MAHANT RAMDHAN PURI

v.

BANKEY BIHARI SARAN & OTHERS

1958

May 23.

(GAJENDRAGADKAR, A. K. SARKAR, SUBBA RAO and VIVIAN BOSE JJ.)

Deed, construction of—Mortgage or lease—Accounts—Mortgagee, if bound to render account—Transfer of Property Act (IV of 1882), ss. 76 and 77.

D executed a document in favour of M hypothecating an eight annas share in a village for the purpose of discharging a debt of Rs. 29,496 payable by him to M. In respect of this property there was a pre-existing thika in favour of J for a period of 9 years, under which D took Rs. 2,205 as peshgi money without interest and the annual rent was fixed at Rs. 2,205. The document provided that (i) interest at ½ per cent. per month was payable on the sum of Rs. 29,496; (ii) during the subsistence of the thika M would receive the rent from J and appropriate Rs. 1,769-12-0 towards interest and pay Rs. 435-4-0 as rent to D; (iii) after the expiry of the thika M would take physical possession of the land and appropriate the produce towards interest and pay Rs. 435-4-0 as rent to D; (iv) on the expiry of the thika M would repay the peshgi amount of Rs. 2,205 to J and this sum was added to principal amount due; (v) on the expiry of 15 years, or after the extended period, D would repay the entire principal amount; (vi) and the property was given as security for the amount payable by D. The respondents who are successors of D instituted a suit for redemption on the basis that the transaction was a usufructuary mortgage, for rendition of accounts and for recovery of surplus profits. The appellant, successor of M, contended that the suit for redemption was not maintainable as the transaction was not a mortgage but a lease, and that even if it was a mortgage there was no statutory liability to render accounts as the document provided that the receipts were to be taken in lieu of interest and the case was governed by s. 77, Transfer of Property Act:

Held, that the transaction was a mortgage and not a lease. The guiding rule of construction is that the intention of the parties must be looked into and that once there is debt with security of land for its redemption the arrangement is a mortgage by whatever name it is called.

Held, further, that there was a contract between the mortgagor and the mortgagee within the meaning of s. 77, Transfer of Property Act to the effect that the receipts from the mortgaged property be taken in lieu of interest and consequently the mortgagee was not liable to render accounts. The stipulation

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in the document for payment of Rs. 435-4-0 to the mortgagor was a personal obligation of the mortgagee and he had a right to take the entire receipts from the land in lieu of interest. Though the rate of interest is stated as ½ per cent. per month it was mentioned to enable the parties to approximately fix the amount to be appropriated by the mortgagee from and out of the rent received from the thikadar. The mere fact of the mention of the rate of interest could not make s. 77 inapplicable in view of the clearly expressed intention of the parties.

Pandit Bachchu Lal v. *Chaudhri Syed Mohammad Mah,* (1933) 37 C. W. N. 457, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 239 of 1954.

Appeal from the judgment and decree dated December 12, 1950, of the Patna High Court in Appeal from Original Decree No. 188 of 1945 arising out of the judgment and decree dated December 18, 1945, of the Court of the Additional Subordinate Judge, IV Class, Gaya, in Title Suit No. 4 of 1945.

Purshottam Tricumdas and *S. P. Varma*, for the appellant.

S. P. Sinha and *R. C. Prasad*, for respondents Nos. 1-4, 8-10, 13 and 14.

1958. May 23. The Judgment of the Court was delivered by

Subba Rao J.

SUBBA RAO J.—This appeal by certificate under Art. 133 (1) (a) of the Constitution of India is directed against the judgment and decree of the High Court of Judicature at Patna setting aside those of the Subordinate Judge, Gaya, in a suit for redemption of an usufructuary mortgage.

Deokinand, the common ancestor of plaintiff-respondents 1 to 4 and proforma respondents 6 to 12, executed a document dated August 20, 1923, in favour of Mahant Tokhnarain Puri of Nadra, the predecessor-in-interest of defendant 1, hypothecating eight annas milkiat share in *mauza* Lodipur, Mahimabigha, Tauze No. 4246 for the purpose of discharging a debt of Rs. 31,701 payable by him to the Mahanth. There are conflicting versions in regard to the nature of this transaction—respondents claim it to be a usufructuary

mortgage, while the appellant asserts it to be a lease. The plaintiff-respondents instituted Title Suit No. 4 of 1945 in the Court of the Additional Subordinate Judge IV, Gaya, for redemption of the said document on the basis that it was a usufructuary mortgage, for rendition of accounts and for the recovery of surplus profits due to them. The appellant pleaded, *inter alia*, that the suit for redemption was not maintainable as the document was not a mortgage but a lease, that on the assumption that it was a mortgage it would only be an anomalous mortgage in respect whereof there was no statutory liability to render accounts to the plaintiff, that even if it was a usufructuary mortgage, it was governed by the provisions of s. 77 of the Transfer of Property Act taking the mortgage out of the purview of s. 76 (d) and (g) of the said Act.

