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suits against a Central Board in respect of their acts as well as to suits for any relief in respect of any waqf. It is not denied that the present suit would attract the provisions of s. 53 if the argument that the Darga and the offerings are not notified is rejected. The result is that the suit is not maintainable as a result of the appellant's failure to comply with the requirements of s. 53. We would accordingly confirm the finding of the High Court that the appellants' suit is barred by time under s. 5(2) and is also not maintainable in view of the fact that the appellants have not given the requisite notice under s. 53 of the Act.

The result is that the appeal fails and is dismissed with costs.

Appeal dismissed.

RADHA SUNDAR DUTTA

v.

MOHD. JAHADUR RAHIM AND OTHERS

1958

September 18.

(VENKATARAMA AIYAR, GAJENDRAGADKAR and A. K. SARKAR JJ.)

Grant—Construction—Patni settlement—Chaukidari Chakaran lands—Resumption and transfer to Zamindar—Grant of the lands by the Zamindar on Patni to person who held the village in Patni settlement—Distinct Patni—Sale of lands for arrears of revenue—Validity—Bengal Patni Taluks Regulation, 1819 (Ben. Regulation VIII of 1819), ss. 8, 14—Village Chaukidari Act, 1870 (Ben. VI of 1870), ss. 48, 50, 51.

The lands in question are situate in lot Ahiyapur which is one of the villages forming part of the permanently settled estate of Burdwan and had been set apart as Chaukidari Chakaran lands to be held by the Chaukidars for rendering service in the village as watchmen. At the time of the permanent settlement the income from these lands was not taken into account in fixing the *jama* payable on the estate. Some time before the enactment of the Bengal Patni Taluks Regulation, 1819, the entire village of Ahiyapur was granted by the then

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Zamindar of Burdwan, to the predecessors-in-title of the defendants on *Patni* settlement. In 1870 the Village Chaukidari Act came into force and acting under the provisions of that Act the Government put an end to the services of the Chaukidars, resumed the lands and imposed an assessment thereon, and, subject to it, transferred the lands to the Zamindar. On June 3, 1899, the Zamindar granted the suit lands on *Patni* to the predecessors-in-title of the defendants who were the then holders of the village in *Patni*. In proceedings taken by the Zamindar under the provisions of the Bengal Patni Taluks Regulation, 1819, the suit lands were brought to sale for arrears of rent and purchased by him. On February 13, 1941, the Zamindar sold the lands to the appellant who sued to recover possession thereof from the defendants. The defendants resisted the suit on the ground, inter alia, that the effect of the grant of the Chaukidari Chakaran lands on June 3, 1899, was to make them part and parcel of the *Patni* settlement of the village of Ahiyapur and that, in consequence, the sale of those lands, apart from the village of Ahiyapur, was bad as being a sale of a portion of the *Patni*.

Held, that when the Zamindar made a grant of the Chaukidari Chakaran lands which formed part of a village which had previously been settled in *Patni*, it was open to the parties to agree that those lands should form a new and distinct *Patni* and the result of such an agreement would be that while the grantee would hold those lands in *Patni* right, that is to say, that the tenure would be permanent, heritable and alienable, so far as his liability to pay *jama* and the corresponding right of the Zamindar to sell it under the Regulation if there was a default in the payment thereof were concerned, the new grant would be a distinct *Patni*, independent of the original *Patni*.

Held, further, that construing the grant dated June 3, 1899, as a whole, the intention of the parties as expressed therein was that the Chaukidari Chakaran lands were to be treated as a distinct *Patni* and that, therefore, the sale of the lands for arrears of rent was valid.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 108 of 1954.

Appeal from the judgment and decree dated March 21, 1952, of the Calcutta High Court in Appeal from Appellate Decree No. 971 of 1950, arising out of the judgment and decree dated August 29, 1950, of the Court of District Judge of Zillah Burdwan in Title Appeal No. 247/16 of 1948 against judgment and decree dated September 25, 1948, of the Court of Additional Sub-Judge, 1st Court, Burdwan, in Title Suit No. 7 of 1946/27 of 1947.

