

*Special Appeal No. 305 of 1869.*Ranu valad Avaji Mali *Appellant.*Ramabai Kom Mahadu Mali *Respondent.**Mortgage—Razinama—Equity of redemption.*

A mortgage deed of *gatkuli* land contained a clause by which the mortgagor agreed, at the expiration of the period for which the mortgage was made, to give a *razinama* of the mortgaged land.

In accordance with this stipulation, the mortgagor gave in a *razinama* to Government, by which he gave up all claim to the land, which was then granted to the mortgagee.

Held, that the equity of redemption of the mortgagor was thereby extinguished.

The Government need not be made a party to a suit of this nature unless the interests of Government are affected.

This was a Special Appeal from the decision of C.B. Izon, Senior Assistant Judge at Solapur, in Appeal Suit No. 240 of 1867, amending the decree of the Munsif of Mareh.

The suit was brought by Ramabai to redeem three fields (Sarvey Nos. 318, 320, 213) at Khem, which had been mortgaged to the defendant on different occasions in 1854.

The defendant, Ranu, answered that, with respect to Nos. 318 and 320, the mortgagor's right to redeem was lost, and his claim barred; and with respect to No. 213, that one year after the mortgage the plaintiff entered into an agreement with the defendant, in accordance with which he gave a *razinama* of the field, and that the defendant held the land from Government.

The *razinama* was to the following effect:—

“To the Government of the Honorable Company Bahadur: The *razinama* of Ramabai Kom Mahadu Mali Devkar, inhabitant of the village of Waije, for the Fasl year 1264.

“At this village three numbers or holdings stand against my name (Nos. 213, 318, and 320). These numbers I cannot undertake to cultivate for the year 1865, for I have not the requisite number of plough oxen; therefore, by reason of my inability, I have given up these fields of my own accord. Government may let them to any one else to cultivate. I have no manner of proprietor's claim left on these numbers. This resignation was given on the 25th April 1855.”

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The mortgage deed contained the following clause :—“ I
 (defendant) shall give a *razinama* of these fields next Fasli
 year, and you may have a transfer of the lands to your
 name, and you may hold them from Government ; I shall
 set up no claim to the said fields.”

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The Munsif of March decreed the redemption of fields Nos. 318 and 320, which were *Mirasi* fields on payment of principal and interest, holding, that although the term of the mortgage was over, the title to redeem was not lost. With respect to No. 213, he threw out the plaintiff's claim, holding that the equity of redemption had been extinguished by reason of the subsequent *razinama*, by which he abandoned the land absolutely.

The plaintiff appealed from this decision to the Assistant Judge at Solapur, on the ground that the *razinama* could not have the effect of extinguishing his equity of redemption.

The Assistant Judge held that plaintiff's right to redeem No. 213 was not lost by reason of the *razinama*. He said that all the three fields were transferred to the defendant, as security for the debt; that no evidence of sale was adduced; the *razinama* proved nothing, as it referred in the same terms to all the fields. *Razinamas*, he said, were authorities to the revenue officers to transfer fields from one person's name to another. The Assistant Judge accordingly amended the decree of the Munsif, by allowing the plaintiff to recover all the fields, on payment of principal and interest due upon the mortgage.

The special appeal was argued before WARDEN and LLOYD, JJ.

Gopinath Sadashiva for the appellant :—The *razinama* is an absolute abandonment of the right of the plaintiff to the land mortgaged. This is clear from its terms. “He had no manner of claim over the fields; the Sirkar might let the holding to any person it chose.” The *razinama* was given, moreover, in pursuance of an agreement in the mortgage deed in which it was stipulated “that if within a year's time the

debt was not paid off, the mortgagor would give a *razinama* of the fields, and then the mortgagee might take the lands from Government, and transfer them to his own account, the mortgagor agreeing to make no manner of claim upon the fields or the trees that grew on it." Plaintiff's interest in the land was completely at an end when the *razinama* was given to the Government, and no equity of redemption could remain in him after abandonment.

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Bhairavnath Mangesh for the respondent:—The plaintiff claims as *mirasdar*, and in Special Appeal No. 277 of 1868 it was held that a *mirasdar*, though he gives a *razinama*, has a right to recover his land within the time allowed by law, unless he gives up his *miras* rights over it. The abandonment in this case is only temporary, for the purpose of giving complete effect to the mortgage security, and is not intended to be operative beyond the mortgage term. The *razinama* is only an authority to transfer the holding from one name to another. A mortgagor's equity of redemption can only be extinguished in one of three ways; I., by a decree of foreclosure; or, II., by limitation; or, III., by a *bonafide* sale or release of the right for valuable consideration (Addison on Contracts. p. 257). There has been no foreclosure decree; the claim is not barred by lapse of time; and there has been no sale or release of the right to redeem for a fresh and valuable consideration. The *razinama* is without consideration, and cannot therefore operate as a release. In Special Appeal 75 of 1868 there was a mortgage of land for a term of years. In a subsequent deed of sale between the same parties relating to some other land, allusion was made to the land first mortgaged, to the effect that the first land has been already sold to you. When the mortgagor sued for redemption it was held that this allusion to the mortgage transaction in the subsequent deed did not take away the mortgagor's right to redeem, as no consideration was shown for the conversion of the mortgage into a sale. The *razinama* in this case was equally without any consideration. Lastly, in a leading case upon the construction of

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razinamas, No. 512 of 1863 (b), it was held that the Collector should be made a party in a suit founded on the abandonment of land by *razinamas* to Government.

