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APRIL 10.  
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APPELLATE  
CIVIL.

32 C. 683=9  
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32 C. 683 (=9 C. W. N. 567.)

[683] APPELLATE CIVIL.

Before Mr. Justice Rampini and Mr. Justice Caspersz.

RAMESWAR SINGH v. JIBENDER SINGH.\*  
[10th April, 1905.]

*Maintenance—Grant, for maintenance—Babuana property, nature of—Power of grantee to alienate—Kulachar of Darbhanga Raj.*

*Babuana* property granted in accordance with *kulachar* or family custom of the Darbhanga Raj is property granted to the junior male members of the family to be enjoyed by them in lieu of money maintenance, subject to the proprietary rights of the grantor and his ultimate claim as reversioner on the extinction of the grantee's descendants in the male line.

The grantor remains responsible for the payment of the Government revenue and retains his position as the recorded proprietor of the property assigned.

The grantee is bound to pay to the grantor such revenue, which the latter pays into the Collectorate, and this obligation can be enforced by suit.

The grantee has a right to alienate the property subject only to the contingent interest of the grantor.

[Affirm. 36 Cal. 943; Fol. 33 Cal. 1158=10 C. W. N. 978; 35 Cal. 823=12 C. W. N. 958=8 C. L. J. 124; Ref. 38 Cal. 13; 12 C. L. J. 146; 12 C. W. N. 966; 3 I. C. 207; 38 Mad. 867; 50 I. C. 457=36 M. L. J. 511=17 A. L. J. 522=1919 M. W. N. 313=24 C. W. N. 57.]

APPEAL by the defendant, 1st party.

This was an appeal arising out of a suit brought by Jibender Singh and Taradut Singh in the Court of the Second Subordinate Judge of Mozufferpore against Maharajah Rameswar Singh as first defendant and Durgadut Singh and his four sons as second party defendants.

It appeared that Maharajah Madho Singh, the common ancestor of the parties to the suit, left four sons surviving him. The second son, Chutter Singh, succeeded his father to the *guddi*, the eldest having predeceased him, and Rameswar Singh is his great-grandson. Kirat Singh was the third son of Madho Singh and the father of Durgadut Singh, defendant No. 2. The defendants Nos. 3 to 6 and the plaintiff, Jibender Singh, are the sons of the latter, while Taradut Singh is the son of the fourth defendant Amarendra Singh.

Madho Singh, when abdicating in favour of Chutter Singh executed a rajgi sanad, dated the 18th June 1807, the terms of [684] which are set out in *Maharaj Kowur Bosdeo Singh v. Maharajah Roodur Singh* (1) and also referred to in *Baboo Gunesh Dutt Singh v. Maharaja Moheshur Singh* (2). This sanad, as well as the petitions to the Zilla Court of Tirhoot and to the Collector of that district, mentioned in the Privy Council decision of 1855, contained references to the assignment of pargana Jabdi to Kirat Singh as maintenance, subject to payment by him to Chutter Singh of Government revenue, which the latter was directed to pay into the Collectorate as part of the entire revenue. The deed of grant to Kirat Singh was not produced in the suit, but a rajgi sanad executed on 11th Cheyt Sudi 1246, corresponding to 1839, by Chutter Singh to his eldest son, Roodur Singh, also alluding to the grant of pargana Jabdi, was filed. The provisions

\* Appeal from Original Decree No. 920 of 1903 against the decree of Purno Chunder Dey, Subordinate Judge of Mozufferpore, dated July 13, 1903.

(1) (1846) 7 E. D. R. 271.

(2) (1855) 6 Moo. I. A. 164, 167.

thereof relating to maintenance were translated as follows by the Subordinate Judge:—

That I have given pargana Jarail, with four horses and two elephants, to Babu Basdeo Singh for his maintenance; that the said Babu should enjoy the income and *dostoorat* malikana of the said pargana, pay the Government revenue to you, and that you should pay the same with the Government revenue of the raj to the Collectorate; that the said Babu should live in the palace in which he has been residing as heretofore, and that you should treat him in the manner befitting his position.

