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pre-emption to those of the pre-emptor or by the vendee acquiring an equal or better qualification than possessed by the pre-emptor. By the device adopted in the present case, it cannot be said that either one or the other of the modes has been adopted. It is inconceivable that the vendee can acquire a better status by the very transaction, which is the subject matter of a suit for pre-emption. The bargain cannot be split up by the vendee for his own benefit.

After giving the matter my careful consideration and after viewing it in all its aspects, I am firmly of the view that by the device adopted by the vendee in the present case, the plaintiffs' suit for pre-emption cannot be defeated.

For the reasons given above, the appeals preferred by the pre-emptors are allowed, the judgments and the decrees of the Additional District Judge are set aside and plaintiffs' suits are decreed.

In view of the fact that this matter was not so argued before the Additional District Judge, I leave the parties to bear their own costs throughout.

B.R.T.

APPELLATE CIVIL

Before K. L. Gosain and Harbans Singh, JJ.

HANS RAJ AND ANOTHER,—*Appellants.*

versus

BHUPINDER SINGH AND OTHERS,—*Respondents*

Regular First Appeal No: 134 of 1953.

1959

Nov., 3rd

Cis-Sutlej Jagirs—Terms and conditions on which granted—Rights of the Jagirdar for the time being—Properties forming part of the Jagirs—Whether liable to attachment or sale.

Held that—

(1) The rulers of Cis-Sutlej States, who became Jagirdars under the British Government after the annexation of Punjab, were originally independent rulers who came under the protection of the British Government and were guaranteed their rights as rulers. Step by step they were deprived of all vestiges of independent rulers but were allowed to keep the revenue from the villages which were under them. However, the revenue was to be assessed and collected by the agency of the British Government

(2) When the British Government annexed Punjab, it was up to the British Government to forfeit not only the right of these persons to recover land revenue from the villages under their rule but also to forfeit their land and house property and if the British Government allowed the erstwhile rulers to keep the land and house property, in addition to their right to receive land revenue from the villages which were under them previously, all this must be treated to have been given to them by implied grant. The terms and conditions on which this grant was made were:—

(*i*) Lands, houses and other buildings, including forts, mansion houses etc., which have any reference to the estate, including other buildings which have descended with the estate, are to be considered part of the Jagir;

(*ii*) any additions made to any such house or building will also form part of the Jagir;

(*iii*) no property forming part of the Jagir can be attached or sold;

(*iv*) however, if a Jagirdar acquires any separate property of his own, that will be available to the creditors like the property of anyone else.

(*v*) The holders of the Cis-Sutlej Jagirdars have only a life interest in all the properties, situate within their erstwhile dominions, that have descended to them from their ancestors.

First Appeal from the decree of the Court of Shri Pitam Singh Jain, Senior Sub-Judge, Ambala, dated the

31st day of March, 1953 dismissing the plaintiffs' suit against the defendants and leaving the parties to bear their own costs.

F. C. MITTAL AND S. C. MITTAL AND G. P. JAIN. for Appellants.

L. D. KAUSHAL, M. M. GUJRAL AND V. C. MAHAJAN, for Respondents.

JUDGMENT

The Judgment of the court was delivered by—

Harbans Singh, J.

HARBANS SINGH, J.—Facts giving rise to this regular first appeal may briefly be stated as follows: On 6th of April, 1931, S. Jodhbir Singh, Jagirdar of Ghanauli, Tehsil Rupar, father of defendant No. 1 and grand-father of defendants Nos. 2 to 4, effected a mortgage of his residential house in the village known as Qilla, in favour of Ram Rakha Mal, predecessor-in-interest of the plaintiffs (Hans Raj, and his minor son, Krishan Kumar) for a sum of Rs. 8,000/-, the stipulated interest being one per cent per mensem. The suit, out of which the present appeal has arisen, was filed on 29th of March, 1950 by Hans Raj and his minor son, for the recovery of Rs. 14,080/-, being the balance of the principal amount and interest calculated at the rate of Rs. 10/- per cent per mensem which is the maximum permissible under the Punjab Relief of Indebtedness Act. The suit was resisted by the defendants on a number of grounds the main ground, with which we are concerned, being that the property in dispute, i.e., the residential house known as Qilla formed part of what is known as Cis-Sutlej Jagir and as such, Jodhbir Singh, the holder for the time, had only a life interest therein and could not alienate the same and that in any case the mortgage effected by him

could not enure beyond his lifetime, and the property cannot be proceeded against for the recovery of the debt. These matters were put in the form of issues Nos. 3 and 9 which are as follows:—

(3) Whether the mortgagor, for the reasons given in the written statement, was not competant to mortgage the property in suit? And whether this objection can be raised by the defendants?

