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Bombay High Court

Case No: First Appeal No. 116 of 1911

Agarsingji Raisingji		APPELLANT
	Vs	
Bai Naniba		RESPONDENT

Date of Decision: April 9, 1914

Acts Referred:

- Ahmedabad Talukdars Act, 1862 - Section 12

Citation: AIR 1915 Bom 81 : (1915) 17 BOMLR 273

Hon'ble Judges: Batchelor, J; Basil Scott, J

Bench: Division Bench

Judgement

Basil Scott, Kt., C.J.

This suit was filed by the present Thakor of Gamph, Agarsingji Raisingji, to recover the village of Piperia in so far as it was not already in his possession from the three original defendants, namely, Bai Devba, widow of Kaliansingji Rupsingji, Pertapsing Shivsing, otherwise called Vijaysing, who was alleged to have been adopted by Devba, and Bai Shri Bairajba, who was alleged to be a mortgagee of the village of Piperia. The village of Piperia was one of the nine villages which at the beginning of the last century belonged to the Thakor of Gamph, a Thakor of the Chudasama Rajput clan whose home was in Kathiawar and adjacent to the Ahmedabad territory.

2. The evidence shows that the Chudasama Rajputs many years ago migrated from Junagad into what is now the Dhandhuka Taluka of Ahmedabad, and there occupied all or most of the villages in that Taluka. In course of time, the estate which had been undivided became split up into different Talukdari estates by the process of allotment of villages for Jivai or maintenance to younger male members of the family of the chief. The history and constitution of these Talukdari families and estates was the subject of very prolonged and searching investigation prior to and subsequent to the passing of the Ahmedabad Talukdars Act of 1862, and one of the Officers chiefly concerned in the investigation was Mr., after-wards Sir, James Peile, a Talukdari Settlement Officer. In 863, in making a report of his survey operations to

the Revenue Commissioner under date the 15th September he stated: "The way in which these Talukdars are formed by partition from a sovereignty or chieftainship is very clearly shown in the appended pedigree of the Gamph Thakors to whom all Dhandhuka at one time belonged. The allotment in each generation of one or two villages apiece to the one or more younger brothers of the Thakor of the day has, in the lapse of years, left the mutilated trunk of the chieftainship with only eight villages and halves of two others." The pedigree referred to in that report shows that Melaji, the son of Raisingji, had two uncles, who as junior members of the family each received a village. His uncle Kakabhai received Ankewalia and his uncle Babhoji Piperia. But before his death Ankewalia and Piperia had reverted to the ruling branch, to the branch of the chief, and, accordingly, Melaji was able to assign Ankewalia to Arjansingji and Piperia to Rupsingji. Rupsingji had two sons, or his widows claimed that he had two sons, Keshrisingji and Kaliansingji, and in the year 1870, there was litigation between the established successor of Melaji, namely, Raisingji and the two sons of Rupsingji with reference to the village of Piperia. Raisingji contended that Keshrising and Kaliansing were both supposititious children, not the real sons of Rupsingji, and that Rupsingji having died without male issue, the village of Piperia reverted, as it had previously reverted in Melaji''s time, to the Thakor of Gamph. The litigation between Raisingji and the two alleged children of Rupsingji resulted in a settlement in the year 1871 under which 41 acres of the village of Piperia were admitted to be the absolute property of the Thakor of Gamph, while the rest of the village, except four annas share which belonged to certain Mahomedans, was confirmed to Keshrising and Kaliansing, and, as a result of that settlement, Keshrising and Kaliansing until their deaths enjoyed the greater part of the village of Piperia. Keshrising predeceased Kaliansing and Kaliansing died in October 1903, leaving a widow Bai Devba, the original first defendant in this suit. According to the contention of the plaintiff, Kaliansing and Keshrising having neither of them left male issue there was reversion of the whole of the village, which remained with them in their life-time, to the Thakor of Gamph. The widow of Kaliansing, however, after her husband''s death, namely, in March 1904, adopted the and defendant as the son of her deceased husband. The 3rd defendant claims as a mortgagee of the village of Piperia. She obtained an assignment on the 13th of April 1906 of the mortgage rights of Lerabhai Malichand who had obtained the mortgage with possession of the village of Piperia from Kaliansing on the 13th of October 1883. Devba died after the institution of the suit and before the decree of the lower Court.

