

APPELLATE JURISDICTION. (a)

Regular Appeal No. 1 of 1862.

HARISCHANDANA DEVA.....*Appellant.*

RAMANNA CHANDRI and others.....*Respondents.*

Where a village, part of a zamindari, has been entered as a jagir on the accounts of the permanent settlement, the zamindar cannot resume the village, and is entitled in respect thereof only to the usual kattubadi.

THIS was a regular appeal from the decision of G. S. Forbes, the Agent to the Governor of Fort St. George in Ganjam, in Original Suit No. 83 of 1856.

1863.
June 4.

R. A. No. 1
of 1862.

Sloan for the appellant, the plaintiff.

Branson for the respondents, the second and third defendants.

The facts appear from the following

JUDGMENT :—This was an action by the zamindar of Tarla, a hill zamindari in the Ganjam District, for the recovery of the village of Rittapadu, situated within the limits of that estate.

The plaintiff urged that the full revenue or income of the village in question was included in the permanent assets of the estate, upon which the peshkash (land-revenue) was calculated ; that the village is jiraiti or subject to the payment of the full revenue; that it had been dealt with as such both by former zamindars and by the Collector of the District ; but that it had been granted by a former zamindar to the father of the fourth defendant, who had sold it to the first. The plaintiff contended that as the successor of the original grantor, he was not bound to respect this grant, and that he was consequently entitled to resume the village, the produce of which is stated to be rupees 240 annually.

The defendants pleaded that the village in question was a mukhasa ina'am ; that it was so entered in the accounts of the permanent settlement ; and that the plaintiff therefore was not at liberty to resume.

The Agent decided against the plaintiff's title to resume, and declared him entitled to a quit-rent only, on the ground

(a) Present : Phillips and Frere, J. J.

1863.
June 4.
H. A. No. 1
of 1862.

that the village had been entered as a jagir in the accounts of the permanent settlement.

The plainiff appealed against this judgment.

We concur fully in the view which the Agent has taken of this case. The accounts of the permanent settlement clearly show that the peshkash payable by the zamindár was calculated not upon the entire revenue of the village in question, but upon the kattabadi or quit-rent only. We therefore affirm the Agent's decree and dismiss this appeal with costs.

Appeal dismissed.

APPELLATE JURISDICTION. (a)

Special Appeal No. 186 of 1862.

'ALI HUSAIN and others.....Appellants.

NILLAKANDEN NAMBUDIRI.....Respondent.

During the continuance of a first otti mortgage the janmi is in the same possession as regards his right to make a second otti mortgage to a stranger after, as he was before, the lapse of twelve years from the date of the first mortgage.

Where a janmi made an otti mortgage and more than twelve years after made a second otti mortgage to a stranger without having given notice to the first mortgagees so as to admit of the exercise of their option to advance the further sum required by the janmi:—Held that the second mortgagee could not redeem the lands comprised in the first mortgage.

1863.
June 8.
S. A. No. 186
of 1862.

THIS was a special appeal from the decision of K. Kellu Náyar, the Principal Sadr Amin of Calicut, in Appeal Suit No. 534 of 1861, affirming the decree of the District Munsif of Ernád, in Original Suit No. 41 of 1859.

Mayne for the appellant, the second defendant.

Ramanuja Ayyangar for the respondent, the plaintiff.

The facts appear from the following

JUDGMENT :—This was a suit to redeem lands described in the plaint, and in the occupation of the first, second, third and fourth defendants, members of the same family, as otti mortgagees—the same lands having been recently assigned to the plaintiff by the janmi-proprietor, the fifth defendant, on a mortgage of the same description to a higher

(a) Present : Scotland, C. J. and Frere, J.