
(1902) 06 CAL CK 0013

In the Calcutta High Court

Case No : Appeal from Original Decree No. 464 of 1900

Agin Bindh Upadhya

APPELLANT

Vs

Mohan Bikram Shah

RESPONDENT

Date of Decision : 27-06-1902

Acts Referred:

Citation : (1902) 06 CAL CK 0013

Final Decision : Dismissed

Judgement

Pratt and Mitra, JJ.—Raja Perlhad Sen Bahadur was the proprietor of the impartible estate known as the Ramnagar Raj in district Champaran. By his first wife, who predeceased him, he had a daughter and the Plaintiff (Raja Mohan Bikram Shah) is her only son. Raja Perlhad Sen had two other wives, Rani Bindubashini Debi and Rani Nowruchi Kumari Debi, but he had no issue by them. On the 22nd March 1876 he granted to Rani Nowruchi nine villages in istemrari mokurari, reserving an annual rent of Rs. 250. The property in dispute in this case is mouzah Parsi, one of the nine villages. One of the main questions discussed before us refers to the nature of this istemrari mokurari grant.

2. Raja Perlhad Sen died on the 18th September 1879, leaving him surviving the Plaintiff (his grandson) and Ranis Bindubashini and Nowruchi. By virtue of his will dated the 31st August 1876, the grant of the probate of which was contested by Rani Nowruchi, the Plaintiff is now the proprietor of the Ramnagar Raj. The question of the genuineness of the will was disposed of in favour of the Plaintiff by the High Court on the 28th February 1887 on the appeal of Rani Nowruchi Debi. An unsuccessful attempt was thereafter made by Rani Nowruchi to appeal to the Privy Council, but her application for leave to appeal was dismissed on the 10th August 1888.

3. During the pendency of the litigation for the probate of the will of Raja Perlhad Sen, his widows (Ranis Bindubashini and Nowruchi) obtained possession of his estate and on the death of Rani Bindubashini in 1886, Rani Nowruchi as the surviving widow obtained possession of the entire estate. After the decision of

the High Court in the case for probate of the will of Raja Perlhad Sen, the Plaintiff sued Rani Nowruchi (suit No. 8 of 1888) in the Court of the first Subordinate Judge of Saran for recovery of possession of the estates for mesne profits and for adjudication of his right to recover rent of the nine villages granted to her by the deed dated the 22nd March 1876.

4. On the 6th November 1888, Jamoonia and Parsonni, two out of the nine villages, were sold in execution of the decree for costs obtained by the Plaintiff against Rani Nowruchi in the High Court. The Plaintiff purchased Jamoonia, but Parsonni was purchased by a third person. Rani Nowruchi had also other debts to pay and then there was her liability to the Plaintiff for mesne profits. But she was entitled to have suitable maintenance from her husband's estate.

5. In this state of things the Plaintiff and Rani Nowruchi came and very properly, to terms and two ekrarnamahs were executed--one by the Plaintiff on the 28th November 1888 and the other by Rani Nowruchi on the 25th December 1888, in which the terms of the arrangements between the parties were set out. But there were some matters as to which the parties could not agree and reference was made to certain arbitrators as to these. The arbitrators decided these disputed matters on the 21st and 22nd February 1889 and submitted an award which was accepted by the parties and a petition of compromise was filed in Court. On the 8th April 1889, the First Subordinate Judge of Saran passed his decree in the suit (8 of 1888), in terms of the ekrarnamahs and the award of the arbitrators which were embodied in the petition of compromise duly signed by both parties. The effect of these documents on the rights of the parties to the village Parsi is one of the important matters for decision in this appeal.

6. Chaturani Tej Lachmi Debi, widow of one Giriraj Sen who had claimed at one time to be the heir of Raja Perlhad Sen, had a decree for money against Ranis Bindubashini and Nowruchi. In execution of this decree she put up for sale two of the nine villages, vis., Gidha and Parsi, with the description that they were in the possession of the judgment-debtor, Rani Nowruchi, for her maintenance for life. Both the villages were sold and were purchased by Babu Chandi Pershad Singh--Gidha for Rs. 675 and Parsi for Rs. 825. The sale was confirmed without opposition on the 17th September 1890. On the 22nd September 1892 the Defendant, Agin Bindh Upadhyaya, purchased the villages from Babu Chandi Pershad Singh. The price stated in the conveyance was Rs. 7,000.

