and unless they have paid Court-fee on this amount both in the lower Court and in this Court.

ABDUL RASHID J.—I agree.

A. N. K.

Appeal accepted in part.

CIVIL REFERENCE.

Before Addison J.

DEPUTY COMMISSIONER, GUJRAT—

Petitioner,

versus

ALLAH DAD AND OTHERS—Respondents.

Civil Reference No. 16 of 1936.

Punjab Alienation of Land Act (XIII of 1900) S. 21-A — Failure of the Civil Courts to comply with the terms of the section — whether sufficient cause for extending the time for Revision in High Court — Section 14 — Permanent alienation of land requiring sanction of the Deputy Commissioner — Sanction refused — Alienation to be regarded as a usufructuary mortgage — Adverse possession of alienee — starting point of.

Where both the Sub-Judge, 4th Class and the District Judge on appeal failed to send to the Deputy Commissioner a copy of their decree involving permanent alienation of land by a member of a notified agricultural tribe with the result that the Deputy Commissioner moved the High Court very late.

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Held, that there was sufficient ground to extend the time for Revision under section 5 of the Indian Limitation Act.

Held further, that if the Deputy Commissioner refuses sanction to a permanent alienation of land, which requires his sanction under section 3 of the Punjab Alienation of Land Act, the permanent alienation automatically takes effect under section 14 of the Act as a usufructuary mortgage in form (a) of section 6, for such period not exceeding twenty years as the Deputy Commissioner considers reasonable, and adverse possession of the alienee does not start till the expiry of twenty years from the date of the alienation.

Mussammat Nandi v. Pala Singh (1), followed.

Case referred by K. S. Chaudhri Ghulam Mustafa, Deputy Commissioner, Gujrat, with his letter No.2401, dated 8th April, 1936.

Dewan RAM LAL, Government Advocate, for Petitioner.

MADAN LAL, for Respondents.

ADDISON J.

ADDISON J.—On the 28th April, 1909, Allah Dad and two others purchased a certain area of agricultural land from Alam Sher, a member of an agricultural tribe. It was discovered in 1915 that Allah Dad and his associates did not appear to be *Awans* and thus members of an agricultural tribe, but *Mallahs* who were not members of an agricultural tribe. An inquiry was, therefore, commenced by the Deputy Commissioner and on the 26th October, 1919, he came to the conclusion that they were *Mallahs*. On this finding the alienation of the 28th April, 1909, required the sanction of the Deputy Commissioner under the provisions of section 3 of the Punjab Alienation of Land Act.

On the 26th October, 1920, Allah Dad, etc., applied to the Deputy Commissioner to sanction the

sale, as required by the provisions of the Punjab Alienation of Land Act. Unfortunately, this application was not decided till May, 1932, when sanction was refused. By this time Allah Dad, etc., had been in possession of the land for 23 years. Following this decision, Allah Dad, etc., were dispossessed and they thereupon brought a suit for possession against Alam Sher and certain transferees from the latter. This suit was decreed on the 23rd October, 1933, by a Subordinate Judge, 4th Class, and the appeal was dismissed by the District Judge on the 27th April, 1934.

On the 20th March, 1935, the Deputy Commissioner alleging that he had come to know about the matter seven days before, applied to the District Judge under section 21-A of the Punjab Alienation of Land Act, for revision of the order of the Subordinate Judge. It is clear that even then he did not know that there had been an appeal to the District Judge, which was dismissed on the 27th April, 1934. This revision petition under section 21-A to the District Judge was dismissed on the 25th February, 1936, on the ground that the petition lay under the provisions of section 21-A (2) to the High Court. Accordingly, the High Court was moved under the provisions of section 21-A on the 8th April, 1936. It is this petition which is before me.

One further circumstance has to be set out: While Allah Dad, etc., were waiting for the sanction of the Deputy Commissioner or for his refusal to sanction in this case, they instituted a suit on the 4th May, 1922, for a declaration that they were *Awans* and thus members of an agricultural tribe, this suit being against the Secretary of State for India in Council and another person Izzat Beg. The suit was decreed by the trial Court on the 18th August, 1924,

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but on appeal to the District Judge the suit was dismissed on the 18th April, 1925. A second appeal to the High Court was dismissed on the 16th December, 1925, so that in that suit the declaration asked for was refused.

