

[APPELLATE CIVIL JURISDICTION.]

*Special Appeal No. 271 of 1873.*1873.
September 17.

GUNDO SHIDDHESHVAR ... *Defendant and Appellant.*
 MARDAN SA'HEB *Plaintiff and Respondent.*

Government revenue a paramount charge on land—Liability on failure to pay it—Bombay Survey Act, I. of 1865, Sec. 36—Omission by the purchaser of land to get his name entered as occupant in the Collector's Books.

Government revenue being a paramount charge on the land, it adheres to the land and to every portion of it independently of the hands into which it passes, or the subordinate rights that may have been created by the occupant out of his own qualified proprietorship; so that, even after a valid sale of the land by the occupant to a purchaser, who neglects to get his name registered in his books, the Collector may, after giving notice, of the failure to pay the revenue to the registered occupant—in whom alone, according to the Bombay Survey Act I. of 1865, vests the right of conditional occupancy—put up the land for sale, and the purchaser gets occupancy rights free from all claims on the part of the first purchaser.

THIS was a special appeal from the decision of Baron Lar-pent, Acting Judge of Dhárwár, reversing the decree of the Subordinate Judge of Haveri.

Ningavá, the registered occupant of a piece of land, by an instrument duly executed and registered, transferred all her rights therein to the plaintiff Mardan Sáheb who, however, neglected to have his name entered in the Collector's books. The Collector, upon default being made by Ningavá in payment of the Government assessment, gave her notice, and sold the occupancy rights to the defendant Gundo.

The Court of first instance rejected the claim of the plaintiff for possession and occupancy rights, but the Appellate Court awarded it.

The special appeal was heard by WEST and NA'NA'BHA'I HARIDA'S, JJ.

Dhirajlál Mathurádás, Government Pleader, for the special appellant:—The defendant purchased the land at a sale by auction held by the Collector for arrears of land revenue,

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which has been held to be a paramount charge on the land, and the purchaser obtains the land free from all incumbrances : *Abdul Gani v. Krishnaji* (a). A crown debt is entitled to precedence over all other debts both in England as well as in the Presidency town and Mofussil of Bombay : *The Secretary of State v. The Bombay Landing and Shipping Company* (b). The plaintiff was bound, under the Survey Act and Rules, to have his name entered in the Collector's books after his purchase. This he failed to do, and has thus rendered himself liable to forfeit his right of occupancy, which is a conditional right, subject to the payment of Government revenue. The Collector can only recognize him whose name stands in his books.

Shámráv Vithal for the special respondent :—This case does not involve the right of the Crown. The only question to consider here is whether the plaintiff acquired by his purchase all the rights which Ningavá, at the date of the purchase, possessed in the land. This he seems to have done. His purchase was valid in every respect. He, therefore, ought to have been looked to by the Collector for payment of the revenue in case of default, especially as the Collector had notice of the plaintiff's purchase, notwithstanding that his name was not on his books.

Bombay Act I. of 1865, Sec. 48, provides for the recovery of land revenue according to the Regulations. Sec. 5 of Regulation XVII. of 1827 makes the occupant liable in person and property for his revenue ; the third clause of this section makes the crops also liable for its revenue in preference to all other claims. Further on the Regulation by Sec. 11 provides precautionary measures, and deals with the attachment of crops ; and Sec. 12 enacts the procedure for realization of the revenue in case of default. This, along with Sec. 3 of Regulation XIX. of 1827, is the whole law on the subject of forcible levy of Government demands. There is nothing here which prevents the alienation of the occu-

(a) Ante p.

(b) 5 Bom. H. C. Rep. O. C. J. 23.

pancy rights ; and when the alienation to the plaintiff in this case took place no revenue was due to Government.

The definition of "occupant" is given in Sec. 2, Cl. (j), of the Bombay Survey Act. It points to a liability rather, than to a right. The rights of "occupants" are given in Sec. 36 ; and one of these is the right to transfer. This right, although conditional on payment of assessment, is not conditional on the Collector's sanction. If the transferee made default in this payment, the Collector could undoubtedly exercise his right of deprivation ; but he has not done so. The precedent cited does not apply. In *Abdul Gani v. Krishnaji (supra)* the plaintiff was only a mortgagee ; whereas in this case he is a purchaser. In the former case full rights had not accrued to the plaintiff, who was subject to redemption ; but in this, default was not made till years after the accrual of those rights.

