

1863.
January 15.
S. A. No. 659
of 1861.

of the title claimed by the second defendant, who displaced the former mortgagee. We think it necessary therefore to reverse the decree of the civil judge, and to confirm that of the court of first instance. The second defendant will be charged with the costs incurred by the plaintiff in the appeal and special appeal suits.

Appeal allowed.

APPELLATE JURISDICTION (a)

Special Appeal No. 5 of 1862.

PITCHAKUTTI CHETTI.....*Appellant.*

PONNAMMA NÁTCHIVÁR.....*Respondent.*

A Zamindár granted part of his zamindari absolutely and died. His grantee was then dispossessed by a purchaser from his successor :—*Held* that as the conditions specified in Reg. XXV. of 1802, sec. 8 had not been observed by the former Zamindár, the grant was voidable on the determination of his interest, and that consequently the dispossession was legal.

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THIS was a special appeal from the decision of R. R. Cotton, the Civil Judge of Madura, in Appeal Suit No. 122 of 1861 affirming the decree of J. H. Goldingham, Acting Judge of the Subordinate Court of Madura, in Original Suit No. 21 of 1860.

Branson for the appellant, the first defendant.

Wemyss for the respondent, the plaintiff.

The facts appear from the following

JUDGMENT :—This was a claim for four villages, forming a portion of the estate of Padamáttur, founded on a grant in 1839 from the then Zamindár to his wife the present plaintiff.

The plaintiff alleged that she was in possession under the grant down to the year 1855, when she was dispossessed by the first defendant, who claimed under a sale executed in his favour by the present Zamindár, the second defendant

(a) Present Strange and Frere. J J.

The Subordinate Judge considered the sale to the first defendant by the present Zamindár to be fully proved, but pronounced it to be invalid on the ground of the previous grant to the plaintiff by the former Zamindár, and passed judgment for the plaintiff accordingly. This decree was confirmed in appeal by the Civil Judge.

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The plaintiff in this case claims under a grant from her husband the late Zamindár now deceased. It is not asserted that the conditions specified in section 8, Regulation XXV of 1802(a) have been fulfilled in this particular case, and it is consequently clear from the terms of that section, especially as explained in the decree of the late Madras Sadr Court in Appeal No. 6 of 1821, at page 284 of the Select Decrees, that such an alienation is voidable on the determination of the interest of the party by whom it was made. The claim of the plaintiff therefore is not legally sustainable as against that of the first defendant, whose possession is supported by a *bona fide* deed of sale executed by the present Zamindár who was no party to the grant in favour of the plaintiff.

We consider it necessary therefore to set aside the decrees of the lower Courts, and to dismiss the claim of the plaintiff, with all costs of suit.

Appeal allowed.

(a) See this section set out *supra*, p. 142.