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For these reasons we think the proper decree to make in the suit is that the plaintiff do recover the possession and enjoyment of the house and land, unless within three months(*a*) which appears to be a reasonable time, the defendants pay to the plaintiff the full amount of principal and interest found by the Civil Court to be due ; but that upon such payment being made within the time specified all right and interest of the plaintiff under the said mortgage-instruments shall cease, and the said instruments be given up to be cancelled.

The decree of the Civil Court will be modified accordingly, and the appellant and respondents will respectively bear his and their own costs of this appeal.

Appeal allowed.

NOTE :—When a *bona fide* sale is accompanied by a power to re-purchase this will not make the transaction a mortgage, if such does not appear to have been the intention of the parties. "The best general test of such intention is the existence or non-existence of a power in the original purchaser to recover the sum named as the price for such re-purchase : if there is no such power there is no mortgage." Dart. Vendors and Purchasers, 3d ed., 536., Sugd. V. and P., 13th ed., 166. Coote Mortg., 3d. ed., 14, 21, *Perry* v. *Meddowcroft*, 4 Beav., 197,203 : *Verner* v. *Winstanley*, 2 Sch. & Lefr. 393 : *Sevier* v. *Greenway*, 19 Ves. 413 : *Neal* v. *Morris*, Beat., 197 : *Bell* v. *Carter*, 17 Beav., 11 : *Muttyloll Seal* v. *Anundchunder Sandle*, 5 Moo. I. A. Ca., 72, 81. *Ogden* v. *Battams*, I Jur. N. S., 791 : *Alderson* v. *White*, 2 DeG. & J., 97.

APPELLATE JURISDICTION (*b*)

Special Appeal No. 383 *of* 1863.

SUNDARAMURTI MUDALI.....*Appellant.*

VALLINÁYAKKI AMMÁL.....*Respondent.*

Each holder of a Crotriyam conferred for lives can only alienate his own life-interest.

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THIS was a Special Appeal against the decree of A. W. Phillips, the Civil Judge of Chingleput, in Appeal Suit No. 120 of 1860, affirming the decree of T. Alagayya Pillai the Principal Sadr Amin of Chingleput, in Original Suit No. 9 of 1860. This suit was brought by the respondent as

(*a*) In English Courts of Equity the common decree for foreclosure *six* calendar months (from the date of the Chief Clerk's certificate) for payment to the plaintiff of principal, interest and costs. 2 Spenee, 652 : Seton, Dec. 3rd ed., 364.

(*b*) Present : Scotland, C. J. and Frere, J.

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widow and heir of one Kumarasvámi Mudali to recover (inter alia) the four Crotriyam villages of Palanur Kolambákam, Kilvolam and Erupákam in the Madurantakam ta'aluk and rupees 4,792-9-7 being the value of melvárum grain due upon the said Crotriyam for faslis 1268, 1269 exclusive of expenditure. The crotriyam had been granted to one Tenappa Mudali for three lives of which his own was one. He left no issue but adopted a son, Kumarasvámi Mudali, who succeeded as the second life. Kumarasvámi also died without issue, but was survived by Sundaramurti Mudali, the appellant, a son of his natural born sister. It appeared that Kumarasvámi wished Sundaramurti to be his heir, but no adoption of the latter by the former had, or could have, taken place, and a claim which Sundaramurti made as abhimánaputra(a) was not insisted upon at the hearing. Kumarasvámi, however, devised the crotriyam to Sundaramurti Sámi, and the question was whether this devise was valid as against the claim of Kumarasvámi's widow and heir the respondent. The Principal Sadr Amin and on appeal, the Civil Judge decided in favour of the widow.

Mayne, for the appellant, the defendant, contended that the crotriyam was alienable and passed under Kumarasvámis' will. He referred to Madras Reg. IV of 1831, ("a regulation for better securing to the grantee's personal or hereditary grants of money or of land-revenue, conferred by the Government, in consideration of service rendered to the State or in lieu of resumed offices or privileges, or of zamindáris, or palaiyams forfeited or held under attachment or management by the officers of Government or as yanmiás or pensions") and Act XXXI of 1836, sec. 3 of which enacts that "the grants referred to in the preceding section shall not be liable to attachment of sequestration, in satisfaction of any decree or order of Court, *save and except for the discharge of debts or obligations personally incurred by the holders of them*" and to Act XXIII of 1838 by which the words in italics are repealed.

