

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

RAJA NILMANI SING *v.* MADHAB SING.*

Service Tenure—Arrears of Rent—Liability of Successor.

1868
Aug. 14.

A., the holder of a service tenure subject to a quit-rent to the zemindar, died, leaving his rent for the last three years unpaid. B., his son, succeeded him in the tenure. Held, that the zemindar could not sue B. as A.'s successor in the tenure for A.'s arrears of rent.

THIS suit was for recovery of arrears of rent of a holding, from 1270 to 1272 (1863 to 1865). It was admitted that the rents accrued during the life-time of the father of the defendant.

The defendant contended that the jaghir in dispute was a mere service tenure, similar in all respects to Ghatwali holdings, and that he did not obtain possession of it till 1273 (1866); and was, therefore, not liable for any rent which fell due prior to his succession to the same.

The Deputy Commissioner found that the "holding of the defendant was a mere service tenure, held, in lieu of pay, for Police services rendered to Government, and subject to a quit-rent payable to the zemindar." He dismissed the plaintiff's suit. On appeal, the Judicial Commissioner relying upon *Nilmani Sing v. Government* (1) awarded to the plaintiff rent for one year only, *i. e.* for 1272 (1865), prior to the taking possession of the jaghir by the defendant on the death of his father.

The plaintiff appealed.

Baboo *Bama Charan Banerjee*, for appellant.—There was no question that the tenure was hereditary, and the defendant succeeded to it as heir to his father. The son was bound by law to defray the debts contracted by the father from the proceeds of the property which he inherited from the latter. The lower Appellate Court was, therefore, wrong in holding that the defendant was not liable for arrears of rents for the

* Special Appeal, No. 870 of 1868, from a decree of the Judicial Commissioner of Chota Nagpore, modifying a decree of the Deputy Commissioner of Manbhoom.

(1) Mar., 303.

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whole period of three years. The jaghir in question was found to be in the nature of a Ghatwali holding; as such, the rents which accrued thereon formed a charge upon the tenure itself, and the defendant succeeded to it subject to that charge.

Baboo *Mohini Mohan Roy* and *Tarakanath Sen*, for respondents, were not called upon.

The judgment of the Court was delivered by

JACKSON, J.—This is a suit against a jaghirdar to recover arrears of rent, accruing in the time of the defendant's predecessor in the jaghir. The lower Appellate Court, on the authority of *Nilmani Sing v. Government* (1) has declared that the defendant is liable for no more than one year's arrears, and the plaintiff appeals specially, seeking to show that the defendant, present jaghirdar, is liable for the whole arrears of three years.

It appears to us that the case cited is not precisely in point; but there is a case which has been referred to in the argument, *Binod Ram Sen v. The Deputy Commissioner of the Sonthal Pergunnas* (2) which seems to have an important bearing on the question; that, it is true, was a case connected with the Ghatwali tenure of Beerbhoom, and decided with reference to the provisions of Regulation XXIX. of 1814; but we think that the considerations which influenced the Court's decision in that case are exactly applicable to the present case. The tenure on which the arrears accrued was a service tenure, and the rent payable by the holder, is, we may assume, so calculated as to remunerate the holder for service which he is to perform, and also to provide for his maintenance and necessary expenses. If the landlord neglected to realize the rent from the former incumbent year by year, and should seek to recover the arrears of several years at once from the new jaghirdar, he will necessarily be deprived of the funds which will enable him to perform the service, and to support himself as originally contemplated. It appears to us, therefore, that the suit against the jaghirdar, on account of arrears, unpaid by the predecessor, ought to fail.

(1) *Mar.*, 308.

(2) 7 *W. R.*, 178.

Plaintiff, it should be observed, has not sued the defendant, as the legal representative of the late jaghirdar, so as to make him liable to satisfy the arrears out of any assets other than the tenure which may have come to the defendant, but sues him simply as jaghirdar. The special appeal must be dismissed with costs.

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Before Sir Barnes Peacock, Kt, Chief Justice, and Mr. Justice Mitter.

PRAHLAD MISSER v. UDIT NARAYAN SING.*

1868
 Aug. 21.

Registration—Deed of Mortgage—Priority—Act XIX. of 1843, s. 2.

The purchaser under a decree for sale in satisfaction of a registered mortgage is entitled in priority to the purchaser under another decree for sale in satisfaction of another unregistered mortgage, although the latter mortgage be of an earlier date.

See also 14
 B. L. R. 423.

Maharajah Maheswar Sing v. Bhikha Chowdry (1) commented on.

THIS was a suit for confirmation of possession by setting aside an auction sale, and for mutation of names in the Collector's book in respect of Mouza Mahawari.

The facts were as follows :—

Raja Ramprakash Sing borrowed Rs. 5,000 from one Shiu Narayan, for which he executed a deed of mortgage, dated 7th November 1863, in favour of the latter, whereby he pledged, as security, certain properties, of which the village in dispute formed a part. The deed of mortgage was duly registered. On the 25th March 1864, a decree was obtained upon the bond, and the mortgaged properties were declared liable to be sold in satisfaction of the debt. The mouza, the subject of the present suit, was attached, on the 12th April 1864, in execution of that decree, and was purchased by the plaintiffs (appellants) in this case, on the 28th September 1864. Raja Ramprakash, it was alleged by the defendant (respondent), had executed another deed of mortgage in favour of Udit Narayan, brother of the other mortgagee, Shiu Narayan, on the 7th of June 1859. This deed was not registered. On the 1st July 1864, Udit

* Special Appeal, No. 2,940 of 1867, from a decree of the Judge of Shahabad, reversing a decree of the Moonsiff of Shahabad.

(1) Case No. 645 of 1865 5th Feb. 1866.