cular case, it could have been made also under section 522 of the Code of Criminal Procedure.

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[697] BRETT, J. I agree with my Lord the Chief Justice that the order can be supported as one falling under section 522 of the Code of Criminal Procedure. I, however, agree with Mr. Justice Ameer Ali that the Magistrate had an inherent power to pass the order, on the conviction under section 341 of the Indian Penal Code, irrespective of his powers under section 522 of the Criminal Procedure Code.

31 C. 691=8 C. W. N. 538=1 CR. L. J. 453.

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31 C. 698.

[698] APPELLATE CIVIL.

Before Mr. Justice Hill and Mr. Justice Stevens.

HAYES v. HARENDRA NARAIN.*

[11th January, 1904.]

Hindu law—Widow, alienation by—Putni lease—Legal necessity—Consent of reversioner—Delegation, by reversioner, of his power to consent, to his executor.

The power reposed in the reversioner of validating an invalid alienation by a Hindu widow, is one which he is not competent to delegate to his executor.

An alienation made by a Hindu widow without legal necessity is not void, but only voidable, and may be validated by the consent of the reversioner.

Modhu Sudan Singh v. *Rooke* (1) followed.

SECOND APPEAL by the defendants, G. S. Hayes and others.

The plaintiff, Harendra Narain, executor to the estate of one Prohlad Singh, deceased, was substituted as sole plaintiff in the present suit, which was instituted for a declaration that one Mussummut Sibbati, deceased, had no right to grant a *putni* lease of 3 pies 5 krants of the zemindari right in Pergunnah Powakhali, Towzi No. 30, District Purneah, to one Dharam Chand Lal, the predecessor in interest of the defendants executors, G. S. Hayes and others, and for cancellation of the said lease and recovery of possession of the property.

It appears that the zemindari was owned by one Mahesh Lal Singh, who died childless, leaving the said Mussummut Sibbati as his widow. Prohlad Singh was the paternal uncle of Mahesh Lal, and his reversionary heir. On the 3rd June 1896, Mussummut Sibbati granted a *putni* lease, at the annual *jama* of Rs. 163-12 annas, without the assent of the reversioner. Sibbati died in [699] January 1898. Prohlad died in November 1898, leaving a will dated the 9th November 1898, the second paragraph of which ran as follows:

"That I am heir to 3 pies 5 krants of the zemindari share in Pergunnah Powakhali, forming the right of Babu Mahesh Lal Singh, deceased. Mussummut Sibbati, widow of the said Babu, who had legally no right to let out the same in *putni*, has made *putni* settlement with Babu Dharam Chand Lal, zemindar. The consideration covered by the *putni* aforesaid is still due by him. If the said Babu should pay the said consideration to the said *Mutwali*, the said *Mutwali* shall be entitled to approve of and accept the *putni pottah* executed by Mussummut Sibbati. In case of non-payment of the consideration, he should bring a suit for cancellation of the *putni pottah* in the Court."

Appeal from Appellate Decree No. 1760 of 1901, against the decree of W. H. Lee, District Judge of Purneah, dated the 29th of May 1901, reversing the decree of Sasi Bhusan Chatterjee, Subordinate Judge of that district, dated the 17th of July 1900.

(1) (1897) I. L. R. 25 Cal. 1; L. R. 24 I. A. 164.

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The *Mutwali* referred to is the plaintiff. The Subordinate Judge found that the amount of premium, which Dharam Chand agreed to pay, was Rs. 2,007-4 annas. Out of this, the defendants deposited in Court Rs. 1,153-12 annas on the 24th November 1899, a few days after the institution of the suit.

The Subordinate Judge held that all that the plaintiff was entitled to get was the balance of the premium amounting to Rs. 853-8 annas with interest. He ordered accordingly that on the defendants depositing the amount within a fortnight, the suit would be dismissed; but that, if the deposit be not made within the time named, the *putni* lease would become cancelled and the plaintiff would recover *khas* possession of the property.

On appeal preferred by the plaintiff, the decision of the Subordinate Judge was reversed by the District Judge, who decreed the suit. The District Judge held that Prohlad did not give his consent to the lease, for which there was no legal necessity, that the lease was in itself invalid, and could not be validated by subsequent consent.

