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JOSHUA v. ALLIANCE BANK OF SIMLA.

Under section 53 of the Transfer of Property Act, where a transfer is made gratuitously for a grossly inadequate consideration, the transfer may be presumed to have been made to defraud or defeat creditors. But in addition to that presumption the transaction of 1878 was carried out in a most unusual way, and in the only way in which secrecy could be maintained. The deed of appointment was not given to the trustee, and no notice of it appeared in the title. On the contrary it was kept by the lady herself who was one of the *cestui que* trusts. By this unusual procedure the settlor and the trustee were enabled to raise from time to time large sums of money by inducing the persons who advanced the money to them to believe that the whole title lay in the lady and the trustee. It seems to us, therefore, a fair inference that this unusual procedure was adopted by the lady in 1878 with the intention of enabling herself and the trustee to obtain money by showing a complete title in themselves and yet to prevent the lenders from realizing their money.

We think, therefore, that the decree of the Court below is correct, and this appeal must be dismissed.

Appeal dismissed.

Attorneys for the appellants: Messrs. *Gregory & Jones.*

Attorneys for the respondents: Messrs. *Dignam, Robinson & Sparkes;* Messrs. *Harriss & Simmons.*

J. V. W.

PRIVY COUNCIL.

P.C.* 1894 *June* 12.

HEMANTA KUMARI DEBI (PLAINTIFF) *v.* JAGADINDRA NATH ROY BAHADUR (DEFENDANT.)

HEM CHUNDER CHOWDHRI (PLAINTIFF) *v.* JAGADINDRA NATH ROY BAHADUR (DEFENDANT.)

[On appeal from the High Court at Calcutta.]

Enhancement of rent—Independent taluk formerly part of a zemindari—Decree of 1805—Regulation VIII of 1793, sections 51 and 76—Bengal Tenancy Act, 1885, section 67.

A decree of the Sudder Dewani Adalut in 1805 declared that a *taluk* was fit to be separated from the zemindari of which it had originally been part

* *Present:* LORDS HOBHOUSE, MACNAGHTEN and MORRIS, and SIR R. COUCH.

according to the provisions of section 5, Regulation VIII of 1793. The decree directed that, until separation, rent should be paid by the *talukdar* to the zemindar, "according to the *jumma* already assessed upon the *taluk*," this revenue to be, on the separation being effected, deducted from that assessed upon the zemindari.

Proceedings with a view to separation then continued, but litigation and delays ensued, with the result that no separation had been effected when these suits were instituted in 1882 and 1885. In these, the holders of shares into which the zemindari had been partitioned claimed to enhance the rent on the *taluk*. *Held*, that the decree of 1805, acted upon for many years, was conclusive that the *taluk* was not dependent on the zemindari, but an independent one, within section 5, Regulation VIII of 1793; and that, therefore, the zemindars had no right of enhancement.

Section 67 of the Bengal Tenancy Act, 1885, applies only to rent payable quarterly.

CONSOLIDATED appeals from one judgment and four decrees (25th March 1890) of the High Court, affirming decrees (26th April and 4th June 1888) of the Subordinate Judge of Maimensingh.

These appeals were preferred by the two plaintiffs, now appellants, who held separate shares, one a ten annas, the other a four annas, share, in the zemindari Pakhuria Jainsahi in the Maimensingh District. Each sued separately on the 10th July 1881 for enhanced rent, on notice, on a *taluk* named Taraf Balasuti Dejai, on which they, and their predecessors in estate before them, received rent as zemindars from the *talukdar*, the defendant, now respondent. This *taluk* had been granted out of the zemindari before the Permanent Settlement by a former zemindar, to whom and his successors the *jumma* assessed on the *taluk* was paid as rent by the predecessors of the present *talukdar*. This having been at first Rs. 9,648 was increased in the Bengali year 1206 (English 1799-1800) to Rs. 16,369-8-11; and this rent was paid after the subsequent partition of the zemindari proportionately to the holders of the shares therein. When these suits were commenced the holder of the ten annas share was Maharani Surat Sunderi Debi, widow of the late Raja Jogendra Narain Roy. She died during the suit, and was now represented by Rani Hemanta Kumari Debi, widow of the son, now deceased, whom she had adopted to her late husband, Jogendra Narain.

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The decision upon her claim governed the claim of Hem Chunder Chowdhri, who held the four annas share.

Whether the *jumma* paid on the *taluk* as rent to the zemindar was enhanceable by him, or not, depended on whether the *taluk* was a dependent one, or was independent within the sections of Regulation VIII of 1793 relating to separated *taluks*. But it had first to be decided whether a decree of the Sudder Dewani Adalut in 1805, and subsequent acts of those through whom the parties claimed, had left this an open question.