7. Shortly after the purchase, there were proceedings for cadastral survey under Chapter X of the Bengal Tenancy Act and it appears from a paper called the Dispute list of Mouzahs, wherein one Mahomed Ibrahim is described as the first party and Agin Bindh as the second party, that there was a dispute as to village Parsi and the Revenue Officer directed that Parsi should be recorded as mokurari in possession of Agin Bindh. In the record of rights finally framed and published u/s 105, Sub-section (2) of the Bengal Tenancy Act on the 24th April 1896, Parsi was recorded as the perpetual mokurari of Agin Bindh Upadhyaya. As regards the other mouzah, Gidha, the Plaintiff filed in time an objection and it was successful.

The Defendant Agin Bindh appealed against the order of the Revenue Officer as to Gidha, but we are not informed of the result of the appeal. It was, we are told, pending before the Special Judge at the time of the trial of the suit which has given rise to this appeal.

8. On the 19th January 1900, the Plaintiff instituted the suit now in appeal for a declaration that the Defendant had no perpetual mokurari right in Parsi and that the Defendant's purchase had no effect except during the lifetime of Rani Nowruchi Debi. The cause of action was alleged to have accrued on the 24th April 1896, the date of the publication of the record of rights containing the Defendant's name as perpetual mokuraridar of village Parsi.

9. The Defendant pleaded that the grant of Rani Nowruchi was of a permanent character and set up an instrument called a sadarathpatra bearing date the 25th Basakh 1300 P.S. (26th April 1893), alleged to have been executed by the Plaintiff, by which he, on receipt of a premium (nazarana) of Rs. 500, had admitted the Defendant to be the holder of a mokurari "tenure, lasting from generation to generation, both in male and female lines. The Plaintiff denied the genuineness of this document as well as of the two farkhatis or rent receipts filed by the Defendant to prove the Plaintiff's recognition of the Defendant's purchase.

10. If the sadarathpatra is admissible in evidence and is a genuine instrument, the Plaintiff's suit must fail and it will not be necessary to go into the other questions already adverted to and discussed at the Bar.

11. The Subordinate Judge, on the Plaintiff's objection as to the admissibility of the sadarathpatra in evidence, held that, though it was not stamped and registered according to the Acts in force, it could be admitted as a document of recognition of the Defendant's purchase of the interest of Rani Nowruchi; but at the same time he came to the conclusion that it was palpably a forged and fabricated document. He also held that the farkhatis were not genuine.

12. We shall first of all deal with the sadarathpatra. The material portion of this document runs thus: "The Hazur (Plaintiff) also admits you (Defendant) as representative of the mokuraridar (Rani Nowruchi) and appoints you as a mokuraridar and gives this in writing that you and your children, generation after generation, both in male and female lines, should continue in possession and occupation of the said villages." The document not only recognises the Defendant as a purchaser of the mokurari right of Rani Nowruchi, but also creates a perpetual mokurari right in his favour. It declares as well as creates a right to immoveable property and is both a confirmatory lease as well as a lease for a term exceeding one year. The document clearly comes within Section 17 of Act III of 1877 and being unregistered is inadmissible u/s 49 of the Act.

13. We are also of opinion that the sadarathpatra, as well as the farkhatis filed in support of the Defendant's story of recognition by the Plaintiff are not genuine. The very fact of the sadarathpatra being unstamped and unregistered creates grave doubts as to its genuineness. In the year 1893, as in the few previous

