

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Dosibai v. Ishwardas Jagjiwandas and another, from the High Court of Judicature at Bombay; delivered 7th February 1891.

Present :

LORD WATSON.

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD MORRIS.

SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

There have been a great many proceedings in this suit, and the record is very bulky, but the facts material to the present appeal are few, and the questions short and simple.

On the 24th of November 1830 the Government of Bombay made a grant to one Ardasar in the following terms:—

“In consideration of the active and zealous performance of the duties entrusted to him by Government, the Honourable the Governor in Council hereby gives and bestows upon Ardaseer Bahadoor, son of Dhunjeesha, and his heirs for ever as jagheer the following four villages,—Bhestan and Sonaree in the Chowrasee Purgunna, Kumuara and Boreeach in the Chiklee Purgunna, in the zilla of Surat, with the juma and moglaee* of the same, now yielding an average net sum of rupees two thousand nine hundred and ninety-two, one quarter and ninety-six reas (2,992. 1. 96). The revenue of the said villages hereafter, whether more or less, to be collected by the said Ardaseer Bahadoor and his heirs, from the 5th June 1830,

* “The moglaee of Bhestan is granted in jaghiri to Moolna Kootboodeen Hussein, and is consequently not included in this grant. Rupees (525) five hundred and twenty-five.”

and such lawazims or huks as are at present settled on those villages are to be disbursed by the said Ardaseer Bahadoor in the same manner as heretofore."

Ardesar contracted a large debt, and in the year 1833 he executed a deed giving to his creditor a charge on the four villages. In the year 1847 the debt had increased, and he executed a further charge, coupled with a covenant to pay off the debt by annual instalments. In 1856 he died. The Respondents represent his creditor and mortgagee. The Appellant represents his heir.

In the year 1861 the mortgagee sued the then heirs of Ardesar, and obtained a decree, dated the 14th November 1863, to recover the debt then due, nearly two lacs of rupees, from the four jaghiri villages, and from their income, and from the other properties of Ardesar. In pursuance of this decree an attachment was obtained, and the four villages have ever since remained under attachment.

In the year 1866 fresh instalments and fresh arrears of interest had accrued due, and the parties, having some dispute as to the correct amount, referred the question to a Panch, who on the 3rd December 1866 made an award ascertaining the amount due. This award was filed in Court on an application made under Sec. 526 of the Code, and appears to have been taken as supplemental to the suit of 1861, but no decree was made upon it till the 11th July 1883, when a decree was passed to the effect that the Respondents (representing the creditor and mortgagee) should recover the amounts then mentioned from the four villages and their revenues, and from all other properties of the deceased Ardesar.

In the month of July 1883 the Respondents applied for a sale under the last decree, without any previous attachment; and they claimed to have the property sold, with a reservation of

their right under the first decree of 1863, on which they alleged that there was still due Rs. 82,468. It appeared that the four villages were still under attachment in execution of the first decree, and the Appellant stated that she was taking steps to have it removed. The Court granted the application, but directed that a previous notice of 30 days should be given and duly proclaimed. That is the order of which the Appellant complains. On her appeal the High Court supported the Court below; and she now contends that both Courts are wrong, resting her case on three grounds.

The first ground goes to the substance of the Respondents' demand. The Appellant contends that the grant of 1830 did not confer an absolute interest on Ardesar, but, being a grant of a jagheer, operated as giving a succession of life interests to him and his heirs for the time being. There is no principle or authority which gives any warrant for such a contention. It is true that when a jagheer is granted in indefinite terms, it is taken to be for the life only of the jagheerdar. But where there is a grant to a man and his heirs, and nothing to control the ordinary meaning of the words, the grantee takes an absolute interest. The principle that jagheers are to be considered life tenures only "unless otherwise expressed in the grant" is expressly laid down in the Bengal Regulations. See Reg. 37 of 1793, Sec. 15. It is the law also in Bombay and other parts of India.

The second objection taken by the Appellant is that the order for sale should have been preceded by an attachment. The two Courts below held that, in the case of a decree to enforce a mortgage such as the present one, an attachment is not required, and that the practice is to make an order for sale without one. Their Lordships do not feel called on to go into that. In this case the four villages were under attach-

ment at the suit of the same creditor, and to enforce a portion of the same debt, which had accrued at an earlier period under the same instruments of mortgage. A second order for attachment would be an empty formality, and there is no rule which requires it.

The third objection of the Appellant is that as the sale has been ordered, not of the whole property free from charge, but with a reservation of the Respondents' claim under the first decree, she is damnified, because nobody but the Respondents themselves would bid for a property so situated. This objection was not taken in either of the Courts below.

The reason for the reservation is not apparent, nor indeed is the meaning or the effect of the order quite clear. If the objection had been taken in the First Court on the petition which the Appellant presented to get the order discharged, very possibly it might have been complied with, and certainly its intention would have been placed beyond doubt. Their Lordships would be very reluctant to give effect to an objection of this kind, taken for the first time when the Appellant's case is lodged here, even if it appeared to be of some importance. But it cannot be of any importance. The sale is ordered to realize more than 3½ lacs of rupees, which would exhaust the value of the four villages several times over. The debt is not the debt of the Appellant, nor is she interested in its reduction except for the purpose of getting some surplus out of the villages. As it is practically impossible that there should be any such surplus the question is wholly unsubstantial, and that may be the reason why it was never raised until the present stage of the proceedings.

Their Lordships hold that the appeal should be dismissed with costs, and they will humbly advise Her Majesty accordingly.