N. C. Chatterjee and *Sukumar Ghose*, for the appellant.

J. N. Banerjee and *P. K. Ghose*, for the respondents.

1958. September 18. The Judgment of the Court was delivered by

VENKATARAMA AIYAR J.—This is an appeal by the plaintiff against the judgment of the High Court of Calcutta in a second appeal which, in reversal of the judgments of the Courts below dismissed his suit, which was one in ejectment.

The suit property is a Mahal of the extent of 84 Bighas 18 Cottas situated within lot Ahiyapur village, which is one of the villages forming part of the permanently settled estate of Burdwan Zamindari. This village was granted by the Maharaja of Burdwan in *Patni* settlement to the predecessors-in-title of defendants 1 to 7. The exact date of this grant does not appear, but it is stated that it was sometime prior to the enactment of the Bengal Patni Taluks Regulation, 1819 (Bengal Regulation VIII of 1819), hereinafter referred to as the Regulation, and nothing turns on it. The Mahal with which this litigation is concerned, had been at or prior to the permanent settlement set apart as *Chaukidari Chakaran* lands; that is to say, they were to be held by the Chaukidars for rendering service in the village as watchmen. In 1870, the Village Chaukidari Act, 1870 (Ben. VI of 1870), hereinafter referred to as the Act, was passed, and s. 48 of that Act provides that all *Chaukidari Chakaran* lands assigned for the benefit of any village shall be transferred to the zamindar of the estate in the manner and subject to the provisions contained in the Act. Under s. 50, the Collector is authorized to make an order transferring those lands to the Zamindar after determining the assessment payable thereon, and s. 51 enacts that:

"Such order shall operate to transfer to such *zamindar* the land therein mentioned subject to the amount of assessment therein mentioned, and subject

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to all contracts theretofore made, in respect of, under, or by virtue of, which any person other than the *zamindar* may have any right to any land, portion of his estate, or tenure, in the place in which such land may be situate."

In accordance with the provisions aforesaid, the suit properties were transferred to the Maharaja of Burdwan, and on June 3, 1899, he granted the same to the predecessors-in-title of defendants 1 to 7, who at that time held the *Patni* interest in respect of lot Ahiyapur. Under the grant which has been marked as exhibit B, the yearly rental for the area was fixed at Rs. 126-8 as., out of which Rs. 84-4 as., had to be paid to the *Panchayat* within the 7th of Baisakh for being credited to the *Chaukidari* Fund and the balance of Rs. 42-4 as., was to be paid to the *Zamindar* within the month of Chaitra. Exhibit B also provides that in default of payment of kist the lands are liable to be sold in proceedings taken under the Bengal Regulation VIII of 1819. Acting under this clause, the Maharaja applied under s. 8 of the Regulation to bring the suit lands to sale for realisation of arrears, and at the auction held on May 15, 1937, himself became the purchaser. On February 13, 1941, he granted the lands again on *Patni* to the appellant, who filed the suit, out of which the present appeal arises, in the Court of the Subordinate Judge, Burdwan, to recover possession thereof from the defendants alleging that they had trespassed thereon. The respondents contested the suit on the ground that, in fact, there were no arrears of rent due under Exhibit B, and that the sale was therefore void.

The Subordinate Judge held that there were arrears of rent due from the respondents, and that further as they had not sued to set aside the sale under s. 14 of the Regulation within the time limited by law, they could not set up its invalidity as a defence to the action in ejectment. The defendants preferred an appeal against this judgment to the District Court of Burdwan, and there raised a new contention that under the grant, Exhibit B, the suit lands became part of lot Ahiyapur, and that a sale of those lands was