years, the Defendant was openly siding with the Plaintiff's enemies and helping them. He was the principal servant of Rani Nowruchi, who was hostile to the Plaintiff at least until November 1888. The compromise recorded by the decree in suit No. 8 of 1888 was not followed by friendly feelings. Rani Nowruchi and the Defendant both sided with Chantaria Padomraj, son of Giriraj, a claimant to the Raj estate and she was actually residing in the same house with Padomraj and his mother, Tej Lachmi Debi. The claim of Giriraj to the Ramnagar Raj was followed, shortly after his death, by a suit by his son Padomraj against the present Plaintiff in the Court of the First Subordinate Judge of Saran and it was numbered 48 of 1891. It has been abundantly proved, notwithstanding the Defendant's denial, that in this litigation he and the Rani were openly helping Padomraj. On the 26th April 1893, the date which the sadarathpatra bears, the trial was being actually proceeded with at Chapra and it is not probable that the Plaintiff would at this time execute for Es. 500 only a deed in favour of his avowed enemy, confirming or creating a perpetual tenure, when according to the Defendant himself his profit from the two mouzahs was a little less than Rs. 1,000. He let them out in ticca to Mr. Murray for Rs. 1,000 on a bonus of Es. 500. Less than five years before, the grantor's legal representative and the grantee declared, as will presently appear, in their respective ekrarnamahs, that the grant was for maintenance and for life only and a family arrangement; on this basis was arrived at and incorporated in a decree of Court and now without any ostensible reason, a person who is comparatively a stranger and who could not possibly at the time have any influence over the Plaintiff made him execute an instrument superseding the covenants incorporated in the decree.

14. Ramkritarth Lal is said to have engrossed the sadarathpatra, but he was dead before it was produced in the Court of the Revenue Officer. His son, Mathura Pershad, however, denies that the handwriting was his father's and he says that his father was at the date of the deed ill and was not at Ramnagar, where the executant was then admittedly residing. The Defendant himself has made inconsistent statements as to the preliminaries leading to the fixing of the bonus and the settling of the terms of the covenant as to permanency. The draft was made at the meeting for the execution of the deed, then and there, in a short time. The witness Ramsaran Lal had gone there for a receipt and saw the execution of the deed, but he did not know then of the case of Padomraj against the Plaintiff, a palpable falsehood. He saw that the payment of Rs. 500 was entered by Ramkritarth Lal in the account book, but the book has been produced and it does not contain the entry. Buldeo Singh had gone to the place for paying his respects to the Plaintiff. Govind Upadhyaya, a man deep in debt and a chance witness, saw the execution of a farkhati. We cannot but discard the testimony of such witnesses. The rebutting evidence on behalf of the Plaintiff is no doubt not very strong, but that evidence is supported by the probabilities of the case and the books of account. The absence of the Plaintiff from the witness box has been commented upon, but we know what the habits and practices of persons of the Plaintiff's position are in this country. They are always reluctant to give their

depositions even in true cases and we are not always prepared to draw adverse inferences against them for their non-attendance, when the opposite party on whom lies the burden fails to make out a prima facie case by evidence of a reliable character. We find no reason to differ from the Court below in its estimate of the evidence as to the sadarathpatra and the farkhatis.

15. Leaving aside these documents as unproved, the questions for our consideration are--(1) That the suit was barred by then rule laid down in Article 14 of the Second Schedule of the Limitation Act; (2) that the order of the Revenue Officer directing that the Defendant should be recorded as a permanent mokuraridar had the effect of a decree under Sections 106 and 107 of the Bengal Tenancy Act and the matter could not be reagitated; (3) that the grant made by Raja Perlhad Sen to Rani Nowruchi was permanent; (4) that the petition of compromise and the decree in suit No. 8 of 1888 had not the effect of superseding the original grant and converting the permanent grant into one for life; and (5) that, at all events, the suit was not a fit one for a declaratory decree.

16. The object of the suit was not to have set aside any order of the Revenue Officer acting under Chapter X of the Bengal Tenancy Act. The Plaintiff asked for declaration and it was not necessary for him to have any order set aside to enable him to get relief. The suit was one coming strictly within the provisions of Section 109 of the Bengal Tenancy Act--to have a declaration that an undisputed entry in the khawati and the khatian was erroneous. We do not see how Article 14 of the Second Schedule of the Limitation Act can have any application to the present case.