Babu *Umakali Mookerjee* (Mr. *C. Gregory* with him), for the appellants, contended that the lease was not void, as held by the Lower Appellate Court, but only voidable, and could be ratified by the reversioner: *Modhu Sudhan Singh* v. *Rooke* (1). The consideration for the lease having been paid into Court, the executor was bound to accept the lease. There was nothing to prevent the reversioner from delegating his power to ratify the lease to his executor.

[700] Babu *Nalini Ranjan Chatterjee* for the respondent, contended that the reversioner not having ratified the lease during his lifetime, he was not competent to delegate his power of ratification to his executor. Besides, the will left it to the discretion of the executor to ratify or not, but the executor declined to ratify. The Court could not compel him to do so.

HILL AND STEVENS, JJ. This is an appeal by the defendants, who are the executors of one Dharam Chand Lal against the decree of the District Judge of Purneah, by which the decree of the Subordinate Judge was reversed and the suit of the plaintiff decreed.

The suit was instituted on the 11th of July 1899, by the heirs of one Prohlad Singh, for the purpose of setting aside a *putni* lease granted to Dharam Chand Lal by a lady named Mussummut Sibbati, who held a proprietary interest in the lands in suit for a widow's estate and upon whose estate Prohlad Singh was the reversioner at law. The suit proceeded apparently as far as the filing of the written statement, on the 14th of August 1899, but from that time until the 26th of February 1900, nothing appears to have been done. On that date, however, the executor of Prohlad Singh, Prohlad Singh having died on the 11th of November 1898, leaving a will bearing date the 9th of November in the same year, was substituted for the original plaintiffs as the legal representative of Prohlad Singh. The case then proceeded in the ordinary course, and was disposed of in the manner I have mentioned. The decree of the Subordinate Judge is dated the 17th of July, 1900 and that of the learned Judge the 29th of May, 1901.

It has been found that the lessor of Dharam Chand Lal, Mussummut Sibbati, granted the *putni* in question without legal necessity, and the question, upon which the case turns, is whether her reversioner

(1) (1897) I. L. R. 25 Cal. 1; L. R. 24 I. A. 164.

Prohlad Singh did or did not give his assent to the lease. The finding upon this point of the learned Judge is that he did not give his assent, and, in that view of the case it was that he declined to uphold the lease and set it aside.

It has been contended here upon the footing of the second paragraph of Prohlad Singh's will, that that view is unsustainable, and that, what really happened was, that Prohlad Singh gave his [701] assent to the transaction conditionally on the putnidar paying to him a certain premium the amount of which, as the learned Judge has observed, is in dispute but which may be taken perhaps to have been double the amount of the annual rent reserved, or a sum of something over two thousand rupees.

It was, however, at the same time admitted by the appellants, and indeed, on the face of the finding of the learned Judge on the point, it would be hardly possible to contend otherwise, that Prohlad Singh died without having given his actual and unconditional consent to the transaction. The passage in his will upon which reliance is placed is the following " If the said Babu (*i.e.*, the putnidar) should pay the said consideration (premium) to the said *Mutwali*, the said *Mutwali* shall be entitled to approve of and accept the *putni pottah* executed by Mussummut Sibbati " the more accurate translation of the term translated " shall be entitled " would apparently be " shall be empowered, " and the argument was that the testator had left it to his executor on the payment of premium by the putnidar to give his assent to the *putni* lease, that argument being founded upon the terms of the will we have just read.

It was also pointed out that simultaneously with the filing of the written statement by the defendant on the 14th of August 1899, he paid into Court the sum of Rs. 1,153 in part payment of the premium on the lease and, on the 23rd of July 1900, under the decree of the Court of first instance, the balance of the sum of Rupees two thousand and odd was paid into Court in full discharge of the amount due in respect of the premium. No payment, however, was made in respect of the premium either to the testator in his lifetime or after his death, until these payments into Court were made.

