P. C.*
1877
July 6.

LEKHRAJ ROY AND OTHERS (PLAINTIFFS) *v.* KUNHYA SINGH AND OTHERS (DEFENDANTS).

[On Appeal from the High Court of Judicature at Fort William in Bengal.]

Construction, Rules of—Grant for an Indefinite Period.

The rule of construction that a grant made to a man for an indefinite term enures only for the life of the grantee and passes no interest to his heirs, does not apply in cases where the term can be definitely ascertained by reference to the interest which the grant or himself has in the property, and which the grant purports to convey.

THIS was an appeal against a judgment and decree of the Calcutta High Court, dated the 4th April, 1872 (1), by which an application made by the appellants for admission of a review of a judgment of the said Court passed on the 23rd June, 1871 (2), was dismissed.

The only question arising on this appeal was as to whether, under a lease of certain lands granted to the father of the respondent, Kunhya Singh, by one Choonee Lall, through whom the appellants claim, there passed to the lessee merely an interest for his own life, as contended by the appellants, or one which was to continue as long as the tenure of the lessor, as contended for by the respondents.

Mr. *Leith*, Q. C., and Mr. *Doyne*, appeared for the appellants.

Mr. *Cowie*, Q. C., and Mr. *John Cutler*, for the respondents.

The material circumstances of the case will appear from their Lordship's judgment, which was delivered by

SIR M. E. SMITH.—This suit was brought by the present appellants to obtain possession of an eight-anna share of Mouza Toee, and the plaint also prays for the annulment of the mokurari tenure which the respondents claimed to have in the mouza under a potta granted by one Choonee

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(1) 18 W. R., 494. (2) 14 W. R., 262.

Lall. The appellants are the purchasers under a decree obtained against some persons who had become possessed of part of the interest of Choonee Lall in the eight-anna share of the mouza. The respondents are the heirs of Nirput Singh, who was the grantee under the potta. The single question in this appeal is, whether, upon the true construction of this potta, and upon the evidence in the case, the grant was one to endure for the life of Nirput Singh only, or whether it was to endure so long as the interest of Choonee Lall existed. That involves also an inquiry into what the interest of Choonee Lall was.

The lease or potta in question is dated in April, 1808, and the material parts of it are in these terms: "The engage-"ments and agreements of the potta on the kabulyat of "Nirput Singh, lessee of Mouza Toee, Pergunna Malda, "Zilla Behar, are as follows: Whereas I have let the entire "rents of the mouza aforesaid,"—describing what he had let,—"at an annual uniform jumma of Sicca Rs. 606, without "any condition as to calamities, from the beginning of 1215 "Fusli to the period of the continuance of my mokurari." That is the term fixed in the potta. It is a term "from the "beginning of 1215 Fusli to the period of the continuance "of my mokurari." Then it is required that the lessee should cultivate, "and pay into my treasury the sum of Sicca Rs. 606, "the rent of the mouza aforesaid, for the period aforemen "tioned, according to the instalments, year after year." Then there is this provision, "if, hereafter the authorities desire to "make a settlement of the property at that time, he shall pay "the jamma thereof separately according to the Government "settlement." It concludes, "hence these few words are "written and given as a potta, to continue during the term "of the mokurari, that it may be of use when required. "The annual jumma malguzari, including the malikanna, "Rs. 606."

To ascertain what is the term granted by this potta, we must see, in the first place, what is the interest which the grantor Choonee Lall had. He calls it a mokurari interest; but whether it be a true mokurari interest or not, it was evi-

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dently the intention of the parties that the grant should endure during term of his interest. If it can be ascertained definitely what that term is, the rule of construction that a grant of an indefinite nature enures only for the life of the grantee would not apply. If a grant be made to a man for an indefinite period, it enures, generally speaking, for his lifetime, and passes no interest to his heirs, unless there are some words showing an intention to grant an hereditary interest. That rule of construction does not apply if the term for which the grant is made is fixed or can be definitely ascertained.