“ That I have given mouza Sankarpur, pargana Hati and mouza Bistowal, pargana Alapur, to my first wife, and mouza Joydepati, pargana Dharwar, and mouza Mohinatpur, pargana Bhour, to my third wife; that they should enjoy the usufruct thereof; that my third wife, having no male issue, the villages given to her will remain in her possession till her lifetime, and that they would on her death revert to the raj; that the three daughters by my first wife should get for their maintenance the usufruct of mouza Manoharpur, Khajuri, Tingion and Khato Khorga, pargana Gour; that the two daughters of my third wife should get for their maintenance the usufruct of mouza Kijanpura Ghangoril, pargana Gour; that they and their male issue should enjoy the income thereof until their lifetime, and that if they die without male issue, you will have power to resume the said villages; that I have given pargana Alapur to Gopalji (*i.e.*, Moheshwar Singh) in *mukdekhai*.....that my father had given pargana Jabdi to Kirat Singh, pargana Pariharpur Bagho to Gobind Singh deceased, and pargana Pachhi to Ramaput Singh, for maintenance of the Babus; that Kirat Singh, Ramaput Singh and Gonesh Dutt Singh after the death of his father Gobind Singh, have all along paid Government revenue of the above mentioned parganas to me, and that you should receive the same from those Babus and send the same together with the Government revenue of the raj to the Collectorate.”

[685] By a registered mortgage deed, dated 14th April 1892, the pargana of Jabdi was mortgaged by Durgadut Singh, defendant No. 2, to Rameswar Singh, the first defendant, who thereafter filed two suits, numbered 83 of 1894 and 146 of 1895, against the present plaintiffs and the second party defendants, for arrears of interest due on the bond, and obtained decrees on the 11th February 1895 and the 21st April 1896 for the sale of certain mouzas of the mortgaged pargana. In December 1899 the first defendant instituted another suit, being No. 14 of 1899, against the same parties for the recovery of the amount of principal and interest then due on the bond, in which an issue was specifically raised as to the competency of Durgadut Singh to mortgage the *babuana* property, and the validity of the bond.

He obtained a decree in his favour on the 29th March 1901, which led to an appeal (No. 164 of 1901) to the High Court.

The plaintiffs brought the present suit for a declaration that pargana Jabdi, having been given as *babuana* for the maintenance of Kirat Singh and his male heirs, was inalienable; that the mortgage deed was invalid; and that the decrees, dated the 11th February 1895 and 21st April 1896, were not binding on them. They also impeached these decrees as fraudulent and collusive, alleging that their guardians *ad litem* in the two suits in which the decrees were passed did not put in the defence of the inalienability of the *babuana* grants in collusion with the first defendant, and that they were also guilty of negligence in the conduct of the suits. They accordingly prayed for a reversal of these decrees and for possession. The first defendant, who alone appeared, contended upon the merits that the *babuana* holders of properties granted according to the custom of the Darbhanga Raj as maintenance to the junior members of the family have full rights of alienation; that the guardians *ad litem* were appointed by the Court, and were not deceived by any act of his, but acted honestly and took all the defences in the said suits open to the present plaintiffs. The Subordinate Judge found, upon the construction of the grants of 1807

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and 1839 that they conferred only an usufructuary estate, that no custom was proved of *babuana* property being alienable by the grantee, or by any one of the class of persons in whose favor the grant was made, and that the cases [686] of alienation proved were of recent dates and did not establish the custom in question. He further held that the guardians *ad litem* had failed to protect the interest of the minors in not impeaching the validity of the mortgage upon the ground of the inalienability of the property mortgaged, and that they had also omitted to obtain proper instructions. He accordingly passed a decree in favour of the plaintiffs. The first defendant appealed to the High Court.

*The Advocate-General* (Mr. O'Kealey) and Babu Ram Charan Mitter, for the appellant.

Babu Joy Gopal Ghose, for the respondents.