It is not necessary to particularize other defences as nothing turns upon them in the appeal. The learned Subordinate Judge held that the document created a usufructuary mortgage and not a lease and that s. 77 of the Transfer of Property Act applied to the document exonerating the appellant from any liability to render accounts. In the result, the learned Subordinate Judge gave a conditional decree in favour of respondents 1 to 4 for possession on their depositing in Court a sum of Rs. 26,839-7-0 within six months from the date of the decree. The plaintiff-respondents preferred an appeal against that decree to the High Court at Patna. The High Court agreed with the learned Subordinate Judge that the document was a usufructuary mortgage but differed from him on the question of applicability of s. 77 of the Transfer of Property Act. The High Court set aside the decree of the learned Subordinate Judge and passed instead a preliminary decree for redemption and sale on default of payment: the decree also directed the rendition of accounts between the parties in the light of the directions given in the judgment. The second defendant against whom the decree was passed preferred the above appeal.

The point to be first decided is whether the transaction is a lease as contended by the contesting respondents. The only guiding rule that can be extracted

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from the cases on the subject is that the intention of the parties must be looked into and that 'once you get a debt with security of land for its redemption, then the arrangement is a mortgage by whatever name it is called' (See Ghosh on Mortgages, V Edn., Vol. I, p. 102). Let us now examine the terms of the document Exhibit A (3) to ascertain the intention of the parties. The document was obviously not drafted by a trained mind. It appears to be a confused product of one of those village document-writers. We shall read the document, omitting the recitals not material to the question raised: The first part of the document recited that the executant was heavily indebted to the other party under mortgage bonds and also otherwise and that common friends settled that a part of the properties mortgaged should be let out in ijara with possession at a lower rate of interest so that "the increment of interest may be checked and the present necessities may be met". It was also stated in the document that in respect of the said property there was a pre-existing thika (lease) dated April 21, 1922, in favour of Munshi Dodraj Lal alias Munshi Jatadhari Lal, for a period of 9 years and that under the said lease, Rs. 2,205 was taken by the executant as peshgi money without interest and the rent was fixed at a sum of Rs. 2,205. Then the document proceeds to state thus:

"In respect of Rs. 29,496 the total sum of peshgi money, he should, for the satisfaction of interest thereon, get executed a usufructuary mortgage deed bearing a lower rate of interest in respect of 8 annas share i. e., half share in mauza Lodipur Mahima Bigha, principal with dependencies, together known and unknown tola and tolas.....
.....for term of 15 years on fixing Rs. 2,205 as the annual rental and by getting mortgaged thereunder 8 annas proprietary interest, thikadari interest together with peshgi money and the right to receive thikadari rent from the said thikadars. Accordingly, at the request and entreaty of me, the executant, the said Mahanthji took pity at my condition and agreed to my request and got ready to get usufructuary mortgage deed executed. Therefore, I, the executant,

.....have voluntarily let out in ijara with possession the whole and entire 8 annas i. e., half of Mauza Lodipur Mahima Bigha..... for a peshgi money of Rs. 31,701.....that Rs. 29,496, the peshgi money bearing interest at ½ per cent. per month and Rs. 2,205, the peshgi money without interest, at an annual rental of Rs. 2,205 including revenue and cesses, for a term of 15 years, commencing from 1331 Fasli to 1345 Fasli.....and have put him in possession and occupation of the ijara property as my representative. It is desired that the said ijaradar should enter into and remain in possession and occupation of the ijara property and so long as the thika of Munshi Dodraj Lal *alias* Jatadhari Lal.....is intact and in force, he should realize the rent from the above-named thikadars and their heirs and representatives in accordance with the stipulations made in the thika patta and kabuliat as representative of me, the executant, and bring it into his possession and use, that is to say, on his own authority he should set off Rs. 1,769-12-0 on account of the interest on the peshgi money bearing interest mentioned in this deed, year after year, and pay the remaining sum of Rs. 435-4-0, the amount of rent due by the ijaradar, i.e., the reserved rent, to me, the executant, and my heirs and representatives.....The ijaradar should not make any default. If he does so, he and his heirs and representatives shall be held liable to pay interest at ½ per cent. per month."

