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APPELLATE CIVIL.

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[158] APPELLATE CIVIL.

Before Mr. Justice Rampini and Mr. Justice Pargiter.

GOPAL PROSAD BHAKAT *v.* RAGHUNATH DEB.*
[10th August, 1904.]

Hindu Law—Mitakshara—Alienation of impartible Raj—Legal necessity, debt for—Custom—Successor, liability of—Pachis Sawal, authority of.

Alienation by the proprietor of an impartible Raj, which is inalienable by custom, is valid if made for legal necessity; and his successor who takes the Raj by right of survivorship is under the Mitakshara law liable for the debts proved to have been contracted for legal necessity.

The *Pachis Sawal* is a work of authority in respect of customs prevailing among the Rajas of the Tributary Mehals of Cuttack

Nittanund Murdiraj v. *Sreekurun Juggernath* (1) referred to.

APPEAL by the plaintiff, Gopal Prosad Bhakat.

This suit was instituted to recover Rs. 11,000 for principal, together with interest due thereon under a deed of mortgage, dated the 14th March, 1890, by sale of the mortgaged property. The deed was executed in favour of the plaintiff's father by Raja Dibbya Singh of Patia, one of the tributary mehals of Cuttack, who died leaving no son and was succeeded as owner of the Raj by his brother, Raja Raghunath, the defendant No. 1.

The defendant contended that, according to the custom of the Raj, the late Raja had no right to alienate the property, and that he had by right of survivorship under the Mitakshara law obtained the *Rajgi gadi* of Patia and the properties appertaining thereto, and was not liable for the debts of his predecessor.

It was proved that out of Rs. 11,000, the amount of principal a sum of Rs. 3,600 only was borrowed for legal necessity; and [159] the Subordinate Judge holding that, according to the custom of the Raj, the late Raja had no right to alienate his property except for legal necessity, gave the plaintiff a decree for that amount only.

The defendant No. 1 and the plaintiff preferred two separate appeals to the High Court.

Dr. *Rash Behary Ghose* (Babu *Jagat Chandra Banerji* and Dr. *Asootosh Mookerjee* with him), for the appellant. No custom has been proved whereby the late Raja was deprived of the right of alienation. There was legal necessity for incurring the whole of the debt, and the present Raja is bound to repay the debts incurred for legal necessity. The following cases were cited :—*Sartaj Kuari* v. *Deoraj Kuari* (2), *Sri Raja Rao Venkata* v. *The Court of Wards* (3), *Raja Yarlagadda Mallikarjuna* v. *Raja Yarlagadda Durga Prasada* (4), and *Abdul Aziz Khan* v. *Appayasami Naicker* (5).

Babu *Golap Chandra Sarkar* (Babu *Manomohan Dutt* with him), for the respondent. No legal necessity has been proved. Evidence of custom has been given by putting in the *Pachis Sawal* as to the authority of which see *Nittanund Murdiraj* v. *Sreekurun Juggernath* (1). The fol-

* Appeals from Original Decrees, Nos. 89 and 124 of 1903, against the decrees of Abdul Barry, Subordinate Judge of Cuttack, dated Jan. 9, 1903.

(1) (1865) 3 W. R. 116.
(2) (1888) I. L. R. 10 All. 272 ; L. R. 15 I. A. 51.
(3) (1899) I. L. R. 22 Mad. 383 ; L. R. 26 I. A. 83.
(4) (1900) I. L. R. 24 Mad. 147.
(5) (1903) I. L. R. 27 Mad. 131 ; L. R. 31 I. A. 1.

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lowing cases were also cited :—*Madho Parshad* v. *Mehrban Singh* (1), *Balgobind Das* v. *Narain Lal* (2), *Kali Krishna Sarkar* v. *Raghunath Deb* (3) and *Sham Sundar Lal* v. *Achhan Kunwar* (4).

RAMPINI AND PARGITER, JJ. The suit out of which these appeals arise was brought upon a mortgage bond, dated the 14th March, 1890. The plaintiff sued to recover his debt by the sale of the mortgaged property. The bond was executed by one Raja Dibbya Singh, proprietor of the Patia Raj. He died leaving no **[160]** son, and so he has been succeeded as owner of the Raj by his brother, Raja Raghunath Deb, the defendant No. 1. His contention is that the late Raja had no power to alienate or mortgage his property.

The Subordinate Judge has held, that the late Raja according to the custom of the Raj had no right to alienate his property except for legal necessity, and that the plaintiff has succeeded in showing that there was legal necessity for only Rs. 3,600 of the debt, for which the bond was executed. He has accordingly given him a decree to this extent only.

Both the defendant No. 1 and the plaintiff appeal.