RAMPINI AND CASPERZ JJ. This appeal arises out of a suit brought by the fifth son and the second son's son of one Durgadut Singh, who on the 14th April 1892 executed a mortgage-bond in favour of the defendant No. 1. The latter was then the brother of the Maharajah of Darbhanga, but he is now the Maharajah of Darbhanga, having succeeded to the title and property of the Maharajah on the death of his brother. The plaintiff No. 1 is now dead leaving no male issue, but as the right to sue still subsists in the other plaintiff, his death in no way affects this appeal.

The defendant No. 1 on two former occasions sued for the interest due on his bond, making the present plaintiffs parties defendants. Those suits were Nos. 83 of 1894 and 146 of 1895. In those suits the present plaintiffs, being minors, were represented by guardians *ad litem*. The defendant No. 1 obtained decrees in both the suits, as also in suit No. 114 of 1899, which has led to appeal No. 164 of 1901, in which we have recorded a separate judgment. The present suit was brought to set aside the decrees in the first two suits on the grounds:

(i) that the plaintiffs' guardians *ad litem* were negligent in their duties, and had colluded with the defendant No. 1; and

(ii) that the property, pargana Jabdi, against which decrees were given in those suits, being *babuana* property, is inalienable, and not liable to sale or transfer of any kind.

The Subordinate Judge has given the plaintiffs a decree.

The defendant No. 1 appeals.

[687] On his behalf it has been contended before us;

(i) that there is no ground for holding that the guardians *ad litem* were negligent in their duties; and

(ii) that the Subordinate Judge is altogether in error in deciding that *babuana* property, such as is in dispute in this case, is inalienable.

We entirely agree with the first of these contentions.

It seems to us that there is no reason whatever for thinking that the plaintiffs' guardians *ad litem* in the previous suits were guilty of collusion or negligence.

The guardian *ad litem* in the first suit, No. 83 of 1894, was a pleader, Babu Shukeswar Pershad, now dead. There is no evidence on this record with regard to what he did, or the defence he set up; but there is nothing which leads us to conclude that he neglected the minor plaintiffs' interests. The guardian *ad litem* in the second suit, No. 146 of 1895, was another pleader Babu Jnanendra Mohun Dutt. He has been examined and he deposes that when appointed guardian *ad litem* he at once went to Babu Durgadut Singh and Babu Amarendra Singh, the respective fathers of the present plaintiffs, and received full instructions from them. He also took a copy of the

written statement filed by Shukeswar Babu in the previous suit. Babu Durgadut Singh, the principal defendant, admitted to him having executed the bond, and in his deposition he states as follows:—"I filed an answer in that suit in accordance with the instructions which I had received from Babu Durgadut Singh and Babu Amarendra Singh." We believe this to be perfectly true, and we disbelieve Amarendra Singh, father of plaintiff No. 2, who declined to accept the guardianship and now affects ignorance of everything. We can see no reason for concluding that there was any negligence on the part of either of the guardians *ad litem* in the previous suits, and that being so, the Subordinate Judge was clearly in error in setting aside the decrees in those suits.

It has been urged for the respondents that the guardians should have impeached the bond as purporting to transfer inalienable *babuana* property. But we are of opinion that the suits being on the basis of an instrument in which the nature of the mortgaged property had not been specified, such a defence [688] could not naturally arise. Durgadut Singh and his sons did not take up this line of defence, and it is not to be expected that the guardian of the present plaintiffs should do so. But, however this may be, we are satisfied that the two previous suits were properly defended, and that no collusion with the mortgagee or negligence can be attributed to the guardians *ad litem*. The decrees in the former suits cannot, therefore, be set aside.