3. The main questions in the case are:-(i) whether upon the death of Kaliansing without male issue the village of Piperia as held by him reverted to the Thakor of Gamph; or whether his adopted son, the 2nd defendant, has a right to remain in possession and ownership of the village as against the Thakor of Gamph who claims the right of resumption; and (2) whether the mortgagee who represents the interest under the mortgage created by Kaliansing has any title which he can assert

successfully against the Thakor of Gamph since the death of Kaliansing.

4. The first question which was argued in this appeal on behalf of the respondents, namely, the 2nd and 3rd defendants, the adopted son and the mortgagee, was whether, having regard to the documents executed at the time of the settlement in 1871, the suit could possibly succeed even assuming the right of reversion alleged to exist in the Thakor of Gamph under ordinary circumstances. The contention for the respondents was that by these documents an absolute estate was conferred by the Thakor and that any right of reversion was in terms released.

5. Now the right of reversion, as we have stated, is said to arise upon the failure of male issue in the Jivaidar the younger member who obtains the grant of the village for maintenance. The settlement of 1871 resulted in the execution of two documents by the contending parties. One was Exh. 114 executed by Keshrising, dated the 6th of September 1871, and the other Exh. 360 executed by the Thakor Raisingji, father of the present plaintiff, on the same date. The document executed by Keshrising recites :

That the Suit No. 918 of 1870 was instituted against the Thakor Raisingji, to recover the rupees of the income of the grass raised on the pasture of the village of Piperia, which grass the Thakor had got attached by the Talukdari Settlement Officer; that the question in that suit, together with dispute that existed between the Thakor and the son of Rupsing with regard to the village of Piperia, were referred to arbitration; that an award was made which was accepted by the parties, and in pursuance of that award the sons of Rupsing gave up 41 acres 12 gunthas out of two fields which had been seized by the Thakor and admitted that he was the sole owner and master of it. They agreed to pay permanently for the rest of the village, which was left in their possession, Rs. 200 a year for land revenue, which figure was fixed in lump for all their descendants, that their descendants should pay and that the Thakor''s descendants should receive it, and if there should be any increase in the land revenue of the Taluka by the Government, or in any other way, the Thakor should be responsible, Rupsing''s descendants were only to pay always Rs. 200 clear, and the Thakore, except as to laud measuring 41 acres and 12 gunthas, had no right or title on the village of Piperia or any land within its boundaries, Rupsing''s sons being the sole owners and masters.

6. The document executed by the Thakor contains as its first clause the passage upon which chief reliance is placed on behalf of the respondents. This clause is as follows :- "The land 41 acres and 12 gunthas of the description undermentioned in the second clause of this document situated within the boundaries of the above said village Piperia has been taken out by us and we have kept our independent ownership over the same. With the exception of the same you and your descendants and heirs are Maliks, Mukhtyars, Dhanis of this Piperia village site-land and border-land as per original limits. We have no right or claim to it." The words translated "descendants and heirs "are "oa''k okjl" (Vansa Varas.) There is not ''and'',

and if that expression is taken literally it means "your descendants who are heirs.

7. Now, so far as we have any knowledge of the custom of inheritance among Chudasama Girasias daughters are not recognised as heirs. That was the conclusion arrived at in another Chudasama case which went through three Courts terminating in the Privy Council, and there is evidence on record in this case of witnesses who are acquainted with Chudasama customs that wives and daughters do not succeed as heirs. Therefore, "descendants who are heirs" would be confined to male descendants. Here then is an acknowledgment that, except for the 41 acres and 12 gunthas of the village, Kaliansing and Keshrising and their male descendants are Maliks, Mukhtyars, Dhanies. It does not appear to us that that in terms enlarges the estate which, according to the plaintiff''s contention, would appertain to a Jivaidar in the Chudasama clan in Dhandhuka, for he would hold his Jivai village for himself and his issue so long as there were any male descendants to them.

8. It was suggested in argument that one of the questions Which was agitating the parties at the time of this settlement in 1871 was the question whether Melaji had not given to Rupsingji the village of Piperia as a gift, not by way of Jivai, but absolutely. Now it is suggested that there is some indication of that in one or possibly more of the documents upon the record which have emanated from the Government Officers in connection with this estate, We do not think that there is any substantial reason for thinking that that was the question which either of the parties was gitating. We think that the great weight of the evidence indicates that Melaji gave the village of Piperia to Rupsingji as Jivai upon the usual terms, and the only question which was raised between the parties besides that of the seizure of the grass by the Thakor was whether Keshrising and Kaliansing were entitled to be recognised as legitimate and genuine sons of the deceased Jivaidar, Rupsingji. That question was conceded in their favour by Raisingji in return perhaps for a concession of 41 acres 12 gunthas out of the village. Upon the documents, therefore, we do not think that the objection which has been raised by way of demurrer can prevail.

