

N. S., page 259, plac. 11, it appears that in *Anrood Singh v. Rajah Dummur Singh* (a suit between Hindús), and in *Oomrao Begum v. Inderjeet*, two cases which arose in the North-West Provinces, the right of the mortgagor to redeem, before the expiration of the term named in the mortgage, was denied by the Court.

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In S. A. No. 1007 of 1864, *Kahándás Múlji and another v. Mithábhái Jivandás and others, Forbes and Newton, JJ.*, on the 10th of July 1865, affirmed in this court a decree of the Senior Assistant Judge of Ahmedábád, which dismissed a redemption suit instituted before the term (ten years), for which the property was mortgaged, had expired.

Finding, then, the same principle to exist both in the English and the Hindú law, that the right of the mortgagor to redeem does not, in the absence of any circumstances or language indicating a contrary intention, arise any sooner than the right of the mortgagee to foreclose, we hold this suit to have been prematurely instituted; and must, therefore, affirm the decree of the Acting Senior Assistant Judge with costs.

TUCKER, J., concurred.

Decree affirmed.

Special Appeal No. 140 of 1864.

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Oct. 13.

RA'JI NAROTTAM *Appellant.*
PURUSHOTTAM GIRDHAR and another *Respondents.*

Bhágdári tenure—Collector's authority.

Held that any interference by the Collector to assign, of his own authority, lands in a bhágdári village to a tenant for cultivation, is irregular and unauthorised.

THIS was a special appeal from the decision of W. Sandwith, Senior Assistant Judge of Súrat, in Appeal Suit No. 5 of 1862, confirming the decree of the Munsif of Jambusar, in Original Suit No. 447 of 1860.

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The case was heard before ARNOULD, Acting C.J., FORBES and NEWTON, JJ.

Dhirájlál Mathuráddás and *Nánábhái Haridás* for the appellant.

Dádábhái Frámji for the respondents.

The facts sufficiently appear in the judgment

FORBES, J.:—This suit was brought by Ráiji to eject Purushottam and Vassan from certain lands, amounting to 26 kumbhás and 39 moulás (or hundredth parts of a kumbhá), situate in the village of Kulan, in the parganá of Jambúsar, which lands, as the plaintiff, Ráiji, asserts, he let to the defendants for cultivation, and which they refuse to surrender.

The suit was originally tried by the Munsif of Jambúsar, who held that the lands in dispute, with the exception of the two fields Nos. 523 and 543, were some time ago in the possession of Narhar Nathú, in conjunction with whom Girdhar, the father of the defendants, Purushottam and Vassan, held as a *pet-bhágdár* or sub-sharer; that, after Narhar's death, the lands passed into the hands of Narhar's son, Hirá; that on the 28th of June 1842 the said Hirá gave up the lands; and that Girdhar having before that time deceased, and the defendants, Purushottam and Vassan, being minors, the lands fell into the possession of the plaintiff, Ráiji; that Hirá, not holding as sole proprietor, had no authority to resign the shares of his sub-sharers, and that, as a matter of fact, he did resign his own share only; that the lands claimed, with the exception of the two fields above mentioned, were the share of the defendants, Purushottam and Vassan, who were the proprietors of the lands; and that the said lands had been given back to them in their capacity of proprietors.

The Munsif was also of opinion that *bhágdári* lands in Gujarát are held in the same manner as *mirást* lands in the Dahkan, and are recoverable by the proprietor at any time; and that the plaintiff, Ráiji, was not able to establish a title by prescription.

The Munsif, therefore, ordered the defendants, Purushottam and Vassan, to surrender to the plaintiff, Ráiji, the fields

Nos. 523 and 543; but rejected the claim of the plaintiff, Ráiji, to the other lands claimed by him.