The facts, in brief, were that Rani Bhabani, holding the zemindari before the Decennial Settlement, granted the *taluk* to her daughter Tara Devi, a grant confirmed by Maharaja Ram Krishna Rai, with whom the settlement was made. The zemindari then passed into another family's possession, but the *taluk* remained with the original one. Disputes arose as to the amount of *jumma* to be paid by the *talukdar*, and in particular the suit was instituted which the Sudder Court finally decided in 1805, *viz.*, *Bhobindur Naraen* v. *Bishen Nath Rai* (1). This was brought on the 12th December 1800 by the then *talukdar* Bishen Nath Rai, son of Ram Krishna Rai, ancestor of this respondent, against Bhobindur Naraen, complaining that the latter had obtained, under Regulation VII of 1799, an order for payment of rent by the *talukdar* at the rate of Rs. 16,369-8-8 by the year, against the plaintiff's *nath*; that sum being in excess by Rs. 6,720 over his, the plaintiff's, liability for rent. He claimed the difference. The defence was that an increase of revenue, by way of four years' *rasad leshi* (progressive increase), had been assessed on the whole zemindari of Pakhuria Jainsahi at the Decennial Settlement, and that the Collector had assessed the proportionate *rasad* upon the *taluk* Balasuti, fixing Rs. 16,369-8-11 as the annual *jumma* for the year 1197 (English 1790-91), so that the order had been duly obtained. The local Courts differed in their opinions as to what the complaining *talukdar* was entitled to receive, but both would have allowed a refund in part. However, the Sudder Court, on the defendant's appeal, gave the judgment which, reversing the decrees below and disallowing any refund, entered into

(1) 1 Sel. Rep. 100.

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the matter of the separation of the *taluk*, thereby affect'ng the present state of affairs between those in possession of the rights formerly held by the parties to that suit. The record was stated at the hearing of this appeal to be no longer forthcoming, but the judgment of the Sudder Court appears in their order of the 14th August 1805, of which the exact words are given in the judgment of the High Court of the 25th March 1890 (1).

The basis of Maharani Surat Sunderi's claim was that the *taluk* had been created since the Permanent Settlement, and was a dependent one within the meaning of section 51, Regulation VIII of 1793; and that this gave her a claim in accordance therewith and in virtue of section 14 of the Landlord and Tenant Act (Bengal Act VIII of 1869) to the enhanced rent of Rs. 68,559.

The defendant's answer was that the *taluk* was not a dependent one, and that the rights which he possessed in it were equal to those which the plaintiff held in the zemindari. Hem Chunder Chowdhri's claim in reference to his share was Rs. 4,365-3-4 under the same enactments. The defence to both the claims of the zemindars was that the *taluk* was independent, as a portion of Pergunna Pakhuria, bearing a proportionate sudder *jumma*, or revenue, payable to Government, without there being any right, either by custom or in any way, to enhance the amount which had been paid to the zemindars.

The Subordinate Judge, on the 6th April 1888, dismissed both the claims to enhance the rates of rent; but the rent in arrear, at the old rates claimed at the same time, he decreed. He was of opinion that the decree of the Sudder Court of the 14th August 1805 was conclusive, and that the defendant was a *talukdar* with proprietary right within section 5, Regulation VIII of 1793, and did not hold the *taluk* as a subordinate tenure. On the 4th June 1888, on the same grounds, he dismissed the two other suits, which the same plaintiffs commenced in 1885 and 1886 to obtain enhanced rates of rent for the years 1289 to 1292.

Appeals by the plaintiffs in all the four suits were taken up

(1) *Post*, p. 216.

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together and dismissed by a Division Bench of the High Court (O'KINEALY and CHUNDER MADHUB GHOSE, JJ.)

Their judgment gave a history of the *taluk* and a statement of the early litigation about the rent of it. They based their decision mainly on the judgment of the Sudder Court of the 14th August 1805, which they considered to be conclusive on the right of the *talukdar* to have separation. Having stated the proceedings that led to the appeal to that Court, they continued thus :—