illegal as being a sale of a portion of the *Patni*. The District Judge after observing that the point was taken for the first time, held on a construction of Exhibit B that it created a new *Patni*, and that it could therefore be brought to sale, and he also held that s. 14 of the Regulation operated as a bar to the validity of the sale being questioned on the ground that the rent claimed was not, in fact, due. He accordingly dismissed the appeal. The respondents took the matter in second appeal to the High Court, and that was heard by a Bench consisting of Das Gupta and Lahiri JJ. who differed from the District Judge both on the construction of Exhibit B and on the bar of limitation based on s. 14 of the Regulation. They held that the effect of Exhibit B was merely to make the suit lands part and parcel of the *Patni* lot Ahiyapur, and that, therefore, the sale of those lands only was bad, as being a sale of a part of the *Patni*. They further held that as such a sale was void, s. 14 of the Regulation had no application. They accordingly allowed the appeal, and dismissed the suit. It is against this judgment that the present appeal has been brought on a certificate granted by the High Court under Art. 133(1)(a).

Mr. N. C. Chatterjee for the appellant urged the following contentions in support of the appeal: (1) The defendants did not raise either in the written statement or during the trial, the plea that under the sanad, Exhibit B, the *Chaukidari Chakaran* lands comprised therein became part of the *Patni* settlement of lot Ahiyapur, and, in consequence, their sale was bad as being of a part of the *Patni*, and the learned Judges should not have allowed that point to be raised in appeal. (2) Exhibit B properly construed must be held to create a new *Patni* distinct from lot Ahiyapur, and its sale is therefore valid. (3) Assuming that the sale is invalid as being of a part of a tenure, the only right of the defendants was to sue to have it set aside, as provided in s. 14 of the Regulation, and that not having been done, it is not open to them to attack it collaterally in these proceedings.

We see no substance in the first contention. It is

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true that the defendants did not put forward in the trial Court the plea that the effect of Exhibit B was to incorporate the suit lands in lot Ahiyapur *Patni*, and that, in consequence, the sale was illegal as being of a part of the *Patni*. On the other hand, the written statement proceeds on the view that Exhibit B created a new *Patni* unconnected with lot Ahiyapur, and the only defence raised on that basis was that no arrears of rent were due under Exhibit B, and that the sale was therefore invalid. But the true nature of the grant under Exhibit B is a matter to be decided on a construction of the terms of the document, and that is a question of law. It is argued for the appellant that it would be proper in determining the true character of the grant under Exhibit B to take into account surrounding circumstances, that to ascertain what those circumstances are, it will be necessary to take evidence, and that, in consequence, a question of that kind could not be permitted to be agitated for the first time in appeal. But it is well-settled that no evidence is admissible on a question of construction of a contract or grant, which must be based solely on the terms of the document, there being no suggestion before us that there is any dispute as to how the contents of the document are related to existing facts. Vide *Balkishen Das* v. *Legge* (1) and *Maung Kyin* v. *Ma Shwe La* (2). It should, moreover, be mentioned that when the defendants sought to raise this contention in their appeal in the District Court, no objection was taken by the plaintiff thereto. Under the circumstances, the learned Judges were right in allowing this point to be taken. This contention must therefore be rejected.

The next point for determination is as to the true character of the grant under Exhibit B, whether it amounts to a new *Patni* with reference to the *Chaukidari Chakaran* lands as contended for by the appellant, or whether it incorporates those lands in the *Patni* of lot Ahiyapur, so as to make them part and parcel of the lands comprised therein, as is maintained by the respondents. To appreciate the

(1) (1899) L.R. 27 I.A. 58, 65. (2) (1917) L.R. 44 I.A. 236, 243.