The judgment of the Court was delivered by WEST, J. :—The facts of this case, though they have been made the foundation of an elaborate argument, are of a simple character. Mardan Sáheb, the plaintiff, in 1865 bought from Ningavá her property in a Survey number at Ranebednar. His contract was registered, but no application was made to the Collector for a mutation of names in the books kept by him. A dispute had in fact arisen between the vendor and vendee, and the latter being forced to take legal proceedings did not obtain a final decree against Ningavá until 6th February 1871. Why Mardan Sáheb did not then immediately get his own name entered in the revenue accounts as occupant, does not appear. Possibly, he wished to avoid the obligations attaching to the occupancy, for Ningavá had in the meantime made a default in paying the Government rent, and after publication of a notice addressed to her, her occupancy rights were sold on the 14th April 1871. The defendant Gundo was the purchaser.

It has been contended for Mardan Sáheb that the 48th section of the Bombay Survey Act I. of 1865, prescribes that

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land revenue not duly paid shall be recovered according to the Regulations. Regulation XVII. of 1827 provides for the attachment of crops, even before they are reaped, when there is any doubt of the intention or the ability of the occupant to pay what is due. It provides for the use of *mohu-sulli* to bring defaulters to reason. But when these measures fail, or it is not deemed expedient to resort to them, the liability, it is urged, rests not as a specific lien on the land, but only as an obligation on the person and property of the occupant. Under Sec. 12, cl. 6 of the Regulation, the Collector could attach and sell the property of Ningavá, and, as included within that property, her rights, had any remained to her, in the land held by her as occupant. But those rights had some years before passed to Mardan Sáheb. Sec. 36 of the Survey Act vests the occupant with an unrestricted power of transfer which had already been exercised in this case in 1865. From that time forth, therefore, Mardan Sáheb was the true occupant entitled to hold that position until he made default, and the land as part of his property was sold to make good the amount of the arrears. By a sale of Ningavá's right, nothing, it is said, consequently passed to Gundo, and the plaintiff is entitled to eject him

A similar course of reasoning must have led the District Judge to the conclusion that the plaintiff was entitled to recover. "When the Collector sold this land," he says, "it was no longer the property of Ningavá. The defendant should have inquired as to the title which was being sold by auction, and he cannot complain" of the decree which the District Judge then proceeded to make for his ejectment. But the decision in *Abdul Gani v. Krishnaji* (c), given on the 7th July last, which has been followed in a more recent case, declares the Government revenue to be a paramount charge on the land; and being of this character it adheres to the land and to every portion of it independently, of the hands into which it passes or the subordinate rights that may have been created by the occupant out of his own

(c) See preceding case.

qualified proprietorship : *Penn v. Lord Baltimore* (d). But further, Sec. 36 of the Survey Act calls the right of an occupant a "right of conditional occupancy," and the first part of the same section shows that amongst the conditions, on which the right of occupancy depends, is the regular payment of the assessment. The right is of course not a mere right to payment or, in other words, a bare liability. Such a right as this Gundo would not object to recognize in the plaintiff, but the plaintiff would never have given money for it to Ningavá. The right is a right to occupy subject to the assessment, and defeasible on a default in payment, at the same time that, according to the explanation of "occupant" given in Sec. 2 of the Survey Act, no person can be recognized as holding that position except the one whose name is entered in the Government accounts. No. 13 of the Survey Rules provides for a mutation of names on a change of ownership, so as to give effect to the provisions of Sec. 36 of the Act, and such rules it was competent to the Government to make under Sec. 28. If Mardan Sáheb desired to make his right secure against defeasance, he ought to have obtained a mutation of names in the Government books. By not doing so, he left himself exposed to the risk of a forfeiture of the right of occupancy, recognized by the Act, as vested in Ningavá alone and attached as a condition to the holding. On her default, the Government by the sale to Gundo has exercised its power of deprivation, the "conditional occupancy" has come to an end, and the plaintiff has no remedy against the purchaser.

We must, therefore, reverse the decree of the District Judge and restore that of the Subordinate Judge. Costs throughout on respondent.

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