17. The certified copy of the order of the Revenue Officer set out at pages 118 and 119 of the paper-book bears no date and it does not appear that it was passed in a proceeding u/s 106 of the Bengal Tenancy Act. The Plaintiff was no party to the proceeding and the real matter in dispute between him and the Defendant was left open by the Revenue Officer to be decided in a Civil Court. The Defendant has not even attempted to show how the first party (Mohomed Ibrahim) in the proceeding before the Revenue Officer was connected with the Plaintiff. It is remarkable that the Plaintiff could and did come in time to object to the record as to Gridha, the other village held by the Defendant and he was successful. It is also worthy of note that the Revenue Officer directed that village Parsi should be entered, as "mokurari in the possession of Agin Bindh." In one part of the order the words "istemrari mokurari" occurring in the sadarathpatra are incidentally referred to, but the ordering portion is confined to the word mokurari only. In the khatian, however, we find the words "perpetual mokurari." The order of the Revenue Officer was in itself innocuous, but the record in the khatian affected the Plaintiff's future right to possession after the death of Rani Nowruchi. We therefore overrule the second contention of the Appellant.

18. We are also of opinion that this is a fit case for the grant of relief by a declaratory decree. A cloud has been thrown over the Plaintiff's title to resume the grant after the death of Rani Nowruchi. The Defendant had produced

documents before the Revenue Officer which might affect the Plaintiff's future right and the entry in the record of rights might prejudice the Plaintiff, if it was not timely corrected.

19. The grant to Rani Nowruchi by her husband was made on the 22nd March 1876, as we have seen, of nine villages in istemrari mokurari at a fixed rental of Rs. 250 per annum. It is in the following words:

I am Baja Perlhad Sen Bahadur, proprietor of tappas Ramnagar, Jamauli, half of tappa Chingwon, taluka Jamira, pergannah Majhowa, appertaining to Ramnagar Raj, district Champaran, within Sube Behar.

Whereas I, the declarant, have out of my free will and accord granted the nine mouzahs specified below, situated in tappas Ramnagar, Jamauli and Chingwon and taluka Jamira, pergannah Majhowa, appertaining to Ramnagar Raj as per four boundaries specified below, held and possessed by me up to this moment without co-partnership of anybody and possession of any other person and am appropriating the proceeds thereof, in istemrari mokurari to Nowruchi Kumari Debi my second wife, at an annual rent of Rs. 250 of the imperial coin by all means complete and put her into the possession and occupation of the mouzahs specified below, the mokurari properties, for this reason I, the declarant, being in sound state of body and mind, do make this trustworthy declaration and give in writing that the said Maharani should continue in possession and occupation of the said mouzahs as istemrari mukuraridar and appropriate the produce thereof and pay to me, the declarant, Rs. 250, the aforesaid reserved mokurari rent as per specification given below, year after year, without any objection. I, the declarant, or any representatives have and shall have no claim, right or dispute thereto, except the aforesaid reserved rent. For this reason these few words are executed in the form of an istemrari mokurari deed that they may be 8, use when required.

20. There are no words of inheritance in this document such as--naslan bad naslan, watan bad watan, sand furzand or putra poutradi krame, ordinarily occurring in instruments creating hereditary interest. The contention of the learned vakil for the Defendant Appellant is that the words istemrari mokurari are in themselves sufficient to create a permanent tenure at fixed rent and that the additional words naslan bad naslan, etc., though frequently used, are unnecessary. His further contention is that the words used in the last part of the deed - "I, the declarant, on any representatives, have or shall have no claim or right or dispute thereto (grantee's possession and occupation and appropriation of the produce) except the aforesaid reserved rent"--indicate that the grantor intended to create a perpetual tenure and that these words read with the words istemrari mokurari make the interest of the grantee transferable and heritable.

21. The words istemrari and mokurari are both of Arabic origin and literally they mean continuous (running) and fixed. But what is their meaning when used together as a compound and applied to intermediate tenures. They might mean

continuous or permanent during the lifetime of the grantee or permanent as regards hereditary descent. *Lilanand Singh v. Munorunjun Singh* (1873) 13 B.L.R. 124, 133 and *Tulshi Pershad Singh v. Ram Narain Singh* ILR (1885) Cal. 117, 130. Their lexicographical meaning is, therefore, of little use to us, as observed by the Privy Council in *Tulshi Pershad Singh v. Ram Narain Singh* ILR (1885) Cal. 117, 130. We have to see to the customary meaning of the words as established by judicial decisions.