true position, it is necessary to examine what the rights of the *Zamindar* and of the *Patnidar* were with respect to *Chaukidari Chakaran* lands at the time of the grant, Exhibit B. These lands had been originally set apart as remuneration for the performance of services by the village chaukidars as watchmen, and for that reason when the village was granted to the *Zamindar* in permanent settlement, the income therefrom was not taken into account in fixing the *jama* payable by him, though they passed to him under the permanent settlement. Then came the Village Chaukidari Act, and under that Act the Government put an end to the services of the Chaukidars as village watchmen, resumed the lands and imposed assessment thereon, and, subject to it, transferred them to the *Zamindar*; and where the *Zamindar* had already parted with the village in which the lands were situate, by granting *Patni*, it became necessary to define the rights of the *Zamindar* and the *Patnidar* with reference to those lands. Dealing with this matter, s. 51 of the Act provides that the title of the *Zamindar* on resumption and transfer by the Government shall be subject to "all contracts theretofore made". Under this section, the *Patnidar* would be entitled to the *Chaukidari Chakaran* lands in the same right and on the same terms on which he held the village in which they are situate. The nature of this right has been the subject of consideration in numerous authorities, and the law on the subject is well-settled. In *Ranjit Singh* v. *Maharaj Bahadur Singh* (1), it was held by the Privy Council that though the reservation under s. 51 is of rights under contracts made by the Zamindar and the word "contract" primarily means a transaction which creates personal obligations, it might also refer to transactions which create real rights, and that it was in that sense the word was used in s. 51, and that accordingly the *Patnidar* was entitled to institute a suit against the *Zamindar* for possession of those lands and was not obliged to sue for specific performance. But this does not mean that the *Patnidar* is

(1) (1918) L.R. 45 I.A. 162.

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entitled to hold the lands free of all obligations. He is under a liability to pay to the *Zamindar* the assessment due thereon, when it is fixed under s. 50, and also a share of profits. Vide *Bhupendra Narayan Singh* v. *Narapat Singh* (1), where it was held by the Privy Council that when *Chaukidari Chakaran* lands included in a *Patni* settlement had been resumed and transferred to the *Zamindar* under s. 51 of the Act, he is entitled to the payment of a fair and equitable rent in respect thereof, and that the fixing of the rent is a condition to the *Patnidar* being put in possession. Vide also *Rajendra Nath Mukherjee* v. *Hiralal Mukherjee* (2) and *Gopendra Chandra* v. *Taraprasanna* (3).

These being the rights and obligations of the *Zamindar* and the *Patnidar* under s. 51 of the Act, a grant of the *Chaukidari Chakaran* lands by the former to the latter serves, in fact, two purposes. It recognises that the grantee is entitled to hold those lands by virtue of his title as *Patnidar* of the village of which they form part, and it fixes the amount payable by him on account of assessment and share of profits. The question then arises as to what the exact relationship is in which the new grant stands to the original Patni grant. Now, when s. 51 of the Act recognises and saves rights which had been acquired under contract with the *Zamindar*, its reasonable implication is that the rights so recognised are the same as under the contract, and that, in consequence, the settlement of the *Chaukidari Chakaran* lands in *Patni* must be taken to be a continuance of the *Patni* of the village in which they are included. But it is open to the parties to agree that the *Chaukidari Chakaran* lands should form a new and distinct *Patni*, and the result of such an agreement will be that while the grantee will hold those lands in *Patni* right, that is to say, the tenure will be permanent, heritable and alienable so far as his liability to pay *jama* and the corresponding right of the *Zamindar* to sell it under the Regulation if there is any default in the

(1) (1925) L.R. 52 I.A. 355. (2) (1906) 14 C.W.N. 995.
(3) (1910) I.L.R. 37 Cal. 598.

payment thereof are concerned, the new grant will be an entity by itself independent of the original *Patni*. That that could be done by agreement of parties is well-settled, and is not disputed before us. If that is the true position, then the real question to be considered is, what is the agreement of parties with reference to the *Chaukidari Chakaran* lands, whether they are to be constituted as an independent *Patni* or whether they should be treated as a continuation of the original *Patni* or an accretion thereto, and the answer to it must depend on the interpretation to be put on the grant.