Coming now to the revision petition before me, it must be held that on the 20th March, 1935, the Deputy Commissioner had only knowledge of the decree passed by the Subordinate Judge and he only asked for that decree to be modified. As that was the extent of his knowledge at the time, he was right under the provisions of section 21-A (2) to apply to the District Judge. His application was within two months of the date of his knowledge and was within time. He has come to this Court well within two months of the date of the District Judge's order, pointing out that the decree of the Subordinate Judge had been confirmed on appeal by the District Judge and that thus the application lay to this Court. This revision petition is, therefore, within time while, in the circumstances mentioned, I would have no hesitation in extending the time under the provisions of section 5 of the Limitation Act, seeing that both the Subordinate Judge, 4th Class, and the District Judge on appeal failed to comply with the provisions of section 21-A (1), which enacts that every civil Court, which passes a decree or order, involving the permanent alienation of his land by a member of an agricultural tribe, shall send to the Deputy Commissioner a copy of such decree or order. It would also have been open to me to treat the petition before the District Judge as a petition to this Court. No question of limitation, therefore, arises.

The merits also present no difficulties. The Courts below have held that Allah Dad, etc., have become owners by adverse possession. This, however,

is not so, for it is enacted by section 14 of the Punjab Alienation of Land Act that "any permanent alienation, which under section 3 is not to take effect as such until the sanction of a Deputy Commissioner is given thereto, shall, until such sanction has been refused, take effect as a usufructuary mortgage in form (a) permitted by section 6 for such term not exceeding twenty years and on such conditions as the Deputy Commissioner deems to be reasonable." It has already been held by me in *Mussammat Nandi v. Pala Singh* (1) that, in these circumstances, the alienation takes effect automatically as a usufructuary mortgage in form (a) permitted by section 6 for such term not exceeding twenty years and on such conditions as the Deputy Commissioner considers reasonable. When the Deputy Commissioner refused sanction in 1932, he did not fix a term of less than twenty years as the maximum period of twenty years had already expired by three years. That was why Allah Dad, etc., were evicted immediately after the passing of that order. They had been trespassers by that time for three years as the maximum period of twenty years had expired in 1929. The wording of section 14 of the Act admits of no doubt and the sale took effect automatically as a usufructuary mortgage for the term of twenty years, but it ceased to be a mortgage at the end of that period and the alienees became trespassers. Adverse possession commenced to run in 1929, but no title had obviously been acquired by adverse possession as it takes twelve years for this to happen. The decisions of the Courts below were undoubtedly erroneous.

I accept this petition, set aside the decrees and orders of the Court below and dismiss the plaintiffs' suit for possession. In view of the laches displayed

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in the office of the Deputy Commissioner I direct that all parties shall bear their own costs in this Court and in the Courts below.

P. S.

Petition accepted.

REVISIONAL CRIMINAL.

Before Shemp J.

NAZAR MOHAMMAD—Petitioner,

versus

HARNAM SINGH AND THE CROWN—Respondents.

Criminal Revision No. 1777 of 1936.

Criminal Procedure Code (Act V of 1898) S. 476 — Enquiry under — notice to the accused — whether necessary — S. 195 (3) — “ Court to which appeals ordinarily lie ” — meaning of.

Held, that while making a preliminary enquiry into an offence under section 476 of the Criminal Procedure Code, it is not incumbent upon the Court to issue a notice to the accused.

H. C. Ganti v. F. L. Harcourt (1), Sajjad Husain v. Emperor (2), other case law, referred to.

Held also, that the words “ ordinarily lie ” do not mean the same thing as “ ordinarily heard by.” Therefore the Court of the Additional District Magistrate was not the Court to which appeals against the orders of second or third class Magistrates ordinarily lie, and therefore the complaint made by the Additional District Magistrate was lodged without jurisdiction.

Case law, discussed.

Revision from the order of Mr. D. Falshaw, Sessions Judge, Jhelum, dated 27th November, 1936, modifying that of Lala Mangat Rai, Magistrate, 1st Class, Jhelum, dated 16th October, 1936, and ordering the petitioner to be prosecuted under Section 193, Indian Penal Code.

(1) I. L. R. (1931) 58 Cal. 215.

(2) 1935 A. I. R. (Oudh) 118.