9. Moreover, the release must be construed in the light of the position which the parties occupied towards each other at the time the document was executed and in reference to the dispute which was then pending between them. In Directors, etc., of London and South Western Railway Co. v. Blackmore (1870) L.R. 4 H.L. 610 Lord Westbury said: "The general Words in a release are limited always to that thing or those things which were specially in the contemplation of the parties at the time when the release was given. But a dispute that had not emerged, or a question which had not at all arisen, cannot be considered as bound and concluded by the anticipatory words of a general release." Here if reference be made to the original pleadings (Exhts. 197 and 222) in the Suit of 1870-we say the originals, because the official translations are admittedly faulty-it will be recognised that the only dispute which had then emerged was Whether Keshrisang and Kaliansang were spurious

sons or genuine; and the most that could have been decided against the Thakor was that the young men were genuine sons, and, therefore, entitled to possession, but entitled only as Jivaidars. No question was then raised as to any claim on their part to hold absolutely against the Thakor. And indeed so late as 1887 we find Kaliansang in his written statement in Suit 335 of 1887 (Ex. 202) professing in the plainest language to be in possession of Piperia by virtue only of the grant from the Thakor in Jivai or Giras, i.e., maintenance. We are satisfied, therefore, that, despite the apparent terms of Exhts. 114 and 360, there is no substance in the argument that they conferred an absolute estate, releasing the Thakor''s right of reversion.

10. There is, however, another and independent objection to the respondents'' contention upon this point. It is this, that assuming the reversion upon the failure of male issue of the Jivaidar subsists in the holder of the Thakor of Gamph, that is a part of the estate and a part of the estate which may at any time become of great value. Now, at the time of this settlement in 1871 the whole of the landed estate of the Thakor was under the management of the Talukdari Settlement Officer for the purpose of settling the debts of himself and his predecessors, and u/s 12 of the Ahmedabad Talukdars Act of 1862 any alienation of the estates which came within the purview of that Act during the time that they were under management is null and void. The Thakor had a vested reversionary interest in the village of Piperia which, upon the deaths of Keshrising and Kaliansing, would revert to the main line and the whole of that village would become available to the creditors of the Thakor or Thakors. Having regard to the scope and intention of that Act, we think that any such alienation, as is said to have been made by this document (Exh. 360), would be void as offending against the provisions of Section 12. So much for the preliminary objection.

11. The next question that we have to consider is whether the plaintiff has made out that the parties are bound by the customary law, which, as he asserts, entitles him to claim reversion upon the death of Kaliansing. Upon that question the evidence upon the record appears to us to be overwhelming in favour of the plaintiff''s contention. It is established by the report of Government Officers that the Thakorate of Gamph was governed by the rule of primogeniture. It is established that there was a custom of giving away for maintenance villages to junior members of the family. Therefore, the estate was not governed by the ordinary law of coparcenary and was not partible. Various instances have been proved in the past of Jivai villages which had been given to junior members reverting to the main line upon the death of the Jivaidar without male issue. We have already referred to the case of Ankewalia and Piperia which occurred in the beginning of the last century upon the deaths of Kakabhai and Babhoji. But much older instances can be found in the book kept by the Barot, which is handed down from generation to generation, from Barot to Barot. We have there instances of falling into the main line of the village of Chokdi upon the death of Kushiaji at the end of the 17th century, and the village of Ankewalia appears to have reverted to the main line upon the death of Fatesingji,

who does not appear in the pedigree, but belonged to the generation preceding Kushiaji, being a brother of Devaji. The learned Judge has no reason to distrust the evidence of the Barot who proved entries in this (Vaivancha) book. And such records by the Barots are described by Forbes in the ''Ras Mala'' as being recognised for their accuracy and truth-fulness among the Rajput clans of Kathiawar.