(9) Whether after the death of mortgagee, the property mortgaged cannot be proceeded against for the recovery of the debt?

These two issues were dealt with together and the learned trial Court came to the conclusion that the property in suit is certainly a part of the Cis-Sutlej Jagir and that Jodhbir Singh had only a life interest therein and could not alienate the same beyond his lifetime. In view of these findings the suit of the plaintiffs was dismissed, but the parties were left to bear their own costs. Being dissatisfied, the plaintiffs have come up in appeal to this Court.

The learned counsel for the appellants took us through Paras 100 to 107 and 111, of the Land Administration Manual which give the history of the Cis-Sutlej Jagirs which were formerly known as Cis-Sutlej States. It is not necessary to reproduce this history because this has been done at length in a number of cases dealing with Cis-Sutlej Jagirs to some of which we will have occasion to make a reference. All that need be said is that these persons, who became Jagirdars under the British Government after the annexation of Punjab, were originally independent rulers who came under the protection of the British Government

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and were guaranteed their rights as rulers. Step by step they were deprived of all vestiges of independent rulers but were allowed to keep the revenue from the villages which were under them. However the revenue was to be assessed and collected by the agency of the British Government.

The contention of the learned counsel for the appellants was that the history showed that there was no specific grant made by the British Government to these people and that if there was any grant, that was of the land revenue which was always theirs, and that only the method of calculation was changed. The main stress laid by him was on the point that the house and landed property owned by these erstwhile independent rulers were allowed to remain with them just as the property of other subjects continued to be enjoyed by them without any let or hinderance by the British Government and that consequently, the land and house property owned by these persons would have to be treated in the same manner as the property of any other private owner. We, however, feel that there is a fallacy in this argument. When the British Government annexed Punjab, it was up to the British Government to forfeit not only the right of these persons to recover land revenue from the villages under their rule but also to forfeit their land and house property and if the British Government allowed the erstwhile rulers to keep the land and house property, in addition to their right to receive land revenue from the villages which were under them previously, all this must be treated to have been given to them by implied grant and it is necessary, therefore, to determine the terms and conditions on which this grant was made.

In *Shiv Ditta Mal* v. *Sardar Rajinder Singh* and others (1) decided by a Division Bench of the

(1) R.S.A. 1734 of 1939

Lahore High Court, consisting of Dalip Singh and Sale JJ., (Ex. D. 17-printed at p. 123 of the paper-book) the point now raised by the learned counsel was pointedly raised and dealt with. That was also a case of a Cis-Sutlej Jagir and the question for decision was whether the land was liable to attachment and sale. The material issue framed was as follows:—

> Whether the Jagir, that is, the property in suit, is a political pension and has defendant No. 1 only a life interest in it, and is it ancestral qua the plaintiffs?"

The learned Judges held that the question whether the rights of the holder (Hukam Singh) in the land could be regarded as political pension was irrelevant. Mr. Achhru Ram, the learned counsel (as he then was), arguing for the other party, tried to draw a distinction, as is being drawn in the present case, between the land itself and the assignment of the land revenue and urged that the rights of the plaintiffs as the mortgagors of the land were not affected by the mere fact of the assignment of the land revenue thereon. The two points to which the learned Judges directed their minds, therefore, were (1) whether the property mortgaged is part of a Cis-Sutlej Jagir and (2) if so, what is the nature of such a tenure. The learned Judges came to the conclusion that "in the absence of any evidence to show that the land now in suit is property which has been separately acquired by the plaintiffs or any of their ancestors, the natural inference is

* * * *

that the land in suit is part of the Butahri Jagir which is admittedly one of the Jagirs commonly known as a 'Cis-Sutlej Jagri': "For determining the nature of the estate, *inter alia* reliance was placed on Circular No. 60, dated 26th of February, 1857, and it was held that "holders of the land forming

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part of the Jagir have only a life estate the succession to which is regulated by rules and the permanent alienation of which is forbidden".