In this state of the case, and upon the facts before them, the Sudder Dewani decided that the *talukdar* had not a *mokurari istemrari* interest in the land, that, in fact, these words did not occur in the deeds of sale in favor of Rani Tara, nor had the grantee paid the same *jumma* from twelve years prior to the Decennial Settlement. They then say : "For these reasons it is finally decreed and ordered that the decree of the Judges of the Provincial Court, dated the 22nd March 1804, be set aside, and that of the District Judge, dated the 12th December 1801, allowing the *jumma* of Rs. 13,452-11-18 *gundas*, be modified, and the claim of the respondent for the excess *jumma* of Rs. 6,720-14-11 *gundas* be disallowed and dismissed ; that the amount which, by execution of those two decrees, has been awarded to the respondent from the appellant, be refunded to the appellant by the respondent with interest at the rate of Re. 1 per cent per month. As Doyaram Chuckerbutty, the *naib* of respondent, executed, on 20th January 1796, in the presence of the Judge of Maimensing, in favor of the appellants, an *ikrarnama* to the effect that the respondent had objection to the (payment) of *rasad*, &c., in the *jumma* of Rs. 16,369-8-11, for which reason he has made an appeal, therefore he (the executant) would pay to him, during the pendency of the appeal, the rent according to the above mentioned *jumma*. In order to avoid dispute and trouble and costs of the parties, it seems proper that on account of the past years and the present year as well as of the years to come, till separation of the respondent's *taluk* from the zemindari of the appellants, the respondent should pay rent to the appellant according to the aforesaid *jumma*. But as this is a suit simply on account of the excess *jumma* of 1206 B. S , therefore it is not proper to pass any order in the decision of this suit with respect to the payment of the balance of the aforesaid *jumma*. From the deeds of sale and documents filed by the respondent, *taluk* Balasuti and others, the property of the respondent, is fit to be separated from the zemindari of the appellant according to the provisions of section 5, Regulation VIII of 1793. The respondent has, within the time prescribed by section 14, Regulation I of 1801, filed a petition for the separation before the Collector of the district ; therefore it is necessary that according to the order of the Collector of 2nd Magh 1208 B. S., the respondent do file before the Collector all the documents relating to his *taluk* with a copy of this decision, so that the

said Collector do in future deduct, according to the provisions of section 10, Regulation I of 1793 and section 8 of Regulation I of 1801, the sudder *jumma* of the *taluk* of the respondent from the sudder *jumma* of the zemindari of the appellants, and separate the *taluk* of the respondent from the zemindari of the appellants."

The order of the Sudder Court concluded by providing for costs.

Petitions for separation followed, and orders were made by the Collector. On the 30th December 1808 the Board of Revenue, referring to the Sudder Court's decree, wrote that the *talukdar* was entitled to have his *taluk* separated from the entire estate of Pakhuria, the *jumma* allotted on it to bear the same proportion to its actual produce as the *jumma* of the entire estate bore to the produce of the latter, and that until this could be ascertained the *talukdar* was to pay to the zemindar an annual *jumma* of Rs. 16,369-8-11.

The judgment of the High Court, after referring to numerous other proceedings and causes of delay, summed up that there could be no doubt that the Sudder Court had declared the *talukdar* entitled to separation, being an independent *talukdar*, and in equally express terms had declared that until separation the *talukdar* should pay the above *jumma*. The Sudder Court had jurisdiction thus to declare. The High Court concluded its judgment in the words set forth in their Lordships' judgment.

On this appeal,—

Mr. *R. B. Finlay*, *Q.C.*, and Mr. *C. W. Arathoon* argued that the rent could be enhanced, the *taluk* being one subordinate to the zemindari, and never effectually separated from it. They referred to the repeated commencement of proceedings to effect the separation, and argued that the steps necessary to complete it had never been taken. The intention hardly was to have a separate *taluk* in the early stages, as nothing had been done at the Decennial or Permanent Settlement to have the separation effected at a time when it would have been readily carried out. The appellants were not concluded by the statements in the order of the Sudder Court of the 14th August 1805. The question of the independence of the *taluk* had not been contested on what might be taken as a direct issue of a sufficiently definite kind raised

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between the parties, and the most that the decree had decided was that at that time the *talukdar* might, on proper steps being taken by him for the purpose, have a separation carried out. It was contended that in the long course of proceedings no separation had been effected, and the *taluk* had remained a dependent one.

Mr. *T. H. Cowie*, *Q.C.*, and Mr. *R. V. Doyne*, for the respondent, were not called upon as to the question of the right to enhance the rent.

Their Lordships' judgment was given by

LORD MACNAGHTEN.—The appellants are the zemindars of a ten-anna and a four-anna share in the zemindari property called Pakhuria Jainsahi, in the District of Maimensingh. The respondent is *talukdar* of a *taluk* called Balasuti, forming part of that zemindari. The object of the four suits, which were brought by the predecessor in title of Rani Hemanta Kumari Debi and by Hem Chunder Chowdhri against the respondent, was to obtain from him enhanced rents in respect of that *taluk*. The main question to be decided in these appeals is whether the Courts below were right in holding that the appellants were precluded by a decree of the Sudder Dewani Adalut from demanding a larger rent from the respondent than Rs. 16,369-8-11, or from disputing the independent nature of the respondent's *taluk*. The decree of the Sudder Court was pronounced on the 14th August 1805. By that decree the Court expressed the opinion that the then defendant, the predecessor in title of the respondent, was entitled to have his *taluk* detached from the plaintiff's zemindari, and that in the meantime, and until separation took place, the rent of sicca Rs. 16,369-8-11 should continue to be paid.