12. We think that on the evidence the case of the plaintiff is made out that the villages given to junior members of the family were given for maintenance upon the terms that upon the failure of male issue they reverted to the holder of what is called the ''Gadi''. A very noteworthy piece of oral testimony to that effect is to be found in the evidence of Akhuba, who was one of the descendants of Melaji, and who holds the village of Ankewalia upon these terms. It is not a case where he could admit, out of friendliness for the Thakor, that there is a right of reversion upon failure of the grantee''s male line for he himself has no sons and one of his brothers is of unsound mind. Therefore, the reversion in his case is not likely, so far as we can see, to be long deferred. Another notable witness is Exh. 333, Dadabha Bhavansing, the Talukdar of the village of Cher belonging to this clan. He says: "Narsing was my uncle two degrees removed. And old Talukdar, Vakhatsing, told me that Chokdi, Ankewalia and Piperia had reverted to Gamph Darbar. He said that the villages were given seventy-five years ago." In all twenty-nine Chudasama witnesses had been called on the part of the plaintiff who are holders of Talukdari villages in the Dhandhuka Division, and they all, without exception, testify to the existence of the custom alleged by the plaintiff.

13. Having regard to this evidence, we think there is no room for doubt that the custom of reversion is established in the plaintiff''s favour. It is true that the learned Judge below has thrown doubt on the credibility of the plaintiff''s oral witnesses on this point; but we are not able to share this doubt, for which, we observe, no particular reason is assigned. A long series of witnesses deposing to one special custom of this kind must of necessity use much the same language, and it may be that it was the uniformity of the story which excited the Judge''s suspicions. In any event no other or more valid ground for suspicion has been mentioned before us, and this ground appears to us untenable. It is, further, worthy of remark that the evidence of these witnesses, who admit the custom of reversion, is evidence against their own interests, and this consideration is by no means displaced by the remark that, in the majority of cases, the likelihood of their interests being in fact prejudiced is so remote that the point should not be held to have weighed with them. As to this it must be observed that the nearness or remoteness of a possible prejudice of this sort is very much a matter of individual opinion, and, whether it be near or remote, we know that the tenacity with which Rajput Girasias hold to their land must operate against the making of any admissions which, in any conceivable circumstances, might tend to deprive them or their successors of their existing estates.

14. This evidence is, we think, in conformity with the official reports both as to the original status of the Jivaidar and as to the regular practice which has been followed. In Sir James Peile''s report of 6th June 1866 (excerpts from which are Exh. 580 on this record) it is, no doubt, stated that "a village given from a Gadi to a younger son reverts to the Gadi if the younger son dies childless"; but this, we think, is manifestly a slip, the condition intended being the extinction of the grantee''s line by default of male heirs. Certainly it was nobody''s case before us that the reversion falls in if the original grantee leaves male heirs, and both the other evidence on the record and the history of the parties'' dealings are, we think, conclusive to show that the Thakor''s right to the reversion does not accrue so long as there are male heirs capable of taking in succession to the original grantee; indeed more than this has never been claimed by the Thakor, nor was it contended for the respondents that the right of reversion lapses in all cases except where the original grantee dies without issue. That this was the meaning intended by Sir James Peile appears from his report of 30th January 1860, where he says: "I believe I am correct in stating that patrimonies carved out of the main estate for the scions of the house were enjoyed under no other limitation whatever except that, should the grantee''s family become extinct, their estate should revert to the Head of the clan". This passage occurs in a letter the object of which was to ascertain various details of Girasia custom from the then Political Agent in Kathiawar. At that time this officer was Captain Barr, and in his reply to Sir James, dated 7th March 1861, he writes, "patrimonies carved out of the main estate for scions of the house are enjoyed as you understand". This view of the matter is confirmed by numerous instances to which plaintiff''s counsel has called our attention and in which the dispositions of the estates followed the rule for which the plaintiff contends. The reply to this evidence made on behalf of the respondents was that such dispositions were made by order of political officers and for reasons of state. But a reference to the record shows that that is not so; on the contrary, the various orders were made as being calculated to carry out the established Girasia custom and tradition, and were made by officers most familiar with that custom.

15. Then it is contended that assuming that there is such a custom, nevertheless the reversion does not take place immediately upon the death of the last sonless Jivaidar but his widow succeeds to his estate. A good deal of evidence was referred to by the respondents'' counsel in support of that contention. All of it is of the same nature. It is an assertion that in the case of separated Girasias the widow inherits her husband''s estate. Now a case of separated Girasias occurs, as is shown very clearly in certain judgments of the Ahmedabad Courts, Exhs. 248, 250, 253, and 438, where a village has been granted in Jivai and the Jivaidar has various sons who for convenience enjoy portions of the village separately, and that is what is meant so far as the rocord shows by "separated Girasias", and where you have several brothers enjoying portions of the village separately, and one of these brothers dies without leaving children, it often happens that the widow succeeds to his share for her life.