The second and main contention in this appeal is that *babuana* property being alienable, the bond, dated the 14th April 1892, can be enforced against the mortgagor, Durgadut Singh, and his male descendants including the plaintiffs. As to this also, we think the judgment of the Subordinate Judge cannot be supported. Although the original deed executed by Maharajah Madho Singh, granting pargana Jabdi (the property now in dispute) to his son Babu Kirat Singh by way of *babuana* or maintenance, has not been produced in evidence, we find it to be an admitted fact that the grant was made in the year 1807 in accordance with the *kulachar* or family custom of the Darbhanga Raj. *Babuana* grants, and the grant now in question, are alluded to in the Privy Council case of *Gunesh Dutt Singh v. Maharaja Moheshur Singh* (1). The nature of *babuana* property can be ascertained without difficulty from the evidence and admissions of the parties before us. It is property granted to the junior male members of the Raj family to be enjoyed by them in lieu of money maintenance, but subject to the proprietary rights of the grantor Maharajah and to his ultimate claim as reversioner on extinction of the grantee's descendants in the male line. There is no reason to suppose that the *kulachar*, or family custom in question, originated not earlier than the year 1807; but it is clear that the head of the family remains responsible for the payment of the Government revenue and retains his position as the recorded proprietor of the villages assigned to the Babus. This appears from the *rajgi* sanads of the years 1807 and 1839, respectively, mentioned in the judgment of the Court below; they are exhibits 7 and 8; and we also rely on this point on the evidence of Ekradeswar Singh and of the [689] defendant No. 1, the present Maharajah of Darbhanga, who defines "*babuana*" as a grant of the "usufruct of parganas in lieu of maintenance." It is further apparent that the grantee is bound to pay to the Maharajah the Government revenue, which the latter pays into the Collectorate, and that this obligation can be enforced by suit.

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Such being the nature of *babuana* property, we see no reason to refuse the recognition of a right to alienate that property subsisting in the holder, subject only to the contingent interest of the Maharaja; the contingency being remote in a country where the line of male descendants can be reinforced by the practice of adoption. The estate created by these grants is, therefore, virtually an absolute estate. To refuse the right to deal with and transfer such an estate would be tantamount to placing persons *sui juris* in the category of proprietors under disability, and allowing them to incur obligations, it may be to the full value of the estate, without responsibility for the same and in disregard of their inherent right to alienate.

It is true that for many years after the grant of *pargana* Jabdi, made in the year 1807, there were no alienations of *babuana* property, but in, and after, the year 1891 we find eighteen such transactions. The Subordinate Judge says that these dispositions do not establish the fact that *babuana* properties are alienable, and his argument is that "the alienations were made long after the grants, and, with the exception of one, all were in favour of defendant No. 1." He is in error here; for we find that two were in favour of a third party, Ganga Pershad. It seems to us immaterial to enquire into the motives of the defendant No. 1 in lending money on the security of these *babuana* properties. He took the risk, and it was only natural for him to come to the assistance of his extravagant and impoverished relative Durgadut Singh. The Maharajah was severely cross-examined on this point. We are of opinion that it was unreasonable to expect him to know full details of the course of dealing with *babuana* property adopted by the junior members of his family, and to put to him hypothetical cases involving consideration with which we are now dealing after a protracted litigation between the parties.

[690] It is worthy of note that the witness Amarendra Singh, father of the plaintiff No. 2, when questioned on this subject, deposed:—"I have made no enquiry as to who from among the Babus have hypothecated, mortgaged in *sulbharna* and sold their *babuana* property. My father Babu Durgadut Singh, is at home. I see him every day. I have come here without making enquiry from Durgadut Singh about the transfer of *babuana* property." There can be no doubt that the Babus have regarded and dealt with their *babuana* property as alienable in all respects, and there is nothing to show that it is not. The necessity for raising money has only recently become acute owing to the increase in the number of the original grantee's descendants and the indebtedness of Babu Durgadut Singh.

We, therefore, allow this appeal with costs.

*Appeal allowed.*

32 C. 691 (=1 C. L. J. 360.)

[691] APPELLATE CIVIL.

*Before Mr. Justice Rampini and Mr. Justice Holmwood.*

BARHAMDEO NARAYAN SINGH v. BfBI RASUL, BANDL.\*  
 [30th March, 1905.]

*Certificate—Public Demands Recovery Act (Bengal Act I of 1895), ss. 7, 10, 16, 19, 31—Signature as Collector—Notice, service of, by registered post—Certificate,*

\* Appeal from Original Decree No. 144 of 1903, against the decrees of Tej Chandra Mukerjee, Subordinate Judge of Saran, dated Jan. 31, 1903.