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 Narayan Raghoji v. Bholagir Guru Mangir
 Hormasji Sorabji et al. v. Bholagir Guru

store the property to the condition in which it was when he took possession; the same to be completed within one year from the date of this decree. Costs of Special Appeal, No 589 of 1868, on Narayan bin Raghoji, and those of Special Appeals Nos, 597 and 602 of 1868, on Hormasji.

GIBBS, J.—Concurred.

Decree modified.

Bholagir Guru Mangir v. Hormasji Sorabji

Special Appeal No. 61 of 1869.

Malhari valad Raghoji. ... *Appellant.*
 Tukaram valad Darkoji. ... *Respondent.*

Limitation—Gatkuli land—Non-payment of assessment.

Where a *gatkuli* tenant omitted to pay the assessment on his *gatkuli* land, and the defendant obtained possession of it. The lower Court decided that the *gatkuli* tenant, having omitted to pay his assessment, had lost all title to his land.

On Special Appeal the High Court remanded the case for the lower Court to inquire whether the Government had taken act on in the matter by putting the defendant in possession; as, if not, he would be merely a trespasser, and the *gatkuli* tenant would be entitled to recover.

This was a Special Appeal from the decision of F. Lloyd, Judge of the District of Puna, in Appeal Suit No. 496 of 1866, reversing the decree of the Munsif of Khed.

Malhari valad Raghoji sued to recover from Tukaram valad Darkoji possession of a field, alleging that it had been registered in his (Malhari's) name for thirty-two years, and that he had during that time paid assessment on it; that about eight years ago he had let it under a verbal agreement for five years to the defendant who now refused to give it up.

Tukaram's defence was that the land was *gatkuli* and that the plaintiff had no right to it; that the plaintiff was unable to cultivate it and had relinquished it fifteen years ago; that, with the consent of the Patil and Kulkarni, one Sahatu cultivated it for two or three years; that he had also resigned it, and that then the Government placed him (Tukaram) in possession, and that he had since paid the assessment.

The Munsif awarded the claim, but his decision was re-versed by the Judge who delivered the following judgment :—

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Malhari Raghoji
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“The issues in this case are :—Is the lease proved? Has Malhari a title to the land? Has Tukaram held adverse possession for more than twelve years? Is Malhari entitled to possession?”

“I find that the lease is not proved. The land is admitted to be *gatkuli*, that is, land to which no one can claim a proprietary right, and the continued possession of which is conditional on due payment of the assessment; consequently, Malhari having ceased to pay the assessment has no title to it.

“Tukaram has not held possession for more than twelve years.

“On the last issue I find that, as the land is *gatkuli*, and hence Malhari has no title to it, he having ceased to pay the assessment, he is not now entitled to be placed in possession; and I, therefore, reverse the decree of the lower Court and throw out the claim. Costs on Malhari.”

The case was heard by COUCH, C. J., and GIBBS, J.

Dhirajlal Mathuradas and Shivshankar Govindram for the Appellant.

Nanabhai Haridas for the Respondent.

COUCH, C. J.—In this case the plaintiff was the recognized occupier of the land, and though the land was still in his name in the Collector's books, he ceased to pay the assessment six years before the suit. The defendant was in possession; but it is not found whether the Government put him in or whether he was merely a wrong-doer. If the Government has not put him in and has taken no action upon the non-payment of the assessment by the plaintiff, the latter will have a good title against the defendant, because, until his title is divested by the act of the Government, he retains his right. We must, therefore, reverse the decree and remand the case, in order that the Appellate Court may try and determine,

1869 whether the defendant Tukaram had been put into possession by the Collector upon non-payment of the assessment by Malhari Raghoji the plaintiff, Malhari, or upon a *razinama*. If this question v. be not found in the affirmative, the lower Court should pass a decree in favour of the plaintiff Malhari.
TukaramDarkoji

GIBBS, J.—I quite concur.

Decree reversed and case remanded.

Special Appeal No. 65 of 1869.

April 14.

Appa valad Kashinath.	..	<i>Appellant.</i>
Vithoba valad Tukaram.	...	<i>Respondent.</i>

Insufficiency of evidence taken by lower Court—Course to be pursued on appeal—Civ. Proc. Code, sec. 355.

Where a Munsif, without framing issues or examining the plaintiff passed a decree in his favour upon an admission made by the defendant and upon inspection of a document that was upon the record of a former suit; but the judge, on appeal, reversed the decree of the Munsif on account of the insufficiency of evidence, the document, in his opinion, not being admissible.

It was held that the judge ought not to have reversed the Munsif's decree without first exercising his power of taking fresh evidence under sec. 355 of the Code of Civil Procedure.

This was a Special Appeal from the decision of S. N. Tagore, Acting Assistant Judge at Ahmednagar in Appeal Suit No. 356 of 1868, reversing the decree of the Munsif of Kadā.

The plaintiff Appa sued the defendant Vithoba to recover possession of certain premises alleged to have been let to him.

The defendant denied that the premises had been let to him by the plaintiff, and pleaded occupation for ten or twelve years.

The Munsif, Narayan Govind Apte, after adjourning the case several times for the settlement of issues, sent for the papers in another suit (No. 2239 of 1864 from the Judge's