Upon this the plaintiff, Ráiji, preferred an appeal to the Senior Assistant Judge: but Mr. Sandwith confirmed the Munsif's judgment, on the ground that Ráiji had not established a title by inheritance to the lands; that he had not been in possession for more than eighteen years (the plaint having been filed on the 13th of June 1860), which was not a sufficiently long time to give him a title by prescription; and, lastly, that Ráiji had not proved that he had let the lands to Purushottam and Vassan.

Ráiji now makes a special appeal to this court against the Senior Assistant Judge's decision; and he urges that he does not set up any title by inheritance; but that the lands have been made over to him by the Collector as a cultivator, and that he is entitled to hold them as long as he pays the rent. In support of this argument, we are referred to a passage in Lieutenant Colonel Monier Williams' Memoir on the Zilla of Baroche, at page 72.

Thus, the contest between the parties is reduced within very narrow limits: and without going into the questions, whether the original defendants, Purushottam and Vassan, are proprietors of the land in question by right of inheritance; or whether, in case of their being held to be proprietors, their title would be affected in any way by the resignation made by Hirá, or whether there is any analogy between the bhágdári tenure in Gujarát and the mirásí tenure in the Dakkan, so that bhágdári lands must be held to be recoverable by the proprietor, at any time within the period of limitation; we have only to determine, whether the plaintiff, Ráiji, is entitled to eject the defendants, Purushottam and Vassan, from the lands in dispute, on the ground that they have been assigned to him as cultivator by the Collector.

Mr. Marshall, in his "Statistical Account of the Parganá of Jambúsar" (a), gives the following description of the village constitution:—

"Every village is managed by one or more pátíls, and

(a) Transactions of the Literary Society of Bombay, vol. iii., p. 245.

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is either *bighotí* or *bhágvárí* ; that is, it is either let out to the cultivators at a certain rate per *bigha* or *kumbhá* ; or the lands are divided into shares (*bhágs*), either equal, or bearing a known proportion to each other, each of which pays in the lump its respective quota of the whole charges against the village. These *bhágs* are either subdivided into smaller *bhágs* ; or parts of them are let out by the *bhágdár* (holder of a *bhág* or share) at a fixed rate : in which case the tenant is called *ganotíá*, and is either (*upadvádiá*) the inhabitant of another village, or, if he have settled in the village, is on the footing of a stranger there, and has no right of citizenship. Each *bhágdár* has the entire management of his own *bhág*.”

“ By far the greater part of the villages in this collectorate,” says Colonel Monier Williams, in his Memoir (b), “ are what are called *bhágvár* villages. In this system the lands of the village are, in the first place, divided into great shares, or *bhágs*, in number from two to ten. The chief holders of these are the *bhágdárs*, the whole or a part of whom are also the *pátíls* of the village. But each of the great *bhágs* is subdivided into portions, usually called *ánás* ; and these again into sixteenth parts called *ánís* or *chavals*, and these are held by numerous inferior *bhágdárs*. There may be more than a hundred *ánás* in a village ; but, whatever the number may be, the total amount of the demands on the village, on Government or other accounts, is divided by that number, and thus the amount to be paid by each individual, whether he holds one *áná* or more, or the fractional part of an *áná*, is ascertained: The apportioning of the lands into *bhágs* and *ánás* is made by the village community, with reference to all the circumstances of soil and situation, which increase or diminish the value of different patches ; and thus the great *bhágs* are not each a separate and distinct portion of the village land, but have their fields intermixed throughout the whole area. Whatever other sources of revenue exist at the village, such as *salámi*, from alienated lands ; from grass land ; from any

(b) Memoir of the Zilla of Baroche : London, 1825.

portion of land which may happen not to be included in the *bhāgs*, but separately let to casual cultivators; from *virás*, or extra taxes on houses, professions, or otherwise: these are first ascertained or estimated, and their amount deducted from the total of the demands on the village; and then the remainder is divided by the number of *ánás* comprised in the village lands, in order to determine the payment from the *bhāgdárs*, great and small."