The sole objection to treating that decree as absolutely binding comes to a question of form. It is said that the opinion of the Sudder Court was expressed in the form of a recommendation and not in the form of a decision. That undoubtedly is so; but it was an expression of opinion by a Court which was perfectly competent to deal with the matter, and it must be borne in mind that at that time the pleadings, if there were any pleadings, were not very strict or very formal. Beyond that, it appears that from the date of the decree until the present question arose, both

parties, zemindars and *talukdars* alike, have treated that expression of opinion as binding.

Proceedings were taken soon after the decree to obtain an actual separation. Those proceedings lasted for about fifty years. They were carried on with more or less activity, until the year 1854 when they came to an end, not in consequence of the right of the predecessor in title of the respondent to a separation being disputed, but because of the intervention of the Government.

The first of the four suits now pending was brought in the year 1882. Both Courts have decided the suits in the respondent's favour. In the judgment of the High Court pronounced in all the suits the view of the Court is expressed as follows: "The suit, as laid, is a suit against an independent *talukdar* alleged to be a dependent *talukdar* under the Regulations; and it appears to us quite clear from the decision of the Sudder Dewani Adalut that it was decided between the parties that, instead of being a dependent *taluk*, it was an independent *taluk*, within the meaning of section 5, Regulation VIII of 1793, and that that decision had been acted upon by both parties for nearly fifty years." In that view their Lordships entirely concur. They are of opinion that there is no foundation whatever for these appeals on the main question of the enhancement of rent.

A subordinate question arose in Appeals Nos. 20 and 21 of 1890 with regard to the interest on the rent in arrear. It appears that there are some arrears which have become due since the Bengal Tenancy Act, 1885. The Subordinate Court held that interest was to be calculated monthly on the arrears; but the High Court held that under the provisions of that Act, as regards arrears which became due after the Act came into force, the interest should be calculated quarterly. It appears to their Lordships that the High Court were wrong, and that the provision in section 67 of the Act, on which they relied, only applies to cases where the rent is payable quarterly. Here it is not disputed that the rent is payable monthly, and on rent in arrear it appears to their Lordships that interest ought to be calculated monthly. This is a matter which has not added at all, or if at

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all, only to an infinitesimal degree, to the costs of the appeals, and their Lordships think that this variation ought to make no difference as to the costs.

Although by the judgment of the High Court the judgment of the Subordinate Court was varied in the above respect, the decrees drawn up by the High Court contain no such variation, but simply dismiss the appeals from the Subordinate Court with costs. The decrees of the High Court are consequently right and should be affirmed. Their Lordships will humbly advise Her Majesty accordingly. The appellants must pay the costs of these appeals.

Appeals dismissed.

Solicitors for the two appellants, Rani Hemanta Kumari Debi and Hem Chunder Chowdhri: Messrs. *T. L. Wilson & Co.*

Solicitors for the respondent: Messrs. *Barrow & Rogers.*

C. B.

GURDYAL SINGH (DEFENDANT) *v.* RAJA OF FARIDKOT (PLAINTIFF.)

P. C.* 1894 *June* 29. *July* 28.

[Appeal from the Chief Court of the Punjab.]

Foreign Court, Judgment of—Suits in British Courts on Judgments and Decrees of Courts established in recognised Foreign States—Territorial Jurisdiction of each separate State in personal actions—Civil Procedure Code (Act XIV of 1882), sections 431, 434.

Jurisdiction, being properly territorial and attaching, with certain restrictions, upon every person permanently or temporarily resident within the territory, does not follow a foreigner, after his withdrawal thence, living in another State.

As to land within the territory jurisdiction always exists, and may exist over moveables within it; and exists in questions of *status*, or succession, governed by domicile. But no territorial legislation can give jurisdiction, which a Court of a Foreign State ought to recognize, over an absent foreigner owing no allegiance to the State so legislating.

In a personal action, to which none of the above causes of jurisdiction apply, a decree pronounced by a Court of a Foreign State *in absentem*, the latter not having submitted himself to its authority, is by international law a nullity.

Not to the Courts of the State in which the cause of action has arisen,

**Present:* THE EARL of SELBORNE, LORDS WATSON, HOBHOUSE, MACNAGHTEN, MORRIS and SHAND and SIR R. COUCH.