It is now necessary to refer to the material terms of Exhibit B under which the *Chaukidari Chakaran* lands were granted to the predecessors of respondents 1 to 7. It begins by stating that the *Patnidars* of lot Ahiyapur appeared before the *Zamindar* and "prayed for taking *Patni* settlement of the said 84 Bighas 18 Cottas of land at a yearly rental of Rs. 126/8 as.", and then provides how the amount is to be paid. Then there is the following clause, which is important:

"You will pay the rent etc., Kist after Kist according to the Kistbandi in accordance with law, and if you do not pay the same, I will realise the arrears together with interest and costs by causing *the aforesaid lands* to be sold by auction by instituting proceedings under Regulation VIII of 1819 and other laws which are in force or will come into force....".

Then follow provisions relating to the transfer by the *Patnidars* of "the aforesaid lands", succession by inheritance or by will to "the aforesaid lands" and the registration of the name of the transferee or successor in the *Sherista*, and it is expressly stated that "so long as the name of the *new Patnidar* is not recorded in the *Sherista*, the former *Patnidar* whose name is recorded in the *Sherista* will remain liable *for the rent*, and on a sale of the Mahal by auction on institution of proceedings against him under Regulation VIII of 1819 or any other law that will be in force for realisation of arrears of rent, no objection thereto on the *part of the new Patnidar* can be entertained."

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Then, there are two clauses on which the respondents rely, and they are in these terms:

"If in future it transpires that any other persons besides yourselves have *Patni* rights in the *Patni* interest of the said lot Ahiyapur, such persons shall have *Patni* rights in these *Chakaran* lands also to the same extent and in the same manner as they will be found to have interests in the *Patni* of the aforesaid lot, and if for the said reason any person puts forward any claim against the Raj Estate and the Raj Estate has to suffer any loss therefor, you will make good the said claim and the loss without any objection. If in future the *Patni* interest in the said lot Ahiyapur be transferred for liability for arrears of rent or if the same comes to an end for any reason, then your *Patni* interest in these *Chakaran* lands also will be transferred or will come to an end alongwith the original *Patni* simultaneously."

It is on these two clauses that the learned Judges in the Court below have based their decision that the intention of the parties was to treat the suit lands as part of the *Patni* of lot Ahiyapur. Now, it cannot be disputed that the two clauses aforesaid afford considerable support to the conclusion to which the learned Judges have come. The first clause provides that if besides the grantee under Exhibit B, there were other persons entitled to *Patni* rights in lot Ahiyapur, those persons also shall have *Patni* rights in *Chaukidari Chakaran* lands to the same extent as in *Patni* Ahiyapur. That clearly means that the rights conferred on the grantees under Exhibit B have their roots in the *Patni* lot of Ahiyapur. Likewise, the provision in the last clause that the grantees will lose their rights to the *Chaukidari Chakaran* lands if their interest in Ahiyapur Patni was sold clearly suggests that the grant under Exhibit B is to be an annexe to the grant of Ahiyapur.

As against this, the appellant argues that the other clauses in Exhibit B quoted above strongly support his contention, and that when the document is read as a whole, it unmistakably reveals an intention to treat the suit lands as a distinct *Patni*. We must now

refer to these clauses. Exhibit B begins by reciting that the grantees desired to take a *Patni* settlement of 84 Bighas 18 Cottas, which is some indication, though not very strong, that it is to be held as a distinct entity. We have then the clause which provides that when there is default in the payment of kist, the lands are liable to be sold in proceedings instituted under the Regulation. Now, the law had long been settled that a sale of a portion of a *Patni* is bad, but that if by agreement of all the parties interested different portions thereof are held under different sanads, which provide for sale of those portions for default in payment of kist payable respectively thereon, then each of those sanads might be held to have created a separate *Patni* in respect of the portion comprised therein. Vide *Mohadeb Mundul* v. *Mr. H. Cowell* (1) and *Monomothonath Dev and another* v. *Mr. G. Glascott* (2). When, therefore, the *Zamindar* and the *Patnidar* agreed under Exhibit B that the lands comprised therein could be sold under the Regulation when there was default in payment of kist fixed therefor, they must clearly have intended that those lands should be constituted into a distinct *Patni*. Otherwise, the clause will be inoperative and void, and indeed, the learned Judges in the Court below have, on that ground, declined to give any effect to it.

