

1868
July 29.

Before Mr. Justice Loch and Mr. Justice Mitter.

RAJA RAMESWAR NATH SING v. HARALAL SING.*

Resumption of Jaghir—Alienation by Grantee.

A zemindar cannot sue to resume a jaghir on the ground of its alienation by the grantee, so long as there are heirs male of the grantee existent.

PLAINTIFF'S ancestor gave the lands in dispute to Thakurāi Ram Baksh Sing, as a jaghir. Ram Baksh Sing sold it to Basti Sing, ancestor of defendant, in the year 1861, reserving to himself a quit-rent of Rs. 5. Plaintiff sued to resume, on the grounds that the lands formed a part of a service grant and that there had been a failure of the conditions on which it was held; and that the grantee had forfeited his rights by, alienation. It was found that there had been no failure of service proved and this finding was upheld on Special Appeal. But on the 22nd July 1867, the High Court (Loch and Seton-Karr, JJ.) remanded the case, for determination of the issue, whether jaghirdars are, by local usage or custom, entitled to alienate and convey their tenures to third parties; and whether the third parties can hold the same against the will of the original grantor or his heirs.

The defendant relied on the case of *Munwar Sarbjit Sing v. Aguri Gopal Narayan* (1). The Judicial Commissioner held, partly on oral evidence and partly of his own knowledge, that it was a universal custom in the province for jaghirdars to dispose of their rights without prejudice to the rights of the zemindar, who could always resume on default of heirs male of the original grantee; and as, in the present case, the heirs male of Ram Baksh Sing survived, no resumption could take place.

* Special Appeal, No. 3085 of 1867, from a decree of the Judicial Commissioner Chota Nagpore, reversing a decree of the Principal Assistant Commissioner of Hazaribag Division.

(1) S. D. R., 1851, 253.

Mr. *Paul* (with him Mr. *Twidale*) for appellant.

Mr. *C. Gregory* for respondent.

1869

RAJA RAMBEE
WAR NATH
SING

v.

HARALAL
SING.

LOCH, J., (After stating the facts.)—The lower Court finds on the oral evidence of certain witnesses that holders of jaghirs can alienate their rights in those jaghirs, and the Judicial Commissioner, speaking from his own knowledge of the province, says, it is generally admitted that jaghir lands are alienable, subject always to the rights which the owner of the soil has, as a reversioner, to resume on failure of heirs male of the original grantee; and he, therefore, dismissed the suit with costs.

On appeal, it is urged, that the evidence before the Judicial Commissioner is not sufficient to prove the existence of a local custom or usage, and it appears to me that this contention is correct, but allowing this to be the case, it is very doubtful whether such alienation can give the plaintiff any right to resume so long as any of the heirs male of the original grantee are in existence. He has nothing to do with the management of these jaghir lands, which the grantee may let or manage as he pleases, and it is only on the death of the jaghirdar without heirs male, that the grantor can interfere and resume the lands.

The sale to the defendant by the jaghirdar does not interfere with plaintiff's right of resumption, when there are no heirs male of the grantee in existence. He would be entitled to recover possession notwithstanding this alienation if there were no heirs male of the original grantee. As, however, it is not asserted that the grantee's family is extinct, I think the decision of the lower Court should be upheld, and the special appeal dismissed with costs.

MITTER, J.—I concur. Upon the plaintiff's own showing, it appears that his right to resume the tenure in dispute depends upon one of two things, namely. 1st, failure of male heirs; and, 2nd, failure of service. The mere fact of an alienation being made would not necessarily give him a right to resume, although the alienation may not be binding upon him.

1863
 RAJA RAMESH-
 WAR NATH
 SING
 v.
 HARAJAL
 SING.

The plaintiff has failed to prove either of the two conditions above referred to, and his suit must, therefore, be dismissed with costs. The point upon which our judgment is based was not determined by the learned Judges who had remanded the case on a former occasion, and I do not think, therefore, that the remand order stands in the way of our decision.

1868
 July 31.

Before Mr. Justice Bayley and Mr. Justice Macpherson.

SYED SHAH ENAET HOSSEIN v. SYED RAMZAN ALI.*

Mohammedan La—Creditor of Ancestor—Purchaser from Heir.

A., a Mohammedan, died, being indebted to B. in a sum of money. B. sued the heirs of A. for the amount, and obtained a decree. Before B. obtained his decree, the heirs of A. had mortgaged the estate of A. to C. The property was put up to sale in execution of B.'s decree, and B. became the purchaser; and now sued to obtain possession from C.

Held, that the mere fact of the property having once belonged to the estate of A. did not entitle B. to follow it in the hands of C., so as to enable him to recover possession without redeeming. The heir of a Mohammedan may, as executor, sell a portion of the estate of the deceased, if necessary, for the payment of debts; and such sale will not be set aside, if the purchaser acted *bonâ fide*.

In this suit the property in dispute, which formed part of the estate of one Momtaz Ali, a Mohammedan, deceased, was put up for sale, and purchased by the plaintiff, in execution of a decree obtained by the plaintiff against the heirs of Momtaz Ali, in respect of a debt due to him, plaintiff, by the deceased. The plaintiff sought to eject the defendants, who held possession under a mortgage executed to them by the heirs, prior to the decree in execution of which the plaintiff had purchased.

Mr. Allan for appellant.

Mr. C. Gregory and Baboo Ramesh Chandra Mitter for respondent.

The facts, the holdings of the Court below, and the arguments on Special Appeal sufficiently appear in the judgment of the Court, which was delivered by

* Special Appeal, No. 3088 of 1867, from a decree of the Judge of Gya, affirming a decree the Principal Sudder Ameen of that district,