Now, the primary difficulty with which as it appears to us the appellant is met is that the provision of the will, upon which he relies, involves a delegation of the power which, no doubt, was reposed in the testator himself during his lifetime to assent to and thus to give validity to the *putni* lease. As we have already had occasion to observe, the learned Judge has found specifically that the testator died without having himself assented to the lease. We have not been referred to any authority, however which [702] would go to sustain the view that the power of validating a transaction of this description, which is reposed in the reversioner, is one which he is competent in law to delegate to his executor; and in point of fact the executor has not, any more than did his testator, given his assent to the lease. It may perhaps be upon the proper construction of the clause in the will to which we have referred that there was an option left by the testator to his executor as to whether he should or should not give his assent to the lease, in the event of the payment of the premium being made. It is not, however, very easy to say whether the intention was to give him a specific direction to give his assent

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in the event of payment or whether this was a matter which was left to the discretion of the executor. But the point is hardly one upon which it is necessary to express a decided opinion, if, in point of fact, the testator, not having himself given the necessary assent during his lifetime, was not competent in law to delegate his authority to his executor. It is, we think, unnecessary to go further into the case. But it seems to us that we ought to point out to the learned Judge that the view which he took of the nature of a lease granted in the absence of legal necessity by a Hindu widow, of property subject to her widow's estate, is hardly correct. He has dealt with the transaction throughout in his judgment as one which was void *ab initio* and could not afterwards be validated. That that is not so appears very clearly from the decision of the Privy Council in the case of *Modhu Sudan Singh* v. *Rooke* (1), and we desire to direct the attention of the learned Judge to this decision. It was there pointed out that a lease granted by a widow of property subject to her estate as a Hindu widow under circumstances such as the present is not void, but voidable and that it may be validated by the assent of the reversioner. The learned Judge has not taken a correct view of the law in this respect, but in the result his error has not affected the merits of the case, and, we, consequently, think that his judgment ought to be maintained. The appeal is, therefore, dismissed with costs.

Appeal dismissed.

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31 C. 703 (=8 C. W. N. 320.)

[703] APPELLATE CIVIL.

Before Mr. Justice Rampini and Mr. Justice Pratt.

UPENDRA NARAIN BHUTTACHARJEE *v.* PRATAP CHUNDER PARDHAN.*

[20th and 24th November, 1903.]

Chowkidari chakran land, resumption of—Putni lease—Ejectment of former tenant.

When under the terms of a putni lease, the putnidar is entitled to all resumed lands, and certain *chowkidari chakran* land within the putni is resumed by Government and made over to the zemindar, the zemindar cannot, by allowing the old chowkidar to remain on the land and accepting rent from him, protect the latter from ejectment at the instance of the putnidar.

Binad Lal Pakrashi v. *Kalu Pramanik* (2) and *Hari Narain Mozumdar* v. *Mukund Lal Mundal* (3) distinguished.

[Ref. 8 C. W. N. 315 ; 9 C. W. N. 571 ; 34. Cal. 109=5 C. L. J. 33=11 C. W. N. 201 ; 7 C. L. J. 593 ; 13 I. C. 194 ; 31 I. C. 789; 39 I. C 182=21 C. W. N. 88; 18 C. L. J. 271=15 C. W. N. 976=9 I. C. 374; 52 I. C. 473 ; Foll. 31 I. C. 249=22 C. L. J. 290; 33 I. C. 593; 37 I. C. 852; Dist. 24 I. C. 434.]

SECOND APPEAL by the plaintiff, Upendra Narain Bhuttacharjee.

The plaintiff took in November 1898 five years' lease of 61 bighas 3 cottahs of chowkidari chakran lands situate in village Srisara, from Baikanta Nath Sen Barat, putnidar of 10 annas share of Pergunnah Satsoika, within which the said village is situate.

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* Appeal from Appellate Decree No. 899 of 1901, against the decree of Jogendra Chunder Moulick, Subordinate Judge of Burdwan, dated the 20th December, 1900, reversing the decree of Babu Purno Chunder Chowdhry, Munsiff of Cutwa, dated the 23rd December 1899.

(1) (1897) I. L. R. 25 Cal. 1 ; L. R. 24 I. A. 164.

(2) (1893) I. L. R. 20 Cal. 708.

(3) (1900) 4 C. W. N. 814.