22. Permanent intermediate tenures at fixed rent were unknown or were seldom recognised in India under the Mahomedans and the British Government were at first reluctant to recognise them. The Bengal Code of 1793 passed by the Government of Lord Cornwallis was decidedly against their creation (Regulation XLIV, Section 2). The prohibition was repeated in Regulation 1 of 1795, Section 2 and Regulation XLVII of 1803, Section 2. The proprietors of revenue-paying estates were first permitted to create them by Regulation V of 1812, Section 2 and Regulation XVIII of 1812, Section 2. And as regards tenures technically known as *patni*, *darpatni* and *sepatni*, they were first recognised by Regulation VIII of 1819. There is no reference in these Regulations to *istemrari mokurari* tenures. Sections 16 to 19 of Regulation VIII of 1793 refer to *mokurari* and *istemrari* proprietary rights held directly under the Government. The words are nowhere defined. They seem to have been used as interchangeable expressions and might apply to a grant for life as well as heritable grants.

23. The decisions of the Sadar Dewani Adawlat at Calcutta and of the High Court and the Privy Council as to the meaning of the expression *istemrari mokurari* were reviewed in *Tulshi Pershad Singh v. Ram Narain Singh* ILR (1885) Cal. 117, 130. The decisions of the High Court at Calcutta in *Lakhu Kowar v. Roy Sari Krishna Sing* (1869) 3 B.L.R.A.C. 226 : 12 W.R. 3 and *Raja Ram Narain Singh v. Amir Khan* dated the 4th September 1877 (unreported) were overruled and their Lordships thus summed up their judgment: - "After this review of the decisions their Lordships think it is established that the words "*istemrari mokurari*" in a *patta* do not per se convey an estate of inheritance, but they do not accept the decisions as establishing that such an estate cannot be created without the addition of the other words that are mentioned, as the Judges do not seem to have in their minds that the other terms of the instrument, the circumstances under which it was made or the subsequent conduct of the parties, might show the intention with sufficient certainty to enable the Courts to pronounce that the grant was perpetual." They added: - "As has been said, their Lordships, having regard to the customary meaning of the words, as established by the decisions which have been noticed, are of opinion that they do not convey an estate of inheritance in this case." In *Beni Pershad Koeri v. Dudh Nath Roy* ILR (1899) Cal. 156, 165 : L.R. 26 IndAp, 216 their Lordships repeated what they had said in *Tulshi Pershad Singh v. Ram Narain Singh* ILR (1885) Cal. 117, 130 in the sentence--"An *istemrari mokurari* tenure is not necessarily a perpetual hereditary tenure."

24. It has been contended before us that the remarks of the Privy Council as to the effect of the use of the words *istemrari mokurari* without words of inheritance, such as *naslan bad naslan*, etc., must be read as referring to grants for maintenance, which are *prima facie* for life only. But we see no reason for such a limitation. The object of the grants in the last two cases might be the maintenance of the grantees, but the grants themselves did not expressly refer to the maintenance of the grantees as the purposes of the grants. In *Lilanand Singh v. Munorunjun Singh* (1873) 13 B.L.R. 124, 133 the tenure created was *ghatwali*, but when speaking of the words "*istemrari mokurari*," their Lordships doubted whether they meant "permanent during the life of the persons to whom they were granted or permanent as regards hereditary descent." Their Lordships were not prepared to accept the meaning put upon these words by the High Court in the same case. The observations of the Lordships in the later case referred to by us were general and not limited to maintenance grants only.

25. We think the use of the words *istemrari mokurari* in the grant in question is not sufficient to enable us to say that the tenure created was permanent and hereditary.

