The 25th May 1865.

Present:

The Hon'ble E. Jackson and F. A. Glover, *Judges.*

Mahomedan Law—Death-bed Mokurruree Leases—Pleadings—High Court (Power of).

Case No. 3462 of 1864.

Special Appeal from a decision passed by the Principal Sudder Ameen of Behar, dated the 2nd Septemper 1864, reversing a decision passed by the Sudder Ameen of that District, dated the 15th January 1863.

Molk Enaet Hossein (Defendant), *Appellant, versus*

Musst. Kureemoonissa (Plaintiff), *Respondent.*

Mr. C. Gregory for Appellant.

Messrs. R. V. Doyne and *R. E. Twidale* for Respondent.

A mokurruree lease, extended when the grantor was dangerously ill and in contemplation of death, was held to be a death-bed gift, and his natural heirs declared incapable of taking anything under it except their shares of the defendant's property according to Mahomedan Law.

The High Court can raise and adjudicate upon such points in special appeal when they are apparent on the face of the pleadings, even though the parties to the suit are silent.

THE plaintiff in this case (special respondent before us) sued to set aside a mokurruree lease said to have been executed by one Lall Mahomed in favour of his grand-children, the present special appellants.

The lease comprised a 2-annas 13 d. share of Khajapore Dhomul, a similar portion of Huskaleepore Salah, and a 2-annas 1 d. 10 ch. share of Audoos, and it is not denied that these shares represented all his property.

At the first trial of the case, the mukurruree lease was treated as a will, and declared good only to the extent of one-third of the property conveyed by it. But, on appeal, the Judge gave the grand-children a decree for the whole.

It then came up in special appeal to this Court, by which (12th May 1864) it was remanded to find whether the mokurruree was a gift on the part of Lall Mahomed, and whether it was made while suffering from a malady which proved fatal; whether, in short, the conveyance came under the meaning of a death bed gift, and, as such, good only to a certain extent, and whether possession passed under it.

The Principal Sudder Ameen has now decided that the mokurruree deed itself is spurious, and that the special appellants never held possession of the land.

It is urged before us in special appeal:—

(1.)—That the question of the genuineness of the mookurruree lease was not in issue on remand, having been finally disposed of by both lower Courts; that the Principal Sudder Ameen was restricted to finding whether the donor, at the time the mokurruree was granted, was in contemplation of death, so as to make the grant of the nature of a death-bed gift; and whether the grant had been supplemented by *seisin;* and

(2.)—That the question of possession had not been fairly decided, the lower Court having proceeded entirely on the fact that the deed was not executed.

With regard to the first objection, we think that the special appellant has reason to complain. The execution of the mokurruree lease had been found, as a fact, by both the lower Courts, and no question as to its genuineness was raised in special appeal. The case was remanded for enquiry into the circumstances under which the deed was given—whether or not, at the time of giving it, the donor was in that state of illness as made death a probable result; whether, in short, he gave the lease in contemplation of death, in which case it would have been by Mahomedan Law *donatio mortis causâ*, and only operative as a will.

There is, we think, sufficient evidence on the record to enable us to come to a conclusion on this point. Whatever may have been the precise nature of Lall Mahomed's disease, it is abundantly clear that he was very ill when he executed the mokurruree; and that he died within six months afterwards, without mending during the interval: in other words, he was, when he executed the deed, on what proved to be his death-bed. There is no proof, we observe, that he was *non compos mentis* at the time, nor does the Principal Sudder Ameen say that he was so; but that he was very ill, there can be no doubt.

Under such circumstances, the presumption would undoubtedly be that the gift was made in contemplation of death, and that it can only operate as a will, and pass one-third of the property. (*Vide* Ashrufoonissa *versus* Musst. Ajeemun, Sutherland's Weekly Reporter, 13th August 1864, page 17.)

This being our opinion, it is unnecessary to go into the second ground of special appeal, as a gift of the description above noted

would be the same thing as a legacy, and *seisin* would not accompany the gift.