Now, it is a settled rule of interpretation that if there be admissible two constructions of a document, one of which will give effect to all the clauses therein while the other will render one or more of them nugatory, it is the former that should be adopted on the principle expressed in the maxim "*ut res magis valeat quam pereat*". What has to be considered therefore is whether it is possible to give effect to the clause in question, which can only be by construing Exhibit B as creating a separate *Patni*, and at the same time reconcile the last two clauses with that construction. Taking first the provision that if there be other persons entitled to the *Patni* of lot Ahiyapur they are to have the same rights in the land comprised in Exhibit B,

(1) (1871) 15 Weekly Reporter 445.
(2) (1873) 20 Weekly Reporter 275.

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that no doubt posits the continuance in those persons of the title under the original *Patni*. But the true purpose of this clause is, in our opinion, not so much to declare the rights of those other persons which rest on statutory recognition, but to provide that the grantees under the document should take subject to those rights. That that is the purpose of the clause is clear from the provision for indemnity which is contained therein. Moreover, if on an interpretation of the other clauses in the grant, the correct conclusion to come to is that it creates a new *Patni* in favour of the grantees thereunder, it is difficult to see how the reservation of the rights of the other *Patnidars* of lot Ahiyapur, should such there be, affects that conclusion. We are unable to see anything in the clause under discussion, which militates against the conclusion that Exhibit B creates a new Patni.

Then there is the clause as to the cesser of interest of the grantees in the *Chaukidari Chakaran* lands when their title to lot Ahiyapur comes to an end, and according to the respondents, this shows that under Exhibit B the *Chaukidari Chakaran* lands are treated as part and parcel of the Ahiyapur *Patni*. If that were so, a sale of lot Ahiyapur must carry with it the *Chaukidari Chakaran* lands, they being *ex hypothesi*, part and parcel thereof, and there was no need for a provision such as is made in the last clause. But that clause would serve a real purpose if the *Patni* under Exhibit B is construed as separate from that of lot Ahiyapur. In that view, when the major *Patni* of lot Ahiyapur is sold, the intention obviously is that the minor *Patni* under Exhibit B, should not stand out but be extinguished,—a result which could be achieved only by a special provision. We should finally refer to the clauses in Exhibit B providing for transfer of or succession to the *Chaukidari Chakaran* lands and for the recognition of such transferee or successor as a *Patnidar* of those lands. It is clear from these provisions that such a transferee or successor is to hold the lands as a *Patnidar*, different from the *Patnidar* of lot Ahiyapur. Reading these clauses along with the last clause, it seems clear that the intention of the parties

was that while a transfer of the Ahiyapur *Patni* by sale should extinguish the title of the holders of the *Chaukidari Chakaran* lands a transfer of these lands would have no effect on the title to the lot Ahiyapur Patni. Construing Exhibit B, as a whole, we are of opinion that the intention of the parties as expressed therein was that the *Chaukidari Chakaran* lands should be held as a distinct *Patni*.

We must now refer to the decision on which the learned Judges in the Court below have relied in support of their conclusion. In *Kanchan Barani Debi* v. *Umesh Chandra* (1), the facts were that the Maharaja of Burdwan had created a *Patni* of lot Kooly in 1820. The *Chaukidari Chakaran* lands situated within that village were resumed under the Act and transferred to the *Zamindar* who granted them in 1899 to one Syamlal Chatterjee in *Patni* on terms similar to those in Exhibit B. In 1914 the *Patni* lot Kooly was sold under the Regulation, and purchased by Smt. Kanchan Barani Debi. She then sued as such purchaser to recover possession of the *Chaukidari Chakaran* lands. The defendants who represented the grantees under the *Patni* settlement of 1899 resisted the suit on the ground that the sale of *Patni* Kooly did not operate to vest in the purchaser the title in the *Chaukidari Chakaran* lands, as they formed a distinct *Patni*. Dealing with this contention, B. B. Ghose J. who delivered the judgment of the Court, observed :

"It is certainly open to the only two parties concerned to alter the terms of the original patni if they chose to do so; and what we have to see is whether that was done. In order to do that, we have to examine the terms of the pattah by which the Chaukidari Chakaran lands were granted to Syamlal Chatterjee."