Now it appears that as early as 1788 the Government granted what has been called a mokurari lease to Mahomed Buksh, and that lease, after various intermediate assignments, was ultimately purchased by Choonee Lall, the grantor of the potta in question. Choonee Lall is said to have purchased it in 1807 or 1808. It is also said that he had purchased the proprietary interest in two annas of the mouza. From the document which has been produced from the Collector's office, other persons appear to have been proprietors of the remaining annas, but nothing is heard of them in this suit. However that may be, it does not really affect the present question, because the interest pointed at in the potta in question is a mokurari interest. The kabulyat of the lease of 1788, signed by Mahomed Buksh, is as follows:—"Whereas I have obtained a lease "of Mouza Toee, Zilla Kosra, Pergunna Malda, the area "whereof, by estimation, is 709 bigas 10 cottas, from 1196 "(one thousand one hundred and ninety-six) Fusli, at a jumma "of Sicca Rs. 400"—with certain exceptions—"I do acknow-"ledge and give in writing that I shall continue to pay the "rent of the mouza aforesaid at the said jumma, year after "year, according to the kabulyat and the kistbundi. If any "one establish his zemindari (proprietary) right in respect of "the said mouza in his own name before the authorities, I "shall continue to pay, year after year, to him or his heirs, the "'malikana' (proprietary allowance) thereof at the rate of "Rs. 10 per cent. on the jumma aforesaid, in addition to the "Government revenue." The lessee is to pay a jumma of Rs. 400 and a malikana of 10 per cent. on the jumma. Of

course, if Mr. Leith is right that Choonee Lall became the owner of the proprietary interest, the malikana would go into his own pocket. Then at the end there is this clause, which has given occasion to considerable discussion: "If the present "officers of the British Government, or any authority who "may come hereafter, do not accept my mokurari lease to be "hereditary, I acknowledge that this kabulyat is only for one "year, thereafter it shall be cancelled." That, undoubtedly, acknowledged a power in the Government to put an end to this lease, which is called a mokurari lease, at the end of one year. But it appears that the Government have not done so. It may be that it was contemplated that the Government would settle in the ordinary way with the proprietors for the revenue, and in that case would put an end to this mokurari. But it appears that no settlement has been made, and that this lease has been allowed to go on without being put an end to; and although, it is not perhaps properly a mokurari, inasmuch as practically the Government could enhance the rent, it must be regarded, as long as it goes on, as an hereditary lease, a mourasi potta. This being the interest of Choonee Lall (he having become the purchaser of this potta), he grants this lease to Nirput Singh to endure during the continuance of it. That interest, which continues, and has not been determined by the British Government, being an hereditary interest, there seems to be no reason why, upon the construction of the potta in question, it should be held to be limited to the life of Nirput Singh. As already observed, the duration of the term is capable of being definitely ascertained by reference to the interest which the grantor himself has in the property.

Their Lordships think that this case may be decided upon the construction of the document, and that it is not necessary to have recourse to the exposition of it to be derived from the conduct of the parties. It is satisfactory, however, to find that the view which has been taken by their Lordships of the construction of this document is that which the parties themselves evidently entertained, because for twelve years after Nirput Singh's death his heirs were allowed to remain in

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possession of the property precisely in the same way in which he had held it, paying the same rent.

Their Lordships agree with the judgment of the High Court given upon review, and they will humbly advise Her Majesty to affirm that judgment, and to dismiss this appeal with costs.

Appeal dismissed.

Agent for the appellants: Mr. *S. L. Wilson.*

Agents for the respondents: Messrs. *Barrow* and *Barton.*

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PARICHAT (DEFENDANT) *v.* ZALIM SINGH (PLAINTIFF).

[On Appeal from the Court of the Judicial Commissioner, Central Provinces.]

Mitakshara—Alienation of Ancestral Property—Illegitimate Son—Maintenance.

Since by the Hindu law the illegitimate son of a person belonging to one of the "twice-born" classes is entitled to maintenance, an assignment to him by his father, having no legitimate son then born, of a part of his ancestral estate, being in performance of a legal obligation, is on a different footing from a voluntary alienation to a stranger, and is valid under the law of the Mitakshara.

Quære.—Whether under the Mitakshara law a father who has no child born to him is competent, without legal necessity, to alienate the whole or any part of the ancestral estate; or whether the rights of unborn children are so preserved as to render such an alienation unlawful?

IN the suit in which this appeal was brought, Zalim Singh claimed to recover from Rajah Parichat, possession of a village which he alleged had been granted to him under a sannad by way of maintenance by Bahadoor Singh, the late Rajah of Belhera, whose illegitimate son he was, and from which he had been dispossessed by the defendant, the present Rajah. The defendant denied the *factum* of the sannad. He also denied its validity. The Deputy Commissioner of Saugor, in whose Court the suit was brought, held that the village had been assigned to the plaintiff by his father for his maintenance, and

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