But we also think that, under the circumstances, the special appellant must fail in this suit, although we may admit that the owner of the property, Lall Mahomed, was capable of conveying it, on the undoubted maxim of Mahomedan Law, that (*vide* Macnaghten's Mahomedan Law, Chapter V., page 51) no one can make a gift of any part of his property on his death-bed to one of his heirs, it not being lawful for one heir to take a legacy without the consent of the rest. Now, the special appellants in this case are Lall Mahomed's grand-children, and, as such, his heirs in conjunction with the other members of the family; and, if they are allowed to take the one-third under the mokurruree as a death-bed gift, it is manifest that the co-heirs would be damaged to that extent.

It may be urged that this ground of objection has never been taken by those interested. But the law permits this Court to raise and adjudicate upon such points when they are apparent on the face of the pleadings, even when the parties to the suit are silent. Indeed, were we not to take this question into consideration, we should be deciding the suit on grounds diametrically opposed to the law which we are bound to administer.

We think, therefore, that the mokurruree having been executed when Lall Mahomed was dangerously ill, and in contemplation of death, can only be considered in the light of a death-bed gift; and, that being the case, the special appellants, who are with others the natural heirs of the donor, cannot take anything under it, but must be satisfied with such share of the deceased's property as Mahomedan Law gives them.

The special appeal is dismissed with costs.

The 25th May 1865.

Present:

The Hon'ble C. B. Trevor and J. P. Norman, *Judges.*

Lessee (Rights of)—Principals and Agents—Shareholders (Powers of)—Manager (Revocation of appointment of)—Partition.

Case No. 250 of 1864.

Regular Appeal from a decision passed by the Principal Sudder Ameen of Monghyr, Zillah Bhaugulpore, dated the 20th August 1864.

Bulakee Lall and others (Plaintiffs), *Appellants,*

versus

Mussamut Indurputtee Kowar and others (Defendants), *Respondents.*

Mr. C. Gregory and *Baboo Unnodapershad Banerjee* for Appellants.

Baboos Dwarkanath Mitter and *Chunder Madhub Ghose* for Respondents.

A lessee can take no greater rights than his lessor, and is bound by the decree in a suit against his lessor to the same extent as the latter.

A principal can determine at his mere pleasure the authority given to an agent. So one shareholder cannot resist the revocation by another shareholder of the authority given to a manager, there being no stipulation in the deed providing for the appointment of a manager, that the authority should continue for any definite time.

Any act or declaration showing an unequivocal intention on the part of any shareholder to hold or enjoy his own share separately, and to renounce all rights upon the shares of his co-parceners, constitutes a complete severance or partition.

THE plaintiff sues to recover two annas of talooka Kuttree Iktyarpore, to which he claims to be entitled under two leases, dated respectively the 7th Choitro 1267, and the 3rd Joistee 1268 Fuslee, executed by Nawab Singh and others.

The defendant Indurputtee Kowar claims the same property under a zur-i-peshgee lease granted by Indurjeet Singh on the 12th Assin 1266 (October 1858) to secure Rupees 10,000 borrowed by him to defray the marriage expenses of his daughter.

The property in question is a part of four annas of the talook which was purchased in the name of Gunnesh Dutt, the father of Indurjeet Singh. Before the date of the defendant's lease, *viz.*, in September 1858, Nawab Singh and others, brothers of Gunnesn Dutt, brought a suit against Indurjeet Singh, alleging that the property, though standing in the name of Gunnesh Dutt, was not his, but purchased by Maghoo Singh, their father, in his name. This suit ended in a compromise, in pursuance of which, on the 13th of June 1859, a decree was passed that, of the said four-anna share, four annas should belong to the said Indurjeet and Lutchmun Singh his brother, and that, of the remaining twelve annas, each of the other sons of Maghoo Singh should receive two annas eight gundahs; that the parties were