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It would be necessary to refer to this Circular No. 60 which is printed in this case as Exhibit D. 5 at page 111 of the paper book. This Circular is dated 26th of February 1857, from the Commissioner and Superintendent Cis-Sutlej States to the Deputy Commissioner, Ludhiana in which the orders of the Government regarding the liability of Jagir Estates for debts were referred to and the Deputy Commissioner was directed carefully to draw the attention of the parties interested to the rules on the subject. It was furher stated as follows:—

> "All proprietary rights to any part of the lands forming a part of the Jagir, which may be held by the Jagirdar, will be considered as pertaining to the Jagir and will go to the holder of the Jagir for the time being. Similarly, all houses and other buildings standing on the Jagir, which are in the nature of forts, mansion houses etc., and may be considered to appertain to the estate as well as all buildings which have descended with the estate, will be considered part of the Jagir. Thus, if a Jagirdar adds to his house upon his estate, I do not think it can be touched by the creditor or if a row of shops has descended to him from his predecessors as Nazool property that also cannot be touched. But if a Jagirdar has himself acquired or built shops in town, apart from his place of residence, I think that there are cases in which such property will be available to creditors."

The above-quoted words of the Circular leave no manner of doubt that—

(1) Lands, houses and other buildings, including forts, mansion houses etc., which have any reference to the estate, including other buildings which have descended with the estate, are to be considered part of the Jagir;

(2) any additions made to any such house or building will also form part of the Jagir;

(3) no property forming part of the Jagir can be attached or sold;

(4) however, if a Jagirdar acquires any separate property of his own, that will be available to the creditors like the property of anyone else. It was on the basis of the history of the Cis-Sutlej Jagirs, as given in Douie's Land Administration Manual, and the terms and conditions of the grant of the Jagirs by the Government, as contained in this Circular, that the learned Judges, in the case referred to above, came to the conclusion that a holder for the time being of the Jagir has only a life interest and cannot alienate it beyond his life-time.

In *Daya Ram etc.*, v. *Shubh Indraj Singh etc.*, (1) (Exhibit D. 16, printed at page 135 of the paper book), Mahajan J. (as he then was), sitting singly, and in *Abdul Ghafoor Khan* v. *S. Amar Jit Singh* (2), (Exhibit D. 6, printed at page 138 of the paper

(1) R.S.A. 394 of 1944
(2) R.S.A. 561 of 1946

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book) sitting with Teja Singh J., took the same view. In the latter case, Mahajan J., who delivered the Bench judgment, referred to a number of other decisions as follows:—

> "The matter was again examined by me sitting in Single Bench in *Daya Ram etc.*, v. *Shubh Indraj Singh etc.*, (1), decided on the 30th of May, 1945, and the view expressed in the above mentioned decision in *Shiv Ditta Mal* v. *Sardar Rajinder Singh and others* (2), was followed. On the third occasion I dealt with the matter sitting with the learned Chief Justice, Sir Trevor Harries in *Harinder Singh etc.*, v. *Mohan Kaur etc.*, (3) decided on the 4th of July, 1945. That case again was decided on the assumption that so far as Cis-Sutlej Jagirs are concerned, the lands that are situated within the original dominions of those Jagirdars when they were rulers, cannot be alienated and the nature of the tenure of the holder for the time being is a limited one".

