1869

MUSSAMUT RANI RAMA v. SHEIKH JAN MOHAMMED.

encourage another to lay out money under an erroneous opinion of title; and the circumstance of looking on is, in many cases, as strong as using terms of encouragement. When a man builds a house on land supposing it to be his own or believing he has a good title, and the real owner perceiving his mistake abstains from setting him right, and leaves him to persevere in his error, a Court of Equity will not allow the real owner to assert his legal right against the other, without at least making him full compensation for the monies he has expended. Other cases on this subject are referred to in Kerr on Injunctions, 41, 226.

The decision of the lower Appellate Court is reversed with costs, and the case remanded for trial. The defendants' costs of the former trial in the lower Appellate Court will abide the result, and defendants must get them, if they ultimately succeed, and the suit is dismissed. If the suit is decreed in part, each party will bear his or their own costs of the former trial in the lower Appellate Court.

Before Mr. Justice Norman and Mr. Justice E. Jackson.

1869
April 12.

PRATABNARAYAN DAS AND OTHERS (DEFENDANTS) *v.* THE COURT OF WARDS, ON BEHALF OF BABOO SRIGURBNARYAN SING AND OTHERS MINORS (PLAINTIFF.)*

Mithila Law—Alienation by Father.

Under the Mithila law the father of a Hindu family cannot give a mokurrari lease of land, at a nominal rent, as a reward for faithful service, when his children, being infants, do not consent to such a grant.

The plaintiff (the Court of Wards) in this case sued to recover possession of a share in certain ancestral lands and to set asid a mokurrari potta of the lands, at a nominal rent, granted by the father of two minors to the family Dewan, as a reward for good service, without the consent of the minors. The defendant contended that a mokurrari lease was not an alienation under Hindu law. The first Court, relying on the case of *Shoshibhusen*

* Special Appeal, No. 2560 of 1868, from a decree of the Additional Judge of Zilla Bhaugulpore, dated the 17th of July 1868, reversing a decree of the Principal Sudder Ameen of that district, dated the 11th of April 1867.

1869

PRATABNARAYAN DAS v THE COURT OF WARDS.

Dutt v. *Chunder Coomar Rai* (1), and also on the fact that a Hindu father can grant a jungleburi potta, decided in favor of defendant. The lower Appellate Court held that the arguments of the first Court were not in point; that the precedents cited by counsel, *Raja Ram Tewari* v. *Luchmun Pershad* (2), *Ojudya Persad Sing* v. *Ramsurn* (3), *Baboo Ram Dowar Sing* v. *Musst. Mahpop* (4), *Muddhu Dyal Sing* v. *Gobin Sing* (5), and *Baboo Mohesh Lal* v. *G. Christian* (6), threw no light upon the question immediately at issue; and that the Vivada Chintamani page 309; and Mitakshara, Chapter I., section 1, verses 21, 27, and 28, and section 5, verse 9, forbade all alienations by the father not beneficial to the family; and that a grant of a mokurrari lease, on a pepper-corn rent, was not a valid alienation. It gave plaintiff a decree.

Baboos *Chandra Madhab Ghose* and *Ramesh Chandra Mitter* for appellants.

The Advocate-General for respondents.

On special appeal, the following was the judgment of the Court, delivered by

NORMAN, J.—This is an appeal from the decision of the Additional Judge of Bhaugulpore.

The question is whether, under the Mithila law, a mokurrar lease of 100 bigas of land, a very small portion of the ancestral estate, granted, at a nominal rent of one pice per biga, by way of a reward for long service to the Dewan of the family, by the father of the infant plaintiffs, who were in existence at the time of the lease, but did not concur in it, is valid.

In the lower Appellate Court it was contended that such a lease was not an alienation. But the Advocate-General admitted that he could not sustain that contention.

(1) 6 W. R., 41.
(2) Case No 228 of 1867; June 7th, 1867.
(3) 6 W. R., 77.
(4) S. D. A., 1851, 482.
(5) Case No. 1198 of 1867; April 29th, 1868.
(6) 6 W. R., 251.

1869

PRATABNARAYAN DAS v. THE COURT OF WARDS.

Secondly, it was contended that the grant being made as a partition to a person who had served faithfully, and whose ancestors had served as dewans for several generations, the gift was not an act of waste; and that, under the Mithila law, the father is in the position of manager, and is only restrained from such acts as amount to a waste of the estate; that the right of infants is only to interdict him from the dissipation of the estate.

The text of the Mitakshara are, however, too strong to be got over: "Neither the father nor grandfather is master of the whole immovable estate. Immovable property may not be consumed even by the father's indulgence;—which passages forbid a gift of immovable property through favor."—Chapter I., section 1, verse 21. The decision of the lower Court is correct and the appeal must be dismissed with costs.

Before Mr. Justice L. S. Jackson and Mr. Justice Markby.

KALI PRASAD SING (PLAINTIFF) v. JAINARAYAN ROY AND OTHERS (DEFENDANTS.)*

1869
April 14

Suit for Possession—Application by Parties to be made Defendants—Act VIII of 1859, *section* 73.—*Form of Decree.*

In a suit to recover possession of a certain mauza, claimed by the plaintiff as a portion of his darpatni talook, which was brought against several defendants, four other persons applied to be made defendants, on the ground that they were co-sharers with the defendants on the record in the property in dispute. The application was granted; the added defendants were found to be possessed of the share which they claimed; and on the proofs which they adduced, the plaintiff's claim as against the original defendants, who made no opposition, was decreed.

In special appeal, on the ground that they should not have been made defendants, and that the plaintiff was not bound to prove his case against anybody else, but the persons against whom he had brought the suit, *Held*, that section 73, Act VIII. of 1859, leaves to the Courts of original jurisdiction a discretion in such cases; that the section is not limited entirely to cases where the suit, as framed, cannot proceed; that the words "persons who may be likely to be affected by the result," do not mean persons on whom the result would be legally binding.

Jaigobind Dass v. *Gouree Persaud Shaha* (1); *Sarodapersaud Mitter* v. *Koylas Chunder Banerjee* (2); and *Ahmed Hossein* v. *Musst. Khedeja* (3) distinguished. See *Rudmalochum Sen* v. *Lallo and Gupta* (4).

* Special Appeal, No. 2100 of 1868, from a decree of the Additional Judge of Hooghly, dated the 5th of June 1868, affirming the decree of the second Principal Sudder Ameen of that district, dated the 31st December 1867.

(1) 7 W. R., 202.
(2) 7 W. R., 315.
(3) *Vide, p.* 28 *post.*
(4) 1 B. L. R., S. N. 26.