Special Appeal No. 729 *of* 1865.

ANNA'JI' A'PPA'JI'.....*Appellant.*

KA'SI' A'TMA'JI' and others.....*Respondents.*

Inámdár—perpetual lease—ejectment.

Where a family of kulkarnís in the Konkan was proved to have been in actual occupation of land under an inámdár, for ninety years, at a uniform rent:—

Held, in the absence of proof of any lease for a more limited term, as alleged by the plaintiff, that the occupants were entitled to hold as long as they paid the usual rent.

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THIS was a special appeal from the decision of W. H. Newnham, Acting Senior Assistant Judge of the Konkaṇ, at Ratnágirí, in Appeal Suit No. 258 of 1865, reversing the decree of the Munsif of Málvaṇ, in Original Suit No. 449 of 1864.

Aṇṇájí sued Kásí and others for possession of a field: alleging that it was his inám, and had been let to A'tmáji, the father of the first defendant; but that the defendants would not restore it to him.

Kásí answered that the land belonged to himself and certain of the other defendants, and was not the plaintiff's; that he paid rent to the plaintiff as the inámdár in whose name the land stood, but that he had the right of occupancy; and, further, that the third share of the land had been given to him rent-free in 1843 by the plaintiff's brother.

The other defendants, who were either holders in the same interest with Kásí, or mortgagees under them, answered, asserting their respective rights.

The Munsif found that the plaintiff was the owner of the land; that the defendants did not prove a right of perpetual occupancy, as they were merely the tenants of the plaintiff, or of others deriving their rights from him; and that the alleged gift of one-third of the inám by the plaintiff's brother was not valid, even if proved, without the consent of the plaintiff. His decree was, therefore, for the plaintiff.

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Against this decree the defendants appealed, urging (amongst other grounds) that the kulkarṇí defendants' right of perpetual occupancy had been proved, whilst the sanads of the plaintiff only gave the revenue of the land to him; and that the conveyance (No. 14) of one-third of the inám had been proved, and was valid.

The Senior Assistant Judge laid down the point for decision to be: Has Aṇṇáji a right to eject the defendants, or have they a right of perpetual occupancy; and recorded the following judgment:—

"Defendants allege that only the revenue of the land was granted to plaintiff's family, and not the right of occupation. This I do not find. The old sanad (or rather order) produced by him, which is dated as far back as A.D. 1718, distinctly specifies that the land was granted as mirási, or inheritance. But it is admitted that neither the plaintiff nor his ancestors ever had possession personally; and although the kulkarṇí defendants do not prove, as they allege, that they have been the occupants ever since the grant to plaintiff's ancestors, it is admitted by him that they have had occupancy for more than one generation. Their occupancy is recognised in two orders given to the Mámlatdár, in the time of the Peshwá; and in the papers produced by them, the rights of plaintiff's family as inámdárs, and of defendants as occupants, are coupled.

"The plaintiff does not produce any document showing the alleged lease to A'tmáji (it was lost, he says, when his house was burnt); nor is there oral evidence of such a lease. The only approach to a recognition of his power over the land which he shows, is a mortgage of A.D. 1809, by the grandfather of one of the defendants to one Gadre of some of the land, in which it is specified: 'when the owner comes he will redeem the land;' but this is not enough by itself.

"Though the position of the kulkarṇís has been that of tenants under the inámdár, there is, I think, reason to believe that their rights as occupants are contemporary with his inám rights (just as in many cases those of the khot and

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dhárekharís); and I do not consider the plaintiff has the right to eject them.

"The Munsif's decree is reversed; and the claim thrown out with costs on Aṇṇáji."

Against this decision a special appeal was admitted upon the following grounds:—(1) The Senior Assistant Judge was in error in holding that the appellant had admitted that neither he nor his ancestors ever had possession of the land personally, there being no such admission on the record, nor was any such ever made by him; (2) that he was in error in not throwing the *onus* of proving the right of perpetual occupancy, in limitation of the rights of the inámdár, upon the respondents; (3) that he misconstrued the documents Nos. 46 and 47, in holding that respondents' right of occupancy was recognised by the Peshwá; (4) that he was wrong in holding that in the papers produced by the respondents their right as occupants, and that of the appellant's family as inámdárs, were coupled: as those papers, having been prepared by the respondents themselves as kulkarṇís, were inadmissible as evidence against the appellant; (5) that he was wrong in not considering the admission contained in the mortgage deed as conclusive against the obligor, and that Kási's father, having attested the same, must be considered to have acquiesced in the arrangement.

Dhirajlál Mathurádás, for the appellant, urged the grounds of appeal generally, and contended that the position of the inámdár was clearly that of landlord; that the tenancy was only a yearly tenancy; that, except the length of their possession, the defendants had given no evidence of their allegation of being perpetual occupants; that the ordinary law of landlord and tenant should be enforced, and the claim to eject allowed.

Shántárám Náráyaṇ, contra, urged that the plaintiff had failed in making out the case he put forward in his plaint, viz., a lease of the land to A'tmáji, the father of defendant Kási; that defendants had been found to have an estate in the land not defeasible at the will of the plaintiff,—in other

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words, an estate in fee; that in this country, unless the tenant were protected by long occupancy, as in this case, the proved actual occupancy for ninety years, under exhibits Nos. 46 and 47, not to speak of the Judge's opinion that both the inám and the tenancy were coeval, *i.e.*, 146 years old, when the suit was brought, there would be no such thing as a perpetual estate in the land; and that from the inámdárs' acquiescence in the long and uninterrupted occupancy of the kulkarṇís at a uniform rent, the Judge was justified in presuming an arrangement of perpetual occupancy between them: *Sule* v. *Dhundiráj Vináyak (a)*.

PER CURIAM (TUCKER and GIBBS, JJ.):—In this case it has been shown that the tenants have been in actual occupation of the fields in dispute for ninety years; and that during that term they have paid a fixed proportion of the grain produced to the inámdár.

From this long and uninterrupted occupation at a uniform rent, it may be inferred that the land was demised on a perpetual lease; and we hold that, in the absence of proof of any lease for a more limited term, as alleged by plaintiff in the plaint, the defendants cannot be ejected so long as they pay the usual rent.

We do not find that the Senior Assistant Judge has committed any error in law in coming to the conclusion at which he arrived on the evidence; and we, therefore, affirm his decree.

Decree affirmed.

(*a*) *Antè*, p. 55.