

(1868) 07 CAL CK 0029

Calcutta High Court

Case No: Special Appeal No. 3035 of 1867

Raja Rameswar Nath Sing

APPELLANT

Vs

Haralal Sing

RESPONDENT

Date of Decision: July 29, 1868

Judgement

Lochi, J.

The Lower Court finds on the oral evidence of certain witnesses that holders of jaghirs can alienate their rights in those jaghirs, and the Judicial Commissioner, speaking from his own knowledge of the province, says, it is generally admitted that jaghir lands are alienable, subject always to the rights which the owner of the soil has, as a reversioner, to resume on failure of heirs male of the original grantee; and he, therefore, dismissed the suit with costs. On appeal, it is urged, that the evidence before the Judicial Commissioner is not sufficient to prove the existence of a local custom or usage, and it appears to me that this contention is correct, but allowing this to be the case, it is very doubtful whether such alienation can give the plaintiff any right to resume so long as any of the heirs male of the original grantee are in existence. He has nothing to do with the management of these jaghir lands, which the grantee may let or manage as he pleases, and it is only on the death of the jaghirdar without heirs male, that the grantor can interfere and resume the lands.

2. The sale to the defendant by the jaghirdar does not interfere with plaintiff's right of resumption, when there are no heirs male of the grantee in existence. He would be entitled to recover possession notwithstanding this alienation, if there were no heirs male of the original grantor. As, however, it is not asserted that the grantee's family is extinct, I think the decision of the Lower Court should be upheld, and the special appeal dismissed with costs.

Mitter, J.

I concur. Upon the plaintiff's own showing, it appears that his right to resume the tenure in dispute depends upon one of two things, namely: 1st, failure of male heirs; and, 2nd, failure of service. The mere fact of an alienation being made would not

necessarily give him a right to resume, although the alienation may not be binding upon him. The plaintiff has failed to prove either of the two conditions above referred to, and his suit must, therefore, be dismissed with costs. The point upon which our judgment is based was not determined by the learned Judges who had remanded the case on a former occasion, and I do not think, therefore, that the remand order stands in the way of our decision.