The plaintiff's pleas are (i) that the late Raja could alienate his property; (ii) that he could alienate it in such a way as to bind his brother, though not his son, if he had had one; (iii) that there was legal necessity for the whole of the debt; and (iv) that the lower Court should have allowed interest at the bond rate up to the date of realization.

The defendant's plea is that the late Raja could not alienate any portion of his property even for legal necessity.

It is clear, and is conceded before us, that the late Raja could have alienated his property if he pleased, were it not for the custom of the Raj, which prohibits alienation.

The Subordinate Judge has found that it is contrary to the custom of this particular Raj to alienate the property of the Raj, on the authority of a work called the *Pachis Sawal*, or twenty-five questions, which contains answers to twenty-five questions relating to the customs of the Tributary Mehals of Cuttack. The authority of this work is admitted by both sides. It has been acted on by this Court in *Nittanund Murdiraj* v. *Sreekurun Juggernath* (5). The Subordinate Judge has shown that from the answers to questions 16 and 17 of the *Pachis Sawal*, the late Raja could not alienate his property according to the customs of his Raj, having an heir in his brother, who is to be regarded as coming within the category of *pradhan utturadhikari*, or principal heir. It is undoubted that the word *pradhan* means "principal" "and not direct;" so it may be held to include a brother and is not confined to a son. Hence the mortgage is *prima facie* invalid.

[161] But the Subordinate Judge has decided that as the defendant No. 1 took the Raj by right of survivorship, as it has been admitted before us by the learned pleader for the appellant, and as it has already been decided by this Court in the case of *Kali Krishna Sarkar* v. *Raghunath Deb* (3) that he did, the defendant must succeed to the property subject to the rule of the Mitakshara law that he is liable for debts proved to have been contracted for legal necessity. We see no reason to dissent from him in this view. There is nothing in the *Pachis Sawal* to satisfy us that the custom of the Raj against alienation is of such a nature as not to render the defendant liable for debts contracted by his predecessor for legal necessity.

(1) (1890) I. L. R. 18 Cal 157.
(2) (1893) I. L. R. 15 All. 339.
(3) (1903) I. L.R. 31 Cal. 224.
(4) (1898) I. L. R. 21 All. 71.
(5) (1865) 3 W. R. 116.

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Then, as to the facts, we agree in finding that there is no legal necessity shown for debts to the extent of Rs. 7,400. There is no evidence and even no recital in the deed as to why these debts were contracted. The bond, however, sets forth that the sum of Rs. 3,600 was required to defray the expenses of the marriage of the mortgagor's daughter. The late Raja had three daughters. At the time of execution of the bond, he had one unmarried daughter, a girl of about 10 years old. There was therefore a legal necessity to marry her. But it is said she is still unmarried. This, however, would appear to be immaterial, for the creditor discharges his duty, if he shows that there was legal necessity for the loan. He is not bound to see to the application of the money. We are therefore of opinion that the Subordinate Judge's decree is right and that he was justified in giving the plaintiff a decree to the extent of Rs. 3,600 with interest and in dismissing the rest of his claim.

The plaintiff would seem to us to be entitled to interest at the rate specified in the bond up to the date of realization of this portion of his debt.

We accordingly decree the plaintiff's appeal to this extent with costs in proportion.

The defendant's appeal is dismissed with costs.

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32 C. 162.

[152] APPELLATE CIVIL.

Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, Mr. Justice. Bodilly and Mr. Justice Mookerjee.

RADHA KISHORE MANIKYA *v.* DURGANATH BHUTTACHARJEE.*
[19th. July, 1904.]

Jurisdiction—Revenue Officer—Bengal Tenancy Amendment Act (III B. C. of 1898) s. 9—" Every settlement of rent or decision of a dispute by a Revenue officer"—Bengal Tenancy Act (VIII of 1885) ss. 102, 104—Settlement Officer, jurisdiction of.

The words "every settlement of rent or decision of a dispute by a Revenue Officer" are applicable only to those cases which a Revenue Officer has jurisdiction to try, and are not applicable to a decision of a Settlement Officer as to the validity of a *lakheraj* title under s. 104 of the Bengal Tenancy Act of 1895.

[Fol. 43 Cal. 547.]

APPEAL under s. 15 of the Letters Patent.

This appeal arose out of a suit for arrears of rent in which the defendant denied his liability on the ground that the land was *lakheraj*, and that no relationship of landlord and tenant had ever existed between himself and the plaintiff.

The Court of first instance held, that the onus of proof that the land was *lakheraj* lay upon the defendants, and that he had not been able to establish his claim. That Court further held that a decision of the Settlement Officer in a case under s. 104 of the Bengal Tenancy Act, 1885, (to which the defendant was a party) that the alleged rent-free title was false and that the land was rent-paying land, was final between the parties under s. 107 of the Act.

* Letters Patent Appeal No. 27 of 1904, in Appeal from Appellate Decree No. 1523 of 1901.