

he is in equity liable to be declared a trustee of the land so purchased, for the plaintiff, and, moreover, we think, discharged of his (the defendant's) sub-tenancy in consequence of his conduct which worked a forfeiture to any right to be continued as tenant. In such a state of facts as above assumed, the defendant is in conscience bound to [77] hold the purchased land in trust for the plaintiff, and on demand to make it over to the possession of the latter. The Assistant Judge has not come to any finding whether such or any equivalent state of facts exists in the case, and looking at the plaint as we do, *viz.*, as substantially seeking to have the defendant declared a trustee for the plaintiff, and, as such, bound to make over the land to him, we are of opinion that the Assistant Judge's decree must be reversed, and that there must be a new trial by the Assistant Judge for the purpose of ascertaining how far, if at all, the allegations of the plaintiff are true—a question upon which we do not give any opinion. The plaint may be amended by striking out the prayer to set aside the sale and by more distinctly praying than it now does, that the defendant may be declared a trustee for the plaintiff and bound to make over the land to him. The decree of the Assistant Judge is reversed and the cause remanded for re-trial by him with reference to the observations hereinbefore made. Costs throughout must depend on the final result of the new trial.

Decree reversed and case remanded.

5 B. 77.

APPELLATE CIVIL.

Before Mr. Justice M. Melvill and Mr. Justice Kemball.

BHAI SHANKAR (*Appellant*) v. THE COLLECTOR OF KHAIRA
(*Respondent*).* [3rd August, 1880.]

Narva—Bhag—Alienation previous to Bombay Act V of 1862—Attachment—Dismemberment of Bhag.

The principal object of Bombay Act V of 1862 is to prevent the further dismemberment of bhags or shares in bhagdari villages: it renders null and void any future alienation of any portion of a bhag, other than a recognized sub-division, but it does not invalidate previous alienations. A sale of a portion of a bhag, previously to the passing of Bombay Act V of 1862, amounts to a dismemberment of the bhag, and what remains in the bhagdar's hands continues to be a complete bhag, when the portion separated from it becomes a new bhag.

[D., 8 B. 596.]

THIS was an appeal from the order of S. H. Phillpotts, Judge of Ahmedabad.

[78] The material facts of the case are as follows:—

In a village in the Ahmedabad District there was Narva holding consisting of several fields of which the Narvadar Bapuji Bhagwandas in 1816 sold one field, No. 501, to certain persons who at the time of this suit were represented by Daji Dhanji. In 1878 the whole bhag was attached in execution of decree against the said Bapuji in favour of the appellant Bhai Shankar. Daji Dhanji intervened and got the attachment raised from field No. 501. The Collector thereupon made the present application for the removal of the attachment on the remaining bhag, contending, that the effect of the raising of the attachment on a part of the

* Appeal No. 1 of 1880 under Bombay Act V of 1862.

1880
AUG. 3.
—
APPEL-
LATE
CIVIL,
—
S. B. 77.

bhag was to dismember it. This contention was allowed by the District Judge. The appellant, Bhai Shankar, therefore, appealed to the High Court.

Gokaldas Kahandas, for the appellant.—The field No. 501 having been detached from the bhag, before the passing of the Bhagdari Act, this Act could not render the rest of the bhag inalienable: *Ranchoddas v. Ranchoddas* (1). This field was a recognized bhag, and so must the remainder be considered.

Nanabhai Haridas, Government Pleader, for the Collector.—To allow the contention of the appellant would be equivalent to a dismemberment of the bhag which now belongs to several sharers and has *gabhan* land attached to it.

JUDGMENT.

The judgment of the Court was delivered by

M. MELVILL, J.—The principal object of Bombay Act V of 1862 is to prevent the further dismemberment of bhags or shares in Bhagdari or Narvadari villages. It renders null and void any future alienation of any portion of a bhag other than a recognized sub-division, but it does not invalidate previous alienations. The sale, therefore, of field No. 501 to Daji Dhanji in A.D. 1861 was a valid sale, and conferred upon Daji Dhanji all the rights of a purchaser, including the right of alienation. The portion of the bhag which remained in the hands of the Bhagdar after the separation of the field No. 501 has now been attached, and the Collector has obtained an order setting aside the attachment on the ground that, notwithstanding the sale of field No. 501 to [79] Daji Dhanji, both that field and the remaining portion of the bhag continued to be divisions on the same bhag, and not having been recognized in his books, they are not "recognized sub-divisions" within the meaning of the Act, and that, consequently, neither of them is liable to attachment. We are of opinion that the Collector's contention on this point is erroneous. The effect of it would be to give a retrospective operation to the Act, and to alter the nature of the estate in the field No. 501, which was acquired by Daji Dhanji more than 60 years ago. For, if the field No. 501 were to be treated as an unrecognized sub-division of a bhag in Daji Dhanji's hands, it would follow that Daji Dhanji would be incapable of dealing with it; and his proprietary rights would thus be very seriously affected. This test is itself sufficient to show what injustice would be caused, if the Collector's view were adopted. We think that the sale of the field No. 501, previously to the passing of Bombay Act V of 1862, amounted to a dismemberment of the bhag, and that what remained in the bhagdar's hands continued to be a complete bhag, while the portion separated from it became a new bhag. The ground, therefore, on which the District Judge has proceeded is erroneous, and his decree or order must be reversed. The case must be remanded to him in order that he may determine the other questions between the parties, namely, whether the attached *gabhan* is or is not appurtenant or appendant to the attached bhag, and whether the attachment is invalidated by the fact (if it be a fact), that the judgment-debtor is not the sole proprietor of the bhag.

Costs to follow final decree.