

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeals of Mussummat Bibee Sahodra v. Roy Jung Bahadoor (Nos. 51 and 52 of 1877; Consolidated Appeals), and Luchman Sahai Chowdry v. Roy Jung Bahadoor (No. 61 of 1877), from the High Court of Judicature at Fort William, in Bengal; delivered 12th July 1881.*

Present :

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

SIR RICHARD COUCH.

SIR ARTHUR HOEHOUSE.

THE question raised by this Appeal may be disposed of very briefly. There are two suits, each of which is the subject of an appeal; but the appeals have been consolidated for the purpose of argument here. Taking the earlier suit, No. 253 of 1874, it is brought by the Respondents to recover a 4-anna share of a mouzah called Athur which the Defendant, who is Appellant, claims to be rightfully possessed of under a sale executed to her in the year 1845 by a widow of the name of Mainan Koer.

The position of the property was this: The mouzah Athur appears to form part of the ancestral property of a family who in the year 1826 were represented by Kuldip Ram and this widow Mainan Koer, she being the widow of Kuldip Ram's first cousin, Mehtab Ram. The two parties were in litigation. Kuldip Ram claimed to be entitled to the whole property, subject only to such maintenance as the widow might be entitled to. The widow claimed the whole during her life or widowhood as representing Mehtab Ram. Under these circumstances

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the parties came to a compromise in the year 1826, and that compromise was carried into effect in the suit which was then pending for the purpose of settling this question as to the ancestral property. The compromise provides for several different things, as to payment of debts and so forth, but the only material provision which we need now consider is that which relates to the interests given in the immovable property to Kuldip Ram and Mainan Koer respectively. As regards that property, the first clause of the Solenama executed by Kuldip Ram is that all the villages, whether ancestral or acquired by purchase, which lie in certain districts and which were held by Roy Mehtab Ram deceased, "shall during the lifetime of the aforesaid Mussummat"—that is Mainan Koer—"remain in equal shares in the joint possession and enjoyment of me the declarant and the aforesaid Mussummat, but the aforesaid Mussummat shall have no power to alienate the movable or immovable properties; and after her death all the movable and immovable properties, and the outstanding of the time of Roy Mehtab Ram and the said Mussummat, shall be the right of me the declarant." Then there are provisions for a mutation of names in the rent-roll of the Collector's office, so that the name of Kuldip Ram should appear with that of Mainan Koer; and also provisions for the parties being represented each by their own agents. A corresponding Solenama was executed by Mainan Koer.

That compromise was carried into effect by the decree, which does not throw any further light upon the question, because it only orders that the two parties, Kuldip Ram and Mainan Koer, "do hold possession and occupation of all the properties left by Roy Mehtab Ram conformably to the conditions laid down in the deeds of compromise, having had their names entered in the office of the Collector as regards

“ the villages in question.” Accordingly the two parties appear to have entered into possession, and to have remained in such possession until the sale which is the subject of the present suit.

That sale took place on the 5th of June 1845, and by the deed of sale Mainan Koer purports to convey to the ancestor of the Appellant four annas of the mouzah Athur in question, the family property consisting of eight annas of that mouzah. It then appears that a mutation of names took place, by which the grantee under that sale put his name in the place of Mainan Koer; and it is stated by the Appellant, in her written statement in the Court below, that her ancestor, and after him she herself, continued in possession and occupation of a moiety, to wit four annas, and the Plaintiffs and their ancestors in possession of the other four annas, of the mouzah in dispute, that is the mouzah Athur.

Nothing else appears to have been done to alter the position of the property. Kuldip Ram died some time in the year 1852, and Mainan Koer died on the 12th October 1862. The Respondents, who are the heirs of Kuldip Ram, did not bring any suit for the recovery of the property until nearly 12 years after the death of Mainan Koer, but they did bring a suit just in time to save the Statute of Limitations if the starting point of the Statute was the death of Mainan Koer.

The suit being brought, a great many issues of fact were raised which appear to have been of considerable difficulty; but those have all been disposed of by the Courts below, the two Courts finding all the issues of fact in the same way in favour of the Respondents, and they are not in question here. The single question now remaining is, whether the suit is barred by the Statute of Limitations, and that depends again upon the question whether the Statute began to

run on the 5th of June 1845, when Mainan Koer sold her interest in mouzah Athur to the ancestor of the Appellant, or on the 14th October 1862, when she died.

The Appellant contends first that the case falls within head 144 in the second schedule to the Limitation Act 9 of 1871. Head 144 is this: " For possession of immovable property when the Plaintiff has become entitled by reason of any forfeiture or breach of condition: 12 years from the time when the forfeiture was incurred or the condition broken." Then she says that the effect of the compromise of 1826 was to give Mainan Koer an interest in the property on condition that she should not alienate; that by her attempt to alienate she broke the condition; that the entirety of the property then vested in Kuldip Ram; and that the time of limitation began to run from that moment.

Their Lordships are of opinion that no such condition attached to Mainan Koer's life estate, and therefore that there was no forfeiture of it.

The terms of the compromise are, that the property shall remain in equal shares in the joint possession and enjoyment of the two parties; but the Mussummat Mainan Koer shall have no power to alienate the movable or immovable properties, and after her death those properties shall be the right of Kuldip Ram. There are no words of forfeiture, and it would be a very strong thing and a very unusual thing to import a forfeiture where the parties have not provided for one, and where there is no rule of law attaching forfeiture to a particular act. But in point of fact the language of the deed of compromise points to quite a different result. There is every indication that Mainan Koer was to have just as full an enjoyment of her interest in the property during her lifetime as Kuldip Ram was to have in his,

and there is no reason whatever on the face of the deed why she should not deal freely with her interest. And where it is said that she shall have no power to alienate the property, that prohibition is coupled closely with the statement that after her death the property shall go to Kuldip Ram. The inference to be drawn from that is, that when the parties spoke of alienation they were thinking of alienation in perpetuity, and the thing they desired to prohibit was such an alienation as would prevent Kuldip Ram taking the succession immediately upon Mainan Koer's death. That being so, the alienation of Mainan Koer was perfectly good for her lifetime; there was no adverse possession until she died, and the suit is brought within 12 years from that time.

Mr. Doyne argued that the case might fall within head 143 of the same schedule. That head refers to a suit for possession of immovable property where the Plaintiff while in possession of the property has been dispossessed or has discontinued the possession, and it allows 12 years from the date of the dispossession or discontinuance. But in order to bring the case under that head of the schedule, he must show that there has been a dispossession or discontinuance; and the passage which has been read from the Appellant's written statement distinctly shows that there was no dispossession or discontinuance of Kuldip Ram.

Those considerations are sufficient to dispose of the case as to mouzah Athur. The second suit, No. 262 of 1874, relates to another mouzah called Nazirpur, and to eight annas of that mouzah which were the subject of another sale by Mainan Koer; but the questions are precisely the same, and therefore there is no need to repeat with reference to Nazirpur what has been said with regard to Athur.

The result is that their Lordships entirely concur with the view taken by both the Courts below, and think that the Appeals should be dismissed with costs.

The appeal of Luchmun Sahai Chowdry *v.* Roy Jung Bahadoor (No. 61) of 1877 should also be dismissed with costs.

Their Lordships will humbly advise Her Majesty in accordance with this opinion.