Then the document proceeds to incorporate the terms agreed upon by the parties, to take effect after the termination of the thikadari interest. It is stated:

"The ijaradar of this ijara deed or his heirs and representatives on his own authority shall be competent to bring the thika property into his *sir* possession as ijara property as a representative of me, the executant, in accordance with the stipulations made in the patta and kabuliats after setting off Rs. 2,205 the peshgi money due to the thikadars by me, the executant, against the annual thikadari rent. The said ijaradar should make his own arrangement for the cultivation of the ijara property, get it cultivated

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by others, realise the *nakdi* and *jinsi* income of the ijara property from the tenants..... and appropriate the produce of both the shares thereof. I, the executant, and my heirs and representatives neither have nor shall have any right, claim and demand in respect of the produce or the income of the ijara property so long as the ijara deed is intact except getting Rs. 435-4-0, the rent after the payment and deduction of interest on the peshgi money bearing interest."

The document then allocates the liability in respect of improvements and sums spent in regard to boundary disputes to one or other of the parties to the document and then it continues to state:

"The peshgi money amounting to Rs. 31,701 with and without interest as mentioned in this ijara deed has been realized from the ijaradar in this manner that I allowed Rs. 28,246, the amount of loan principal with simple and compound interest as per account given below after remission of the interest due to the ijaradar under all the three mortgage bonds to be set off against the peshgi money by getting a note made to that effect on the back of the said mortgage bonds which I allowed to remain with the ijaradar as a proof of payment of the peshgi money covered by this deed.....The term of this ijara deed with possession shall terminate in the month of Jeth, 1345 Fasli, when I, the executant, or my heirs and representatives shall repay Rs. 31,701 being the peshgi money with and without interest mentioned in this deed in cash and in one lump sum to the said ijaradar or his heirs and representatives, I shall bring the ijara property into my *sir* possession. If I do not repay the peshgi money with and without interest on the expiry of the term of this ijara deed with possession, then, till the repayment of the whole and entire peshgi money with and without interest, this ijara deed with possession shall precisely with all the stipulations remain in force and intact. I, the executant, or my heirs and representatives shall not put forward any sort of claim or demand in respect of an increase in the produce save and except the claim

for getting rent as fixed and the mentioned above..... .....In security of the payment of the peshgi money with or without interest mentioned in this ijara deed I, the executant, have mortgaged, hypothecated, encumbered and made liable the ijara property. I do hereby make a trustworthy declaration that till the repayment of the entire peshgi money of the ijaradar I shall not in any way directly or indirectly on any allegation mortgage, hypothecate, encumber and transfer the ijara property."

The gist of the aforesaid transaction may be stated thus: The executant was indebted to the other party in a large amount under mortgage bonds and otherwise. Through the intervention of common friends, with a view to salvage some property, the amount due from the executant to the other party was fixed in the sum of Rs. 29,496 and it was settled that half share in mauza should be given as security to the other party. At the time of the execution of the document there was an outstanding thika document in favour of a third party, whereunder the said party advanced a sum of Rs. 2,205 to the executant and agreed to pay Rs. 2,205 as annual rent. As the other party agreed to discharge the advance paid by the third party to the executant, the right to collect the rent from him was also agreed to be given as security to the other party. With the result, the executant received Rs. 31,701 under the document, out of which Rs. 29,496 bore interest at ½ per cent. per month and Rs. 2,205 did not carry interest, presumably because the other party did not actually pay the amount to the executant. The document divided the transaction into two parts. The first part dealt with the terms governing the parties during the subsistence of the thikadari interest; the second part mentioned the terms binding on the parties after the expiry of the said interest. During the first period, the other party would receive the annual rent of Rs. 2,205 from the thikadars, set off Rs. 1,769-12-0 on account of interest on the peshgi money bearing interest and pay the