Gopinath Sadashiv in reply:—The land is not *miras* land. It is expressly stated that it is *gatkuli* land, in contrast with the two other fields, which are *miras*. The precedents therefore do not apply. The *razinama* was given owing to the poverty of the plaintiff, and his inability to pay the assessment. This was a sufficient consideration for the abandonment.

Per Curiam:—We think that the plaintiff's abandonment of the land was final, and without reservation. There is always a distinction between *razinamas* with express words of unreserved abandonment and *razinamas* without such words. The former are total abandonments of all the interest of the holder in the land. The land is shown to be *gatkuli* and not *miras* the precedents therefore do not apply. Government have no interest in cases of this sort, which are mere matters between party and party, and do not affect the interest of Government in the land. Government need not be made a party except when the *mirasi* or *gatkuli* tenure of the land is a point for determination. We hold that the *razinama* is evidence of complete abandonment by the plaintiff of his interest as holder of the land under Government, and accordingly amend the Judge's decree, by throwing out the claim to No. 213.

Decree amended.

(b) This case, in which Ravji bin Govind and Bhava bin Devji were appellants, and Bapu bin Darkoji was respondent, was a Special Appeal from the decision of W. H. Newnham, Assistant Judge, Ahmednagar, in Appeal Suit No. 157 of 1863, reversing the decree of the Munsif of Nasik. The judgment of the Court (Couch, C. J. Newton and Warden, J. J.) which states the facts, was delivered by Couch C. J.:—The appellants, Ravji and Bhava, sued the respondent Bapu, to recover a field, No. 9, in the village of Oohli, alleging that it was their *miras* land, but four years ago they allowed it to fall waste, and then Bapu occupied it without their leave, and now would not restore it.

Bapu answered that the appellants abandoned the field by *razinama*, upon which he had taken up the lands from Government.

The appellants, in reply, alleged that there was a custom in the taluka where the land was situated for occupants to abandon the land without abandoning their *miras* rights over it, and that they might afterwards resume possession.

The Munsif found that the custom was admitted by the defendant. He found that the plaintiffs had *miras* rights in the land, and made a decree in their favour.

Bapu appealed, on the ground that he had taken up the land from Government, and that Ravji and Bhava, having abandoned their rights, had no right to sue.

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The Assistant Judge reversed the Munsif's decree on the ground— (1), that the Munsif was mistaken in saying that the *miras* rights of the appellants were acknowledged by the respondent, and that there was not sufficient evidence to show that the appellants were *mirasdars*; and, (2), that the *razinama* which had been given by the appellants was an abandonment of all their rights to the land unless specified to the contrary.

Against this decree the original plaintiff's appeal, contending that they have by custom a right to resume the land notwithstanding the *razinama*, which it is not disputed was given by them.

We think the decision of the case will depend mainly upon the construction to be put upon the instrument by which the appellants professed to abandon their land to Government; and that the question whether a person giving such an instrument can afterwards resume the land, and, if so, upon any and what terms as to paying arrears of assessment, or making compensation to a subsequent occupant, is one in which the Government is interested. Before we can decide upon the effect and operation of the *razinama*, and what rights in the land the appellants relinquished by it, and whether they retained the right to resume the possession, it is necessary that it should be determined whether the land is in fact *miras*, and the appellants are entitled to it as *mirasdars*. Upon any construction that can be put upon the instrument, their right to resume the possession would appear to depend upon this. The Assistant Judge has found that the appellants have not shown themselves to be *mirasdars*. This finding is objected to in the grounds of appeal as contrary to the admission of the respondent; but we think the Government is interested in the question whether the appellants are *mirasdars*. We should not be justified in reversing the finding of the Judge in this matter, and treating the admission of the respondent as sufficient proof of the fact without further inquiry, and we remand this suit to the Court below, to try and determine the issues whether the land claimed is *miras* land, and whether the appellants were at the time of giving the *razinama* entitled thereto as *mirasdars*.

The *razinama* must be construed according to the plain meaning of the language used, having regard to the rights of the party in the land recognised by law; and no ground exists in this case for admitting the evidence of the alleged custom in the taluka to explain it or to contradict it, or vary it by annexing to it a right of resuming possession, which can not be gathered from its language. The custom admitted by the defendant is for *mirasdars* to resume land abandoned on account of exhaustion, but in the *razinama* the reason for abandoning is stated to be that the parties were too poor to cultivate the land. The Collector must be made a party to the suit, and notice be given to him according to Sec. 73 of Act VIII. of 1859.