Norton, for the respondent, the plaintiff, submitted that a crotriyam-holding was in the nature of a tenancy in tail and inalienable beyond the lifetime of the actual holder. He

(a) From Skr. *abhimana* 'affection' and *putra* 'son,'

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cited *Special Appeal No.* 6 of 1860(*a*), *Special Appeal No.* 29 of 1848 (*b*), and referred to the Circular Orders of the Board of Revenue, I, 281 (*c*) "In bestowing crotriyams and similar grants, the claims of the coheirs are for consideration of Government, before the grant is issued; but once issued, the courts are bound to decide according to its terms. They cannot question the propriety of the grant or the injustice indirectly done to other claimants by its issue. By grant of a crotriyam clearly to the grantee and his heirs, his coheirs are excluded by the solemn act of Government." Pro. S. A., 3rd Septr. 1838, Ex. Min. Cons., 2nd Octr. 1838, C. O., B. R., I, 220: "Succession to crotriyam directed to be registered in the name of the eldest son of the deceased although a brother and two other sons were living. The same course was directed to be adopted in all other cases, but the rights of sharers were recognized and they were left to make arrangements among themselves." Ex. Min. Cons., 4th September and 20th Oct. 1848.

Mayne, in reply. *Special Appeal No.* 6 *of* 1860, even if it were rightly decided, turns altogether upon the terms of a special grant by a private person.

SCOTLAND, C. J. :—If a crotriyam was alienable, why should the legislature take care to protect it against the crotriyam-holder's creditors? It would be most unreasonable to allow a man to alienate property and at the same time to forbid his creditors to come upon it.

(*a*) Mad. S. D. 1860, p. 173. In this case property had been given on condition that it should neither be sold nor mortgaged by the donee. A creditor having obtained a decree against the donee and attached the property in question, the donor's heir contended that the condition was broken and sued for the property. The Acting Civil Judge of Cuddalore, G. Ellis, dismissed the suit, holding that the attachment was no violation of the condition. But on appeal the Sadr Court reversed his decision, observing that "the exhibit C shows that the donor's object was to insure the possession of the property in question by the first defendant's father and his descendants, and that it was for this end alone that the transfer was made. They consider it clear that on the extinction of the family of the donee, the property would revert to that of the donor, the gift being of the character of an ina'am confined by strict entail. Any sort of alienation of the property would make void the above purpose and be a transfer of the gift to others whom the donor had no intention to benefit. The Court hold therefore that the property is not available for the third defendant's decree; at the same time they observe that the exhibit C gives the plaintiff no power to resume the property so long as any of the donee's family exist." *Quære* as to this decision, and see *Avison* v. *Holmes*, 1 Johns & H., 530: *Lear* v. *Leggatt*, I Russ, & My., 690. *Croft* v. *Lumley*, 9 H.L. Ca., 731.

(*b*) Mad. S. D. 1849, p. 51.

(*c*) Cited in Sloan's *Judicial and Land Revenue Code*, I, 459.

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Mayne. There is an obvious distinction between a willing alienation and one by a proceeding *in invitum.*

SCOTLAND, C. J. :—The authorities on the subject are few and have been so thoroughly sifted before us, that I think I may without further consideration express my present opinion. The first question is, what is the nature of the crotriyam tenure. Originally a crotriyam appears to have been an assignment to a *crotriya* or Bráhman well-read in the Vedas (*a*). But now it has got the wider signification of a grant by Government to a private person in consideration of service rendered by himself or a member of his family, of a portion of the land-revenue or of a village or land, either in perpetuity or for a limited number of lives, at a moderate rent, on failure to pay which it is liable to resumption and forfeiture. The object of the grant, as in the case of the parliamentary entails in England, is the maintenance of the original grantee and his descendants in a position of social respectability, commensurate to the services rendered, so long as the grant continues. In the present case the grant of the crotriyam is not before us, but it no doubt contained an express limitation of the villages to the crotriyam-holder and his heirs. We have here, however, an admission by all parties that the four villages in question were crotriyam, and the order of the Board of Revenue referred to by Mr. Norton, and it must be taken I think, that the grant was to the original grantee and his heirs. Then, as to the authorities bearing upon the question of the alienability of crotriyams, two cases have been referred to, and of these one, *Special Appeal No.* 6 of 1860 (*b*), if it applied to crotriyams, would be a strong authority, but this does not appear, and the decision cannot be regarded as authority on the point in the present case. With respect to the order of the Revenue Board, it merely goes to shew that in all cases the enjoyment of the land granted is considered as strictly limited by the terms of the grant and that the crotriyam-holding is regarded as of the nature of a strict entail and inalienable by the donee. Then there is *Special Appeal No.* 29 *of* 1848 (*c*). That was undoubtedly