"The making of all the arrangements here described is a village business entirely, in which every member of the village community has an interest, and also has a voice; and in which no other persons and no other authority interfere, unless asked to do so. * * * Where the *bhāgvár* system exists in the greatest perfection, the whole of the lands are included in the *bhāgs* or shares, and every cultivator is a *bhāgdár*, and possesses the rights of one; and a *bhāgdár* of half an *áná* can no more be ejected than one of the principals. Even the alienated lands, not cultivated by the proprietors themselves, are divided among the *bhāgdárs*."

We now come to the particular passage in this Memoir upon which the plaintiff, *Ráiji*, relies; and which is as follows:—"In *bhāgvár* villages, the lands ought to be all included in the *bhāgs*; but this is seldom completely the case: for a *bhāg* may become vacant from deaths without heirs, or from bankruptcies, or the emigration of the proprietors. In such case the *bhāg* so vacated is let out by the *pátíls*, *talátí*, &c., to any cultivators who will take the lands, and the amount brought to account separately. This is called "*gám kháta jamin*," or land on the general village account. In *Turálsá* there are at present about two hundred *bighás* of this description, that once formed part of a *Rájput bhāg* now dissolved. It is cultivated by permanent cultivators; but if any of them give it up (which they may do at pleasure), or fail to pay, the principal *bhāgdárs* assemble and jointly let it out to others."

The principle of the *bhāgdári* tenure, then, as distinguished from *rayatvári* tenures is that, under the former, the Government authorities settle for the revenues of the village

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with the bhágdár or bhágdárs, instead of, as under the latter, with each cultivator individually; and it is clearly shown by the above-quoted authorities, and especially by the quotation relied upon by the plaintiff, Ráiji, when read in connection with the context, that the bhágdárs, and not the Collector or other Government authority, dispose of such lands as may have become vacant, by emigration of the proprietors or otherwise, and that the share of revenue, which they have to make good, is affected by their success or failure in raising a rent from such lands.

We hold, therefore, that any interference by the Collector to assign, of his own authority, lands in a bhágdári village to a tenant for cultivation is irregular and unauthorised; and that, if such interference were exercised in favour of the plaintiff, Ráiji, in reference to the lands now claimed by him, it could not of itself form any ground upon which the plaintiff, Ráiji, would be entitled to eject the defendants, Purushottam and Vassan, from the lands.

We, therefore, confirm the decree of the Senior Assistant Judge with costs.

NOTE.—By Act V. of 1862, Bombay, entitled “An Act for the preservation of the Bhágdári and Narvadári Tenures,” it is enacted:—(I.) No portion of a bhág or share in any bhágdári or narvadári village, other than a recognised subdivision of such bhág or share, shall be liable to seizure, sequestration, attachment, or sale by the process of any Civil Court; and no process of such court shall be enforced so as to cause the dismemberment from any such bhág or share, or recognised subdivision thereof, of any homestead, building-site (gabhán), or premises appurtenant or appendant to such bhág &c. : (II.) Whenever any such process has issued, it shall be lawful for the Collector, or other chief revenue officer of the district, in which such village is situated, to move in such Civil Court that such process shall be set aside or quashed; and the Court shall set aside or quash such process, if it be of opinion that the case falls within the Act: (III.) It shall not be lawful to alienate, assign, mortgage, or otherwise charge or incumber, any portion of any bhág or share in any such village, other than a recognised subdivision thereof; or to alienate any homestead, building-site, or premises appurtenant, &c., apart or separately from any such bhág or share, or recognised subdivision thereof; and it shall be lawful for the Collector &c. summarily to remove any person or persons, who may be in possession of any portion of any bhág or share, homestead, &c., as aforesaid; and to restore the possession to the person or persons whom the Collector shall deem to be entitled thereto; and any suit brought to try the validity of any order which the Collector may make in such matter must be brought within three calendar months after the execution thereof.—ED.