This matter was examined again in *Satinder Singh* v. *Sardar Amrao Singh and others* (4), decided on 5th of November, 1958, by a Division Bench, consisting of the Hon'ble the Chief Justice and Chopra J., in which a similar view was taken. In that case some land was acquired by the Punjab Government which formed part of a Jagir known as 'Singhpurian Jagir', which is a branch of the family with which we are concerned in the present case. The holder of the Jagir for the time being was one S. Amrao Singh, who claimed the entire

(1) R.S.A. 394 of 1944
(2) R.S.A. 1734 of 1939
(3) R.S.A. 1128, 1129 of 1942
(4) F.A.O. 42 of 1955

compensation that was payable in respect of the land acquired. However, his son, Satinder Singh, disputed the right of Amrao Singh to have the whole compensation on the ground that the land acquired formed part of a Jagir in which his father, Amrao Singh, the holder for the time being, had only a life interest and that consequently, urged that either the entire compensation should be invested and Amrao Singh given only the income thereof or the compensation should be equitably distributed between the present life-holder and Satinder Singh who was the next heir. The question which the learned Judges directed themselves to determine, is stated on page 20 of the judgment in the following words:—

> "The question is whether the Jagir in this case or the estate covered by it could be alienated at the will of the holder or he was only entitled to its usufruct for his life."

After referring to a number of decided cases, including some of the cases referred to above, it was held that the holder for the time being had only a life estate. The compensation was consequently ordered to be distributed between Amrao Singh and his son.

Thus, it appears that there is a continuous string of authorities over the last several years in which it has been held that holders of the Cis-Sutlej Jagirs have only a life interest in all the properties, situated within their erstwhile dominions, that have descended to them from their ancestors.

As against the above, the learned Counsel for the appellants has not been able to cite a single decision to the contrary. He, however, referred to

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a number of decisions in which it has been held that certain Jagirs, including Cis-Sutlej Jagirs, did no fall within the category of political pensions". As indicated by Dalip Singh, J., in the judgment referred to above, such a question is absolutely besides the point. Exemption, from being proceeded against for the debts of the previous holder, claimed for the Jagir property is not based on the same being a political pension, but on the fact that, according to the terms of the tenure on which the property is held, the holder for the time being has only a life interest and consequently cannot permanently alienate it. *Dhanwant Singh* v. *Sant Lal* (1), in which a Qilla was held not to form part of a Jagir, was a case of a trans-Sutlej Jagir and not of Cis-Sutlej one and has, therefore, no bearing on the present case. The learned Counsel, however, relied on an obiter observation of the Bench to the effect that even if there were any executive instructions that such a Qilla is not liable to attachment and sale, that would not be effective. The instructions contained in the Circular No. 60 referred to above, however, are not in the nature of mere executive instructions but really lay down the terms on which the Government allowed the erstwhile rulers to remain in possession of their so-called Jagir property. The conditions contained in the Circular have been so treated, as already discussed, in all the decisions relating to Cis-Sutlej Jagirs.

It was not disputed that the residential house in the present case known as Qilla or the fort, has come down to Jodhbir Singh from his ancestors and formed part of the Jagir at the time of the British annexation and thus, does form part of the Cis-Sutlej Jagir.

In view of the discussion above, therefore, we have no hesitation in confirming the finding of the

(1) A.I.R. 1940 Lah. 492

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Court below that the property in dispute formed part of the Cis-Sutlej Jagir in which Jodhbir Singh had only a life interest and consequently, the same is not liable to sale for the mortgage debt created by him.

For the reasons given above, we find no force in this appeal and dismiss the same. Taking into consideration, however, the circumstances of the case, we make no order as to costs in this Court. Costs in the Court below have already been directed to be borne by the parties.

B.R.T.

APPELLATE CIVIL

Before I. D. Dua, J.

MST. BHAGWANTI,—*Appellant.*

versus

SADHU RAM,—*Respondent.*

First Appeal From Order No: 6 of 1959:

1959

Nov., 3rd

Hindu Marriage Act (XXV of 1955)—Section 10—Desertion—meaning of—Wife living separately from husband in pursuance of a compromise—Husband having another wife living with him—Refusal to live with husband by the separated wife—Whether amounts to desertion—Code of Criminal Procedure (Act V of 1898)—Section 488—Provisions of—Whether can be taken into consideration in proceedings under the Hindu Marriage Act (XXV of 1955)—Adultery—proof of—Standard and extent of—Practice—Conflict of oral evidence—Finding of fact by the trial court—Whether should be interfered with in appeal.

Held, that desertion has been defined by Explanation to Section 10 of the Hindu Marriage Act, 1955 as desertion of the petitioner by the other party to the marriage *without reasonable cause* and *without the consent or against*