The learned Judge then refers to the two clauses corresponding to the last two clauses in Exhibit B, and comes to the conclusion that their effect was merely to, restore the position as it was when the original *Patni* was created, and that, in consequence, the purchaser was entitled to the *Patni* as it was created in 1820.

(1) A.I.R. 1925 Cal. 807.

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and that the plaintiff was entitled to the possession of the *Chaukidari Chakaran* lands as being part of the *Patni*. Now, it is to be observed that in deciding that the *Chaukidari Chakaran* lands granted in 1899 became merged is lot Kooly, as it was in 1820, the learned Judge did not consider the effect of the clause providing for sale of those lands as a distinct entity under the provisions of the Regulation when there was default in the payment of rent payable thereon under the deed, and that, in our opinion, deprives the decision of much of its value. In the result, we are unable to hold that the two clauses on which the learned Judges base their conclusion are really inconsistent with the earlier clauses which support the view that the grant under Exhibit B is of a distinct *Patni*. Nor do we agree with them that the earlier clause providing for the sale of the *Chaukidari Chakaran* lands in default of the payment of *jama*, should be construed so as not to override the later clauses. If, in fact, there is a conflict between the earlier clause and the later clauses and it is not possible to give effect to all of them, then the rule of construction is well-established that it is the earlier clause that must override the later clauses and not *vice versa*. In *Forbes* v. *Git* (1), Lord Wrenbury stated the rule in the following terms:

"If in a deed an earlier clause is followed by a later clause which destroys altogether the obligation created by the earlier clause, the later clause is to be rejected as repugnant and the earlier clause prevails. In this case the two clauses cannot be reconciled and the earlier provision in the deed prevails over the later."

We accordingly hold that Exhibit B created a new *Patni* and that the sale of the lands comprised therein is not bad as of a portion of a Patni.

We are conscious that we are differing from the learned Judges of the Court below on a question relating to a local tenure on which their opinion is, by reason of the special knowledge and experience which they have of it, entitled to the greatest weight. It is also true that the decision in *Kanchan Barani Debi* v.

(1) [1922] 1 A.C. 256, 259.

Umesh Chandra (1) has stood now for over three decades, though it is pertinent to add that its correctness does not appear to have come up for consideration in any subsequent decision of the Calcutta High Court, prior to this litigation. But then, the question is one of construction of a deed, and our decision that the effect of an agreement of the kind in Exhibit B was to constitute the *Chaukidari Chakaran* lands into a distinct *Patni* will not result in any injustice to the parties. On the other hand, the rule that a portion of a *Patni* should not be sold being one intended for the benefit of the *Patnidars*, there is no reason why an agreement entered into by them with the *Zamindars* providing for the sale of a portion, thereof—which is really to their advantage, should not be given effect to. Having anxiously considered the matter, we have come to the conclusion that Exhibit B creates a distinct *Patni*, that the sale thereof on May 15, 1937, is valid, and that the plaintiff has therefore acquired a good title to the suit lands under the grant dated February 13, 1941. In this view, it is unnecessary to express any opinion on the point that was the subject of considerable argument before us as to whether it is open to the defendants to raise the invalidity of the sale held on May 15, 1937, in answer to this action, they not having taken steps to have set it aside, as provided in s. 14 of the Regulation.

In the result, the appeal is allowed, the judgment of the lower Court reversed and that of the District Judge restored, with costs throughout.

Appeal allowed.

(1) A.I.R. 1925 Cal. 807.