We say it often happens, because the evidence does not establish that it is invariable. Counsel for the respondents has been able to point out a number of cases in which a widow of a separated Girasia who dies sonless has succeeded to his share. But the discussion of the question in the judgments to which we have referred, several of which judgments refer particularly to the evidence given by the then Thakor of Gamph as being specially valuable and reliable, shows that there is no fixed rule in the matter-sometimes widows succeed and sometimes they do not succeed-but that question really has no bearing upon the question now before us, which is : Whether the existence of a widow of a sonless Jivaidar, the only survivor of the Jivaidar family, can prevent othe operation of the custom of reversion as soon as her husband dies ? The evidence as to what is done in such cases as that is to this effect, that if the Jivai grant is of small value, the Darbar allows the widow to continue because she must have maintenance. If it is of large value, then, only a reasonable allowance is given to her for maintenance. Certain instances were relied upon by the plaintiff to prove that the widows did not interfere with the right of reversion immediately upon the death of their husbands, and so far as they go, they do seem to establish that proposition. But it appears to us that if it is accepted that there is a right of reversion upon failure of the male line, it follows almost as a logical consequence that the reversion will not be impeded by the existence of a female.

16. And the evidence shows that no such impediment has ever in fact been recognised. Apart from the large mass of apparently respectable oral evidence to this effect, we have numerous actual instances in the plaintiffs favour. Thus in Ex. 521 we have the Political Agent''s order in the case of the villages Memka and Vaghela under Wadhan which had been granted in Jivai to Keshrising, who had died leaving only a widow and two daughters. The orders are that "according to usage", an important phrase as showing the ground upon which the Political Officers were proceeding, "the two villages will revert to the State, and the State in its turn will incur the responsibility of making suitable provision for the widow and two daughters." Witness, Junaji Motibhai, Ex. 339, deposes to the due execution of these orders. So in the case of Bagwan under Gangadh : the village was granted in Jivai to the cadet, Rauuising, and after his death without male issue, his widow Jethiba in her plaint, Ex. 601, acknowledges that, in accordance with the custom, the village had reverted to the Thakor and, in lieu thereof, certain lands had been assigned to her for maintenance. Witness, Hamirji Abhesing, Ex. 337, gives similar tesumony as to the disposal of Dared under Vala, though in that case the grant was continued to the widow, presumably because the village was a small one and was considered necessary for her maintenance. In the case of Ayraderiwala under Sayla it is proved by the Bhayati Judge, Ex. 646, that when the grantee died without sons, the village reverted to the State, and the grantee''s widows were allowed a monthly maintenance of Rs. 50. Then we have Exhs. 513, 514, 517 and 541 which show that the Jivai village of Panchasia under Vankaner was similarly dealt with upon the

failure of male heirs in the grantee''s line, and in Ex. 513 the widow herself could put her claim no higher than that "the Vankaner Darbar has no right whatever to resume the giras as long as there is male issue in the line of the grantees". Exhibit 515 is the petition of the two widows of Narsing Jalamsing, to whose father the villages of Kerala and Rajavadla were granted in Jivai by the Thakor of Vankaner. They contended, in their long and argumentative petition, that the "Darbar is estopped from saying that the widow of a deceased Bhayat is entitled to a Jivai only". But the orders of the Political Officers (Ex. 516) were against the widows, whose claim to anything more than maintenance was rejected on the ground that it was contrary to the custom enforced by the agency. These orders, which were confirmed by the local Government, were ultimately taken on appeal to the Secretary of State, who, however, declined to interfere (Ex. 518). In the Kotda Sangani State we have the similar instance of the village Bagadya, the witness being Mr. Abhechand Jethabhai, the Manager of the State (Ex. 640). We see no reason to doubt, and every reason to believe, that the customs prevailing in such matters in the Rajput Girasia States abovementioned are of general validity among Rajput Girasias, whether they belong to the Jhala or the Gohel or the Chudasma sub-division of the clan. These nominal sub-divisions are, as the witnesses prove, closely interconnected, and the matters now under discussion concern the general interests and traditions of the clan, not the particular usages of any sub-division of it. To the argument that no actual case is proved where an adoption was defeated by the reversionary right the answer is that we have no known case where the two rights came into competition; and the explanation of this fact is, as the learned Judge below observes, that these Rajput Thakors occupying a Gadi are not in the habit of adopting, but rather in the habit of putting forward supposititious sons. This circumstance itself suggests how conscious they are of the difference between such claims as spring from the ordinary Hindu law of adoption and such a claim as can alone entitle an aspirant to the possession of the Gadi or to any interest therein.