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remaining sum of Rs. 435-4-0 as reserved rent to the executant. After the expiry of the thikadari interest in 1338 Fasli, the other party would take actual possession by setting off Rs. 2,205 the peshgi money due to the thikadars by the executant, against the annual thikadari rent. After getting possession of the ijara property, the other party would make arrangements for its cultivation and appropriate the produce towards interest, paying the executant only a sum of Rs. 435-4-0 as rent. The previous deeds were discharged and endorsements to that effect made on the back of the documents. If the debt was not discharged within 1345 Fasli, it was agreed that till the repayment of the entire peshgi money, the ijara deed with possession would precisely with all stipulations remain in force and intact. The executant, in express terms, undertook not to put forward any sort of claim or demand in respect of the increase in the produce except and save to get rent as fixed in the document.

From the aforesaid summary of the recitals in the document, the following facts emerge: (1) The executant owed large sums of money to the other party; (2) interest at ½ per cent. per month was agreed to be paid on the sum of Rs. 29,496, i.e., on the entire consideration excluding that amount which was advanced by the thikadars to the executant; (3) the manner of discharging the debt was prescribed in the document, namely, that during the subsistence of the thikadari interest, the other party would receive the rent from the thikadars and appropriate Rs. 1,769-12-0 on account of interest and pay a sum of Rs. 435-4-0 as rent to the executant and that after the expiry of the thikadari interest, the other party would take physical possession of the land and appropriate the produce towards interest and pay only a sum of Rs. 435-4-0 as rent to the executant; (4) on the expiry of 15 years period or after the extended period, the executant would pay the entire principal amount to the other party; (5) 8 annas share in the mauza was specifically given as security for the amount payable by the executant. Under the document, there was a relationship of creditor and debtor between the

parties and the property was given as security for the payment of the amount advanced with interest. Though the document is described as a cowle, the parties, who have had earlier transactions, must be deemed to have known the nature of the transaction they were entering into. In clear and express terms the nature of the transaction has been stated in more than one place. The executant, requested the other party, in respect of the advance amount and interest, to get executed by him a usufructuary mortgage deed bearing a lower rate of interest in respect of the 8 annas share. After mentioning the various terms, the executant restated the intention of the parties in the following terms:

"In security of the payment of the peshgi money with or without interest mentioned in this ijara deed, I, the executant, have mortgaged, hypothecated, encumbered and made liable the ijara property."

Therefore, whatever ambiguity there might be in the recitals that was dispelled by the unambiguous declaration made by the parties that the property was given as security for the loan and the document was executed as a mortgage. The gist of the document was not a letting of the premises, with a rent reserved, but a mortgage of the premises with a small portion of the income of it made payable to the plaintiff. There is, therefore, no scope for the argument in this case that the document is a lease and not a mortgage. We hold, agreeing with the High Court, that the document is a mortgage and not a lease.

Even so, it was contended by the learned Counsel for the appellant that the document did not create an usufructuary mortgage but only an anomalous mortgage. This contention was raised as a foundation to the argument that if the document was an anomalous mortgage, the rights and liabilities of the parties would be governed by the terms of the contract between them and not by the provisions of s. 76 of the Transfer of Property Act. The question does not really fall to be decided in this case. Whether the transaction is a usufructuary mortgage or an anomalous mortgage, in the circumstances of the case, there will

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not be any difference in the matter of rendition of accounts, for in the ultimate analysis, as we would presently show, the true construction of the relevant terms of the document would afford an answer to the question raised. We shall, therefore, proceed to consider the question on the alternative basis.

If it was a usufructuary mortgage, it is contended by the appellant that he was not liable to render accounts to the mortgagor, as, under the mortgage deed, he was authorized to take the receipts in lieu of interest within the meaning of s. 77 of the Transfer of Property Act. The relevant provisions of the Transfer of Property Act are as follows:

"*Section 76*: When during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property,—

(g) he must keep clear, full and accurate accounts of all sums received and spent by him as mortgagee, and, at any time during the continuance of the mortgage, give the mortgagor, at his request and cost, true copies of such accounts and of the vouchers by which they are supported;

(h) his receipts from the mortgaged property, or, where such property is personally occupied by him, a fair occupation-rent in respect thereof, shall, after deducting the expenses properly incurred for the management of the property and the collection of rents and profits and the other expenses mentioned in clauses (c) and (d), and interest thereon, be debited against him in reduction of the amount (if any) from time to time due to him on account of interest and, so far as such receipts exceed any interest due, in reduction or discharge of the mortgage-money; the surplus, if any, shall be paid to the mortgagor;".