26. Then as to the contention that the words "I, the declarant, or any representatives, have or shall have no claim, right or dispute thereto except the aforesaid reserved rent," used in the latter part of the deed, indicate with sufficient certainty that the grant was permanent and at fixed rent. Reliance has been placed on *Ram Narain Sing v. Pearay Bhugut* ILR (1883) Cal. 830, *Kanhia v. Mahin Lal* ILR (1888) All. 495, *Thakur Singh v. Nokhe Singh* ILR (1901) All. 309, *Raj Narain Bhaduri v. Ashutosh Chuckerbutty* ILR (1899) Cal. 44 and the same case in appeal, *Raj Narain Bhaduri v. Katyayani Dabee* ILR (1900) Cal. 649. In *Ram Narain Sing v. Pearay Bhugut* ILR (1883) Cal. 830 and *Thakur Singh v. Nokhe Singh* ILR (1901) All. 309, it was no doubt held that the use of the words by which the claim of the donor and his heirs was excluded sufficiently indicated the intention to create a hereditary grant, even without the ordinary words used to express a grant to the donee and his heirs (*putra poutradi*, *naslan bad naslan*, etc.). The words used in the instrument construed in those cases were, as they appear from the reports, very similar to those used in the instruments before us. But the deed construed in the first-named case is a will and in the other case a deed of gift and not leases creating intermediate tenures. They, therefore, stand on essentially different footings. The duration of a lease depends upon the period fixed either expressly or by implication and when no time is fixed the lease is ordinarily deemed to be one from year to year. But transfers of other descriptions ordinarily pass the entire interest of the transferors.

27. In *Kanhia v. Mahin Lal* ILR (1888) All. 495, the words relied on by the learned Judges as indicating a hereditary grant are--"I, my issues, relations, shall have no claim in respect of the house against the donee or her heirs and if any of my heirs does so, the claim shall be false." The words "or her heirs" obviously denoted that the grant was hereditary. The words excluding the claims of the

donor and his heirs were redundant. The judgments in *Raj Narain Bhadury v. Ashutosh Chuckerbutty* ILR (1899) Cal. 649 and *Raj Narain Bhaduri v. Katyayani Dabee* ILR (1900) Calc. 649 were based upon the particular word *malikatwa* used in the document followed by other words which clearly showed the intention to create an absolute heritable and alienable interest. These cases are, therefore, no authorities bearing on the construction of the grant in the present case.

28. We think the solution of the question as to the effect of the words excluding the claim or right of interference by the grantor and his representatives is contained in the decision in *Tulshi Pershad Singh v. Ram Narain Singh* ILR (1885) Cal. 117. We find in the *istemrari mokurari* deed propounded in that case the following sentence: - "I, the malik and my heirs shall not dispossess the said *mokuraridar* from the *mokurari* estate." And notwithstanding the use of these words, the High Court at Calcutta as well as the Privy Council held that the grant was one for life only. The words in the instrument under construction are of similar import and they may fairly be construed as meaning that the grantor and his representatives would not have the power to disturb the grantee during her lifetime.

29. The tenure in question was one carved out of an impartible estate for the benefit of a wife of its holder and she had no issue, who could be benefited by a hereditary grant. It was very necessary that possession during her lifetime should be secured to her and the next holder of the estate should have no power of interfering with it. In the *Pacheet* estate, which is an impartible *Raj*, grants for maintenance are resumable on the death of the grantor by the next taker of the *Raj*, *Anund Lal Sing Deo v. Gurrood Narayan Deo* (1850) 5 Moore's I.A. 82: similar rights have been attempted to be enforced in other impartible estates, *Woodoyaditto v. Mukoond Narain Aditto* (1874) 22 W.R. 225 and *Uddoy Adittya v. Jadub Lal* ILR (1879) Cal. 113. It is very probable that *Raja Perlhad Sen* intended to avoid such disturbances in the possession of his wife during the period of her natural life and to secure to her the use of Rs. 3,000 per annum, which is said to have been the profit the villages covered by the grant. Words importing hereditary descent are of constant use and if the *Raja* intended to create a heritable tenure, nothing would have been easier than to add the oft-used words clearly expressing such an intention. The absence of such words is significant and we cannot from the words actually used in the document accede to the Defendant's contention that a permanent tenure was created by it.