17. The next question, then, which we have to consider is the position of the adopted son, the and defendant. He is found to have been in fact adopted. But the fact of his adoption by no means concludes the case in his favour. The remarks of Sir Charles Farran in what is known as the Kadwal case (1898) P.J. 60 are very appropriate in this connection. He says: "Under these circumstances we must hold that plaintiff has not proved his right to succeed to the village of Kadwal. We hold the factum of adoption proved; and for spiritual purposes and for inheritance of any private property which Jodhsing may have left, as distinguished from the village of Kadwal, the adoption would be good. But as regards the village of Kadwal, we think that the facts and circumstances are such as to have shifted the burden from defendant on to plaintiff, so that the latter is bound to show that Jodhsing or Jodhsing''s widows had the right to adopt a son and thus prevent the lapse of Kadwal village to the Limdi Taluka". The reason why the respondents tried so hard to establish that widows succeeded to the estates of Talukdars was that the

existence of a widow would defeat the reversioner, and the adoption of a son to the Jivaidar by the widow would have the effect of divesting an estate which had already vested in the reversioner upon the death of the Jivaidar. But if the alleged custom that the widow succeeds, and thus keeps out the reversioner, is not established, it appears to follow that the adopted son can only succeed if he can show that by his adoption he will divest an estate already vested, according to custom, in the Thakor. No instance has been adduced to show that"that is the result of such an adoption, and it appears to us that this series of events should have no such effect upon premises which we have arrived at with regard to the existing customs.

18. It has been suggested that an adoption, if good at all, must be altogether good and effective according to Hindu law. The answer to that is that we are not here dealing with the ordinary Hindu law. We are dealing with the custom of a Rajput clan, and we see no reason why the conclusion arrived at by Sir Charles Farran in the Kadwal case should not be equally applicable to the present case. For the rule of Hindu law as to the effect of an adoption is not affected : that rule contemplates and allows the adopted son''s title only to the partible property of the coparcenary, while the property which we are dealing with here falls outside that category. We, therefore, think that the adopted son does not divest or defer the vesting of the estate which was given to the Thakor of Gamph by the custom of reversion.

19. The only other question remaining is as to the mortgagee. The original mortgage obtained is a mortgage in October 1883 in consideration of an advance of a sum approaching Rs. 5000, the greater part of which was applied to discharge a debt due to the Thakor and to free the village of Piperia from the possession of the Thakor who apparently held it under a lien for advance for maintenance and assessment. There is no doubt that the mortgagee acquired by his mortgage as much as the mortgagor Kaliansing was able to give him, and what he acquired was not merely the interest of Kaliansing, but the interest of Keshrising who had previously died, and whose interest under the document of 1811 had ostensibly been transferred-for what purpose is not clear-to the Thakor of Gamph. The mortgagee got that interest also because the evidence shows that at the time of mortgage the document transferring the moiety of the village of Piperia was handed by the Gamph Darbar to the mortgagee. It does not appear to us, however, that the fact that the mortgage money was advanced in order to satisfy the claim of the Thakor of Gamph is any reason, now that the reversion has occurred, for treating the mortgagee as entitled to anything more than the mortgagor was able to give in 1883. The position is similar to that of the assignee of the Jivaidar in Beni Pershad Koeri v. Dudhnath Roy ILR (1899) 27 Cal. 156 who was held not to take anything more than his grantor was able to give him, having regard to the estate which he had received for maintenance. So far as the English analogies are of any value in a case of this kind, the position of the mortgagee, as pointed out by Mr. Desai, is very similar to the position of the mortgagee in the case of Hankey v. Martin (1883) 49 L.T.N.S. 560, where the plaintiff mortgagee was entitled under his security to a base

fee to continue so long as there should be issue of the mortgagor who would have succeeded under the entail, but he was not entitled to a mortgage of an absolute interest as against the remainderman.

20. We reverse the decree of the lower Court and pass a decree for the plaintiff declaring that the defendant No. 2 has no right whatever to the village of Mouje Piperia, and that the defend ant No. 3, as assignee of the mortgage of the 13th of October 1883, has also no right whatever in the said village. We pass a decree for possession of the village of Mouje Piperia as prayed in the plaint, with mesne profits for three years priomto suit. Mesne profits to be calculated in execution. Decree to be reduced by such maintenance as was given to the widow of Kaliansing during her life-time after the death of her husband. Costs on the respondents throughout.