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Feb. 1.

Special Appeal No. 534 of 1868.

Hari bin Joti. ... ... *Appellant.*

Narayan Acharya. ... ... *Respondent.*

Inamdar—*Rent—Power to Raise Rent—Government Survey.*

An *inamdar*, though he cannot eject his tenants who have been in possession before the grant of the *inam* as long as they pay the rent due for their land, may nevertheless raise such rent at his pleasure, (they not having acquired a prescriptive title)and is not restrained in doing so by the rates fixed by the Government Survey.

This was a Special Appeal from the decision of A.C. Watt Acting Assistant Judge at Sattara, in Appeal Suit No. 239 of 1868, amending the decree of the Munsif of Sattara.

The plaintiff, Narayan Acharya, sued to recover from the defendants, Hari Joti and others, rent for the year 1863-64 for some land which he alleged they had held from him, it being his ancestral *inam*. The plaintiff alleged that, as he had a right to demand any rent he pleased, in October 1862 he sent a registered notice to the defendants,saying that they must pay Rs. 150 a year. This they did not do, but paid Rs. 75 only. He therefore sued to recover the balance from the defendants severally.

The defendants answered that the land was their *miras* : that in the time of the Maharaja they paid the plaintiff Rs. 80 *chandvadi* : that by the survey the assessment was fixed at Rs. 107; that they were not liable to pay the amount demanded by the plaintiff, since he has by his *sanad* a right to demand Rs. 80 only, and that the plaintiff, had sued to eject them but had failed to do so.

The suit was brought in the Court of the Mamlutdar, but under the new Act (*a*) it was transferred to that of the Munsif, who found that the amount demanded by the plaintiff was excessive, but that the defendants were liable to pay what was demanded.

The issues framed on appeal were :—

(*a*) Bombay Act II. of 1866.

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Hari Joti v. Narayan Acharya.

"1. Had the plaintiff a right to demand Rs. 150 rent for the land?

"2. Have the defendants proved that they have acquired a prescriptive right to enjoy the land at any less rent?

"3. Did the defendants pay the *judi*, and if so, what ought to be deducted on that account?"

The finding of the Assistant Judge on these points was :—

"On the first two points the Appellant certainly does not rely much, and all I need say is, that, unless under certain circumstances, the *inamdar* has a perfect right to raise the assessment of his land, and this right was recognised by Government in what are called the Joint Rules at the time of the Survey.

"On the second point the defendants have not proved that they have had the land at an uniform assessment for such a time as has given them a prescriptive right to pay that uniform assessment in future. In fact the defendants' *kaifayat* itself almost contains an admission that they were liable to pay the survey assessment, which was an increase over their former assessment, and they seem to have paid the higher rate, namely, Rupees 107. Their payment, therefore, has not been uniform for thirty years.

"On the third point I find, from the evidence afterwards produced, that the defendants did pay Rupees 33-7-0 as *judi*, and, as this is a a charge which the plaintiff, as *inamdar* is liable for, both parties' pleaders admit that it must be deducted. I therefore deduct this sum from the amount awarded by the Munsif, and find for the plaintiff in Rs. 41-9-0 with costs in proportion."

The case was heard before Couch, C.J., and Gibbs, J.

Dhirajlal Mathuradas for the Appellants :—when the land was given in *inam*, on the 3rd of November 1829, by the Raja of Sattara it was assessed at Rs. 60. In 1860 the plaintiff sued to recover possession, but his claim was rejected on the ground that the *inamdar* was the assignee of the assessment, and that the defendants were in possession when the assignment was made. He then sent a notice to increase

the rent. It is contended that he has no right to levy more than the rates fixed by the survey. The defendants were tenants prior to the *inam* grant (*vide* para. 11 of Exhibit No. 31). There was a general survey in the country and the land in dispute was surveyed and assessed at Rs. 107. [COUCH, C.J.—The *inamdar* cannot deprive the tenants of possession, because they had it before the grant and under the Govern- ment; but he is not bound to observe the Governmnet rules in regard to assessment.] The question is, whether there is any limit to the *inamdar's* right to increase the rent. [GIBBS J.–The *inamdar* having to live on his *inam* may fairly levy a higher rate than what is levied by Government, but if the assessment is such as to show that the object in puting the excessive rent on is virtually to eject the tenant, the case would have to be considered.] The plaint does not seek to make all the defendants liable jointly.

Vishvanath Narayan Mandlik for the Respondents.

PER CURIAM:—The Court amends the decree of the Acting Assistant Judge by ordering that Rs. 41-9-0 be paid by the several defendats in the proportions in which Rs. 75 are claimed from them in the plaint. The costs of the Special Appeal to be borne by the Special Appellant.

Decree amended.

Feb. 16.

Special Appeal No. 633 of 1868.

Sayad Valimia Alimia *et al*... ... ... *Appellants.*

Gulam Kadar Mohidin ... ... *Respondent.*

Muhammadan Law—Gift of land—Interest of Donees not defined—Possession—Receipt of rent.

A gift of land made by a Muhammadan is invalid if the interest of each of the donees is not defined by the gift.

Semble, that the continued receipt by the donees of the rents of land, which had been let by them as the manager of the donor, is not a sufficient taking possession to satisfy the requirements of the Muhammadan law.

This was a Special Appeal from the decision of H. Phillpotts, Acting Senior Assistant Judge at Broach, in Ap-