"*Section 77:* Nothing in section 76, clauses (b), (d), (g) and (h), applies to cases where there is a contract between the mortgagee and the mortgagor that the receipts from the mortgaged property shall, so long as the mortgagee is in possession of the property, be taken in lieu of interest on the principal money, or in lieu of such interest and defined portions of the principal."

Section 76(g) of the Transfer of Property Act imposes a liability on a mortgagee to keep, full and accurate accounts supported by vouchers. So too, he is under a statutory liability under cl. 'h' to debit the nett receipts of the mortgaged property in deduction of the amount due to him from time to time on account of interest and where such receipts exceed any interest due, in reduction and discharge of the mortgage-money and to pay the surplus, if any, to the mortgagor. Therefore, every mortgagee in possession is bound to keep clear, full and accurate accounts and to render the accounts to the mortgagor in the manner prescribed in cl. 'h'. But s. 77 enacts an exception to the mortgagee's liability under cls. (g) and (h) of s. 76. Under that section (s. 77), if there is a contract between the mortgagor and the mortgagee, whereunder it is agreed that the receipts of the mortgaged property should, so long as the mortgagee is in possession of the property, be taken in lieu of interest and a defined portion of the principal, the mortgagee is freed from the statutory liability to keep accounts or to render accounts to the mortgagor in the manner prescribed under cls. (g) and (h) of s. 76 of the Act. This is so because, the receipts are set off against the interest, and there is nothing to account for. Therefore, to insist upon the mortgagee to keep accounts or render accounts to the mortgagor would be an empty formality. The essential condition for the application of this section is that the receipts of the property should be taken in lieu of interest or in lieu of interest and a defined portion of the principal. The contention of the learned counsel for the respondents is that unless the contract authorizes the mortgagee to take the entire receipts in lieu of interest or in lieu of interest and defined portions of principal, this section cannot be invoked; for it is said that the principle behind the section is that one is set off against the other, with the result, there is nothing to be accounted for, whereas if only a part of the receipts is agreed to be paid towards interest or in lieu of such interest and defined portions of the principal, there would be surplus in the hands of the mortgagee, which would have to be

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accounted for. On the basis of that distinction, an argument is advanced to the effect that, as in the present case, the mortgagee had to pay a sum of Rs. 435-4-0 to the mortgagor, he was not authorized by the mortgagor under the agreement to take the entire receipts in lieu of interest, etc., within the meaning of s. 77 of the Transfer of Property Act. To put it differently, the argument is that out of the receipts from the mortgaged property a portion was paid to the mortgagor and the mortgagee was authorized to take only the balance in lieu of interest and, therefore, there was no contract between the mortgagor and the mortgagee for the latter taking the entire receipts in lieu of interest. We find it difficult to accept this argument. Under Exhibit A(3), the mortgagee undertook an unconditional obligation to pay a sum of Rs. 435-4-0 in respect of the property mortgaged to him. This obligation was not made to depend upon the receipts from the property in the possession of the mortgagee. Whether there was yield from the land or not, he had to make the payment to the mortgagor. Though he had to pay the rent as a consideration for his enjoyment of the land as a mortgagee, his liability did not depend upon the receipts from the land—he had to pay, receipts or no receipts. His liability was also not confined to the receipts, for he was under a personal obligation to pay the amount to the mortgagor. On the other hand, the mortgagee was expressly authorized to take the entire income from the land and appropriate the same towards interest and the mortgagor agreed not to put forward any claim or demand in respect of any increase in the produce. Shortly stated, the mortgagee was under a personal obligation to pay Rs. 435-4-0 to the mortgagor and had a right to take the entire receipts from the land in lieu of interest. It is not a case, therefore, where receipts from the mortgaged property are divided between mortgagor and mortgagee, but one where the mortgagee pays a specified amount to the mortgagor and appropriates the entire receipts in lieu of interest. We, therefore, hold that, under the mortgage deed, Exhibit A(3), there is a contract between the

mortgagee and the mortgagor within the meaning of s. 77 of the Transfer of Property Act, to the effect that the receipts from the mortgaged property should be taken in lieu of interest.