30. The circumstances and conduct of the parties attending and following the execution of the document are all opposed to the idea of permanency. A grant to a wife has generally been construed as one for life only, if apt words of inheritance are not added. We may refer to *Koonj Behari Dhur v. Prem Chand Butt* ILR (1880) Cal. 684, *Mahomed Shamsool Hooder v. Shewukram* (1874) 14 B.L.R. 226 : L.R. 2 IndAp 7, *Bhoba Tarini Debya v. Peary Lall Sanyal* ILR (1897) Cal. 646 and *Lallu v. Jagmohan* ILR (1896) Bom. 409 as instances.

31. No express power has also been given to *Rani Nowruchi* of alienation of her

leasehold right.

32. The most cogent argument, however, against the Defendant's contention is that the villages granted to Rani Nowruchi, as well as those granted by another instrument to her co-wife, Rani Bindubashini, were always described as deorhi mouzahs which, we are informed, mean villages granted to female members of the zenana for the use of the profit. Ordinarily they are for maintenance. We find that in the proceedings in suit No. 8 of 1888, they are called deorhi mouzahs and when Chauturani Tej Lachmi Debi advertised the Rani's interest in Gidha and Parsi for sale, she described them in the inventory as "judgment-debtors" property given to her in lieu of maintenance by the Raja of Ramnagar." What she caused to be sold and what came to the Defendant by the purchase by his vendor, Chandi Pershad, at the auction sale was "the receipt of maintenance and possession of the judgment-debtor during her lifetime in the villages Gidha and Parsi." The price paid by Chandi Pershad was only Rs. 1,500, which also indicates the nature of the right sold. The Defendant is said to have paid to his vendor Rs. 7,000 for his purchase. As to this the evidence is of a shady character and Rs. 7,000 is in itself an inadequate value for a fixed heritable interest in the sum of Rs. 1,000 per annum.

33. But whatever doubts there might be as to the nature of the grant as originally made by Raja Perlhad Sen, the Defendant, we are of opinion, is precluded from setting up a title to a perpetual mokurari on account of the ekrarnamahs, the award of the arbitrators and the petition of compromise and the decree in suit No. 8 of 1888 founded on them. Even if the original grant was of a permanent character, the grantee and the grantor's representative solemnly declared the istemrari mokurari to be a grant for life for maintenance and a family arrangement was arrived at and given effect to by a decree of Court on this basis. The Defendant is certainly bound by these documents. In them the villages are said to be deorhi mouzahs granted by Raja Perlhad Sen for maintenance for her life, the income being Rs. 3,000 and prima facie as maintenance mouzahs they were granted for her life only. Rani Nowruchi Debi had under the ekrarnamah no right in them "with the exception of receiving maintenance by holding possession during her lifetime." But as the sum of Rs. 3,000 per annum was thought to be insufficient for her maintenance, the deficiency was made up by grant of additional villages for the use of the profits for her life. It was expressly stipulated that all these villages, the deorhi as well as the added villages, were to revert to the Raj after the Rani's death. In the schedule to the decree, Parsi and Gidha, as well as the other villages, are said to have been allotted to the Defendant (Rani Nowruchi Debi) for her maintenance. The decretal order in suit No. 8 of 1888 directed that the Plaintiff should recover "possession of the entire disputed property with the exception of the former deorhi mouzahs as well as other deorhi mouzahs allotted by the arbitration award to the Defendant for her maintenance for life without any power to transfer them."

34. We are clearly of opinion that the effect of the arrangement evidenced by the ekrarnamahs and the petition of compromise and the decree is to supersede the original grant by Raj a Perlhad Sen, even if it were of a permanent character and to create a new title in favour of Rani Nowruchi. There can also be little doubt, as we have already found, that this new title was substantially the same as the one superseded.

35. The learned vakil for the Appellant has argued that the decree in suit No. 8 of 1888, in so far as it deals with the deorhi villages, is inoperative and he has referred us to Section 375 of the Code of Civil Procedure. But these villages were intended to be dealt with by the suit and the Plaintiff had claimed rent with respect to them. They were not outside the suit. We think the ekrarnamahs, the award of the arbitrators and the petition of compromise even without the decree are binding documents. We see no valid reason to give effect to the contention of the learned vakil.

36. The grounds urged before us are of no avail and we therefore affirm the decree of the Court below and dismiss this appeal with, costs.