(*a*) Cruti in contradistinction to the *Smriti Law.*

(*b*) Mad. S. D. 1860, p. 173.

(*c*) Mad. S. D. 1849, p. 51.

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a case on a crotriyam, and there it was held that the original holder could not charge the crotriyam for the maintenance of the plaintiff's ancestor, and that such charge was invalid, even though the grant had been renewed by the succeeding inheritors. This is a strong authority to show that the crotriyam-holder has no absolute control over the crotriyam such as Mr. Mayne contends for.

These authorities go to support Mr. Norton's contention. Furthermore, assuming this to be a crotriyam-grant made in consideration of personal service, Reg. IV of 1831 applies strongly against any right of alienation. It recites :—" Whereas it is just and expedient that personal or hereditary grants of money, or of land revenue, conferred by the Government in consideration of services rendered to the State should be strictly applied to the purpose for which they have been granted ; and should not be liable to be diverted from that purpose to the use or benefit of persons who have no claim upon the State." The Regulation then goes on to provide that " the Courts of 'Adálat' are hereby prohibited from taking cognizance of any claim to hereditary or personal grants of money, or of land revenue, however denominated, conferred by the authority of the Governor in Council in consideration of services rendered to the State unless the plaint is accompanied by an order signed by the Chief or other Secretary to Government referring the complaining party to seek redress" in those Courts. This Regulation applies to all crotriyams, and they are clearly recognized and treated as strictly settled and not capable of being directed from the purpose for which the grant was made. The Government as donor of the original grant is considered to have a continuing interest in the grant which may at some time revert, like the reversion in the donor of an estate in life or of an estate in tail on failure of issue of the grantee. Then the provision which follows, that " the power to decide on such claims is reserved exclusively to the Governor in Council" is quite inconsistent with the notion that there are independent rights under the grants in question which the grantees may at any time alienate absolutely. Then section 3 provides that "the grants referred to in the previous section shall not be liable to attachment or sequestration in satisfaction of any decree or order of court ;" and

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the rest of the section—"save and except for the discharge of debts or obligations personally incurred by the holders of them"—is repealed by Act XXIII of 1838. Nothing, as it seems to me, could more distinctly shew that the legislature understood that, legally, grantees of crotriyam lands could not dispose of them. The Regulation is intended to guard against the diversion of the proceeds of land comprised in such grants, even during the life-time of the donee. Mr. Mayne contends that this does not amount to a prohibition of the right to alienate. But when I read the Regulation and the Act together, and consider how unreasonable it would be to protect against creditors the proceeds of property which the debtor had a right to dispose of, it seems impossible to avoid the conclusion that the Regulation clearly recognizes the law to be that a crotriyam is inalienable by the holder.

Looking at the whole case, and the principle upon which such grants are made, and grounding my judgment on legislative exposition, which appears to me to show that crotriyams are in the nature of estates tail in strict settlement, I am of opinion that the defendant has failed to make out his case, and that the appeal must consequently be dismissed.

FRERE, J., concurred.

Appeal dismissed.

NOTE :—The right of an adopted son to succeed to a crotriyam was recognized by the Court of Directors, 30th May 1843. C. O. B. R, I, 406, and by Government, ibid, I, 407, 408. So the right of a widow to succeed to a crotriyam during life has been recognized, Ex. Min. Cons, 14th August 1847. Ib. I, 281, Sloan's Jud. and Land Rev. Code, I 559.

See too, 1 Strange, H. L., 209 : 2 Ibid, 365, 366.