Relying upon the judgment of the High Court, a further attempt was made by the learned Counsel for the respondents to contend that the mention of a specified rate of interest in the document is indicative of the fact that under the document the mortgagee, would have to take only such part of the nett receipts sufficient to discharge the interest and credit the balance to the mortgagor. The mere mention of a rate of interest does not necessarily lead to the conclusion. The rate of interest may be stipulated for estimating the amount payable towards interest so that the parties may visualize whether the nett receipts could reasonably be set off against the interest. The rate may also be given for other reasons.

The Judicial Committee, in *Pandit Bachchu Lal* v. *Chaudhri Syed Mohammad Mah* (1), held that notwithstanding the fact that a particular rate of interest was mentioned in the mortgage deed, there was a contract within the meaning of s. 77 of the Transfer of Property Act. It was a case of a mortgage with possession and a particular rate of interest was mentioned in the mortgage deed. There was a provision for repayment of the principal either in whole or in part before the stipulated period, but it was otherwise provided that the mortgagee should appropriate the surplus profits towards interest, he having no claim to interest and the mortgagors having no claim to the profits. The Privy Council held, on a construction of the mortgage deed, that the said deed contained a contract within the meaning of s. 77 of the Transfer of Property Act, 1882.

In Exhibit A-3, though the rate of interest is stated at ½ per cent. per month, it was obviously mentioned to enable the parties to approximately fix the amount to be appropriated by the mortgagee from and out of the rent received from the thikadar. No doubt, the same rate of interest is also mentioned when the

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parties are dealing with their rights after the expiry of the thikadari interest, but in more than one place they have stated in clear and unambiguous terms that the mortgagee could appropriate the produce towards interest and that the mortgagor would not put forward any sort of claim or demand in respect of any increase in the produce. In view of the clearly expressed intention of the parties, we cannot hold from the mere fact that the rate of interest is mentioned that the document does not come under the purview of s. 77 of the Transfer of Property Act. We hold that s. 77 of the Transfer of Property Act applies to the document and therefore the mortgagee is not liable to render any account to the mortgagor.

On the footing that the mortgage is an anomalous mortgage, we arrive at the same result. The learned Counsel for the appellant contends that if the mortgage is an anomalous mortgage, the parties are only governed by the provisions of s. 98 of the Transfer of Property Act and not by the provisions of s. 77 of the Act. Section 98 says:

"In the case of an anomalous mortgage, the rights and liabilities of the parties shall be determined by their contract as evidenced in the mortgage-deed, and, so far as such contract does not extend, by local usage."

The question whether this section excludes the operation of other relevant provisions of the Act, including s. 77, need not be considered in this case, for, whether s. 77 applies, as the learned Counsel for the respondents contends, or the terms of the contract would govern the rights of the parties, as the learned counsel for the appellant argues, the result would be the same for the question to be decided is whether under the terms of the mortgage, the mortgagee has the right to appropriate the entire nett receipts in lieu of interest. We have already held that in Exhibit A(3) not only there is such a recital but there is a specific term whereunder the mortgagor expressly agreed not to claim any produce received by the mortgagee. Whether s. 77 applies or not, under the express terms of the contract,

the appellant is not liable to render accounts for the excess receipts.

No other point is raised before us. In the result, the decree of the High Court is set aside and that of the Subordinate Judge is restored. The appellant will have his costs throughout.

Appeal allowed.

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(GAJENDRAGADKAR, A. K. SARKAR and SUBBA RAO JJ.)

Customary Law—Inheritence—Hindu in Punjab succeeding to maternal grandfather's estate—Such property, if ancestral qua his sons—Stare decisis—Rule, when inapplicable.

Under the customary law of the Punjab property inherited by a Hindu male from his maternal grandfather is not ancestral property qua his sons.

Narotam Chand v. *Mst. Durga Devi*, I. L. R. (1950) Punj. 1, approved.

Lehna v. *Musammat Thakri*, (1895) 30 P. R. 124 and *Musammat Attar Kaur* v. *Nikkoo*, (1924) I. L. R. 5 Lah. 356, not approved.

The rule of *stare decisis* is not an inflexible rule and is inapplicable where the decision is clearly erroneous and when its reversal does not shake any titles or contracts or alter the general course of dealing.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 150 of 1955.

Appeal from the judgment and decree dated August 20, 1952, of the Punjab High Court in Regular First Appeal No. 107 of 1949 arising out of the judgment