Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Moti Lal v. *Karrab-ul-din, Dilband Begam, and the Administrator-General of Bengal, from the Court of the Judicial Commissioner of Oudh; delivered 3rd July* 1897.

Present:

LORD HOBHOUSE.
LORD MACNAGHTEN.
SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

The Plaintiff in this cause, now dead and represented by the Respondents in the appeal, was formerly Queen of Oudh; and she sued to assert her right to a village in Oudh called Para Kuru. The Court of the Judicial Commissioner has maintained her suit, reversing the decision of the District Judge who dismissed it. The village has been the subject of almost incessant litigation, and of numerous judicial orders, during some twenty years, and its legal history is very complicated. But though it has been necessary to examine all the previous proceedings in order to ascertain the true effect of the orders and transactions which now govern the case, it will be sufficient for this judgment to touch only on a few of them.

In the year 1870 a Mahomedan gentleman named Asghar, being then the sole recorded proprietor of the village, mortgaged it to one who in this discussion has been called Agha. Asghar afterwards granted the village by way of gift to his nephews Yusuf and Nasim, who again mortgaged it to Agha.

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In the year 1879 one Sahib-un-nissa filed a plaint against Agha and Yusuf, claiming to be a creditor of Asghar and to have a charge on the village for her debt; and on the 22nd of November 1880 she obtained a decree to that effect. Under that decree a sale took place, at which Hakim Mahomed Masih purchased the right and interest of the judgment-debtor, who according to the heading of the sale-certificate was Asghar. Nasim was not made a party to the suit. This sale was effected on the 24th August and was confirmed on the 14th November 1882. On it the Plaintiff founds her claim. Her right to recover the village if it was, and remained, the property of Masih, is not disputed. What the Defendant contends is that Masih's title was destroyed by events subsequent to 1882.

On the 20th March 1883 Agha obtained a decree against Yusuf and Nasim on the mortgage effected by them; and he went on to enforce execution. On the 19th June 1883 Masih put in a claim which, being disallowed in execution, he had to enforce by suit. Accordingly on the 28th July 1884 he instituted a suit against the heirs of Agha who was dead, and against Yusuf and Nasim. He prayed for a decree in these terms:—

"That a decree entitling and declaring the "proprietary right of the Plaintiff to the village "Para Kuru * * * be granted to the Plaintiff "to the effect that the village aforesaid is not "liable to attachment and sale in the decree of "Agha Haidar Husain, deceased, dated the 20th "March 1883, as the property of Defendants "Nos. 4 and 5, and that the Defendants be made "to pay the Plaintiff's costs."

On the 4th November 1885 the Judicial Commissioner made an order by which a decree of the District Judge was reversed and the

Plaintiff's appeal and original claim were decreed. Masih was then dead, but the suit had been continued by his heirs.

In the meantime the heirs of Agha had prosecuted their proceedings in execution of his decree of 20th March 1883. On the 22nd October 1884 the village was put up for sale and was purchased by the Defendant Moti, who either was then in possession or obtained it afterwards. It is contended by the Defendant that this sale must be set aside before the Plaintiff's right can be established.

It may be as well here to dispose of a very extraordinary contention set up for the Defendant. He bought whatever interest belonged to the heirs of Agha who were mortgagees, and to Yusuf and Nasim who were mortgagors. But three months before he bought, Masih had instituted his suit against those very persons to establish his title against them, and it was established by the decree of November 1885. Is it possible for the Defendant to allege that, as against Masih or his heirs, the heirs of Agha or Yusuf or Nasim had any interest to convey to him? The District Judge holds that the Defendant is free from the decree because he was no party to the suit, and because the transfer to him was made prior to the decree. If that were law, it is difficult to see in what cases a pending suit would be any protection; and Mr. Branson very properly declined to argue in support of that view. But then he could not assign any reason for avoiding the force of the decree except that Agha's attachment was prior to Masih's suit. Attachment however only prevents alienation; it does not confer title; and even if it did, the interest so acquired would be that of Agha or his heirs, who were Defendants in Masih's suit. It is too clear for argument that the decree of November 1885

binds the interests of Agha, Yusuf and Nasim and of all persons claiming under them by transfer subsequent to the 28th July 1884.

After Masih's death litigation broke out among his heirs, and an order in execution proceedings was made for placing one of them named Amina in possession of one third of the village. Under colour of that order she disturbed the possession of Moti, and he applied in the execution proceedings to protect it. The District Judge by order dated 1st November 1886 allowed Moti's application, saying that the decree of 1885 was not binding on Moti "at any "rate in the present execution proceedings in a "suit between heirs." His language though elliptical points to a sound ground for his decision. It was obviously irregular and illegal for Amina to use an order made as between her and her co-heirs, for the purpose of dispossessing one who was a stranger to Masih's estate and to the litigation between his heirs. The decree of 1885 had nothing to do with the matter.

The cause was heard first before the District Judge who decided adversely to the Plaintiff. First he held that the suit is one to set aside the order of November 1886, and that so it falls within Article 13 of the Limitation Act and, not being brought within a year of the order, is barred by time. But the suit does not pray, and the Plaintiff need not pray, any relief of that sort. The order remains wholly unaffected. It was quite right to hold in November 1885 that Amina had wrongfully disturbed Moti's possession; but the right of Masih or of anybody claiming under him to bring a suit within any time allowed by law for suits to recover property was quite unaffected by that.

Then the learned Judge holds that the suit is barred by Article 12 of the Limitation Act because it is, or ought to be, one to set aside the

sale of 22nd October 1884. But the suit is founded on the fact that prior to that sale a valid sale of the same interests had been made to Masih, and that Moti took nothing because nothing was left to pass to him. The sale is not set aside but is found not to affect the rights of the Plaintiff derived from Masih. The sale does not purport to pass the rights of Masih or of the Plaintiff, but those of the mortgagee Agha and the mortgagors Yusuf and Nasim, against whom Masih established his prior rights. Between setting aside a sale and holding that the Plaintiff's rights are not affected by it, there is a wide difference.

The Judicial Commissioner and Assistant Judicial Commissioner have concurred in holding the District Judge's views to be erroneous, and as their Lordships are of the same opinion they will humbly advise Her Majesty to dismiss the appeal. The Appellant must pay the costs of the Administrator-General of Bengal who defended this appeal.