

1873.

PREMA'BHAI
HEMA'BHAI
v.
T. H. BROWN.

We reverse the decrees of the Courts below, so far as they affect the special appellants, and reject the claim against them.

Costs of special appellants in Court of first instance on plaintiff. Under the circumstances of the case, we order that each party pay his own costs in appeal and special appeal.

Decree reversed.

[APPELLATE CIVIL JURISDICTION.]

August 28.

Special Appeal No. 242 of 1873.

NA'RA'YAN VISA'JI *Appellant.*

LAKSHU'MAN BA'PUJI and others *Respondents.*

Landlord and Tenant—Yearly Tenancy—Mirásdár—Inámdár—Khot—Custom of the Country—Perpetual and hereditary occupancy—Ejectment.

The defendants entered on land as tenants of a *Mirásdár* on terms which they could not prove, but held it at a uniform rent for three generations and for more than fifty years.

Held, that the defendants, in the absence of any special agreement to the contrary, had not acquired by prescription a right of permanent tenancy.

Whatever right of permanent tenancy a tenant may, by prescription, acquire as against an *Inámdár*, or a *Khot*, it would be contrary to the custom of the country and to the nature of *mirás* tenure, to hold that he could acquire such a right as against a *Mirásdár*.

THIS was a special appeal from the decision of S. Hammick, Assistant Judge at Poona, reversing the decree of the Subordinate Judge of Kheda.

Naráyan Visáji brought this suit to recover possession of certain land from Lakshúman, son of Bápúji, and from Sakháram and Máhádú, sons of Sankroji. The land was originally the *mirás* property of Bhikáji Rámchandra, and cultivated, on payment of rent, by an ancestor of Sakháram and Máhádú. In 1826, Bhikáji mortgaged the land to

Bápúji (father of the defendant Lakshúman). Bhikáji having subsequently died, without any issue, the *Inámdár* in 1869 sold the land to the plaintiff as his *mirás* property.

The defendant Lakshúman stated that the land had been mortgaged to him by Bhikáji Rámchandra, who alone had the power to redeem it. He also set up his mortgage lien on the land. The other defendants pleaded permanent tenancy, and stated that, as they had occupied the land for more than fifty years, they could not be ousted.

The Subordinate Judge found that the land had been mortgaged to the defendant Lakshúman Bápúji by the original *Mirásdár*, and held the plaintiff entitled to redeem it on payment of Rs. 800 to Lakshúman, and to recover possession thereof from the other defendants.

In appeal, the Assistant Judge reversed the decree, and held Sakhárám and Máhádú to be permanent tenants, entitled to occupy the land on payment of rent.

In special appeal, the plaintiff, among other objections, urged that the Lower Court, in the absence of evidence that the respondents were perpetual tenants, ought to have held them to be tenants from year to year.

The special appeal was argued before MELVILL and PINHEY, J.J., on the 28th August 1873.

Bahiravnáth Mangesh for the appellant.

Janárdhan Sakhárám, contra.

MELVILL, J. :—The respondents admit that they entered as tenants of a *Mirásdár*, whose rights have lapsed to the *Inámdár* of the village, and have been by him conveyed to the plaintiff in this suit.

The respondents cannot prove the terms on which they entered; but it is admitted that they have held for three generations and for more than fifty years. It is contended that this long enjoyment is sufficient to create a legal presumption that the original lease conferred a perpetual and hereditary right of occupancy, and that, at any rate, having

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held so long, they cannot, according to the custom of the country, be ejected, so long as they pay such reasonable rent as may be demanded of them.

It has been repeatedly decided by this Court that occupation by a tenant for a number of years does not create a presumption that the land was originally demised on a perpetual lease. The decision in *Annáji A'ppáji v. Kási A'tmáji* (a) appears to tend to a different conclusion; but that it does not really do so is apparent from the observations made by one of the learned Judges who decided it in a subsequent case: *S Ender Lálá v. Lallu* (b). The respondents, having admitted that they entered as tenants, and not having proved any special agreement to the contrary, must be presumed to have entered as tenants from year to year.

As regards the custom of the country, there is, no doubt, some authority for holding that, as against an *Inámdár* or a *Khot*, a tenant may, by length of occupancy, acquire a right of permanent tenancy. But the landlord in the present case is a *Mirásdár*; and, undoubtedly, according to the custom of the country, a *Mirásdár* would have a right to eject any other occupant from his land, even after a longer period than that for which the respondents are proved to have held. This would be the case even if such occupant had entered adversely to the *Mirásdár*; and *a fortiori* would it be the case when he had entered as his tenant. It seems to us that a decision that the tenant of a *Mirásdár* may, by prescription, acquire *mirás* rights against his landlord, would be directly opposed to the custom of the country and to the nature of the *mirás* tenure.

We are, therefore, of opinion that the decree of the Assistant Judge must be reversed, and that of the Subordinate Judge restored. The special respondents must bear the costs in the regular appeal; but, under the circumstances of the case, we order that each party bear his own costs in special appeal.

(a) 3 Bom. H. C. Rep. A. C. J. 124. (b) 7 Idem. 111.