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(II) This brings us to the second, and, as we consider, the only real question in the case, *viz.*, did the defendant No. 1 know of, and consent to, the advance interest being taken?

This point has been fully argued on both sides; and having carefully considered the evidence, we are of opinion that he did consent to it.

Appeal allowed.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Jackson.

BONOMALI BAJADUR (ONE OF THE DEFENDANTS) *v.* KOYLASH CHUNDER MOJOOMDAR AND OTHERS (PLAINTIFFS).*

1878 *June* 19.

Landlord and Tenant—Kurpha Tenants—Rights to Transfer—Execution.

The jummai rights of a kurpha (1) under-tenant are not transferable without the consent of the ryot landlord.

THE facts of this case sufficiently appear in the judgments of the High Court.

Mr. *H. C. Mendies* for the appellants.

Baboo *Jogesh Chunder Dey* for the respondents.

GARTH, C. J.—We think that there has been a mistake pervading the lower Courts in this case.

The question arose in this way: The plaintiff, an execution-creditor, attached certain lands held by his execution-debtors. The present defendant, who is the occupancy ryot of those lands, objected to their being sold, inasmuch as the execution-debtors were his *kurpha* tenants, and that their interest in the land was not saleable without his (the occupancy ryot's) consent.

This objection prevailed; whereupon this suit was brought by the plaintiff against the occupancy ryot and the execution-debtors to establish his right to sell the judgment-debtor's interest.

* Appeal, under s. 15 of Letters Patent, against the decree of Mr. Justice McDonell, dated the 15th of March 1878, made in Special Appeal No. 2682 of 1876.

(1) Is an under-tenant of a ryot, also called *chikani* in Rungpore, and *prajai* (from *praja*), and generally *shikmi* or *petao* ryot. These under-tenants usually cultivate on the terms of paying half produce.—*Whinfield's Law of Landlord and Tenant*, p. 17.

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The suit was dismissed in the first Court; but the Appellate Court gave the plaintiff a decree, on the ground that the *kurpha* tenants held under a jummai right from the defendant Bonomali Bajadur, the ryot.

The case then came before the High Court in special appeal, when it was remanded to try the question which the plaintiff then asked permission to raise—whether the jummai right of the *kurpha* tenants was transferable by the custom of the country? Now this of course meant, under the circumstances, whether the jummai right was transferable without the consent of the defendant, the occupancy ryot, because the suit was brought for the very purpose of having the tenancy sold as against the last-mentioned defendant, and notwithstanding his objection.

It is obvious that this must have been the true meaning of the remand order, because, considering the relation which exists between an occupancy ryot and his *kurpha* tenant, it would certainly seem unreasonable that the right of the latter should be transferred without the consent of the former; the occupancy ryot of course being deeply interested in having as his *kurpha* tenant a person who can properly cultivate the soil, and secure to him his proper proportion of the profits.

But this very material consideration seems to have been entirely lost sight of by the Munsif who tried the case on remand.

The evidence produced at the trial showed, as the Munsif says in his judgment, that those *kurpha* tenancies were transferable with the consent of the occupancy ryots, which meant, we must presume, that they were not transferable without such consent; and yet, upon this evidence, the Munsif finds generally that these *kurpha* tenancies are transferable.

The case then came before the Subordinate Judge on appeal, who also ignored the real point in the case, and arrived at the same conclusion as the Munsif, upon the same evidence.

We think it clear that these decisions, as well as that of the learned Judge of this Court, have been founded upon misapprehension; and that the evidence before the Munsif led to one proper and legal conclusion only, *viz.*, that the tenure of the

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kurpha tenant is not transferable without the consent of the occupancy ryot.

We think, therefore, that the judgment of all the Courts must be reversed, and the plaintiff's suit dismissed with all costs.

JACKSON, J.—I would only add that I never heard before that the question as to the possibility of selling a *kurpha* tenant's right could be raised, and it appears to me to be contrary to the nature of things that such a thing could happen.

The Subordinate Judge speaks of an admission by the defendant that his *kurpha* tenant had a right of occupancy; but if he did make such an admission, he admitted what the law forbids, because s. 6 of Beng. Act VIII of 1869 says that, under such circumstances, a right of occupancy cannot arise, and where a right of occupancy cannot rise *à fortiori*, there can be no transferable right.

ORIGINAL CIVIL.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Markby.

MACKINTOSH *v.* WINGROVE.*

1878
June 7 & 17.

Promissory Note—Interest deducted in advance from the sum lent—Inadequacy of Consideration—Grossly exorbitant Interest—Equitable Relief.

The Court will afford no protection to persons who wilfully and knowingly enter into extortionate and unreasonable bargains.

It is only where a person has entered into an extortionate bargain, and it is shown that he was in ignorance of the unfair nature of the transaction, that the Court is justified in interfering.

REFERENCE to the High Court by the First Judge of the Calcutta Court of Small Causes, under s. 55 of Act IX of 1850.

This was a suit brought to recover the sum of Rs. 82 as principal and interest due on the following promissory note:

Calcutta, 23rd June 1874.

Rs. 20.

On the 13th November 1874 we jointly and severally promise to pay to Mr. H. Mackintosh, or order, the sum of Rs. 20

* Reference, No. 5 of 1878, from the Calcutta Court of Small Causes.