[APPELLATE CIVIL JURISDICTION.]

Regular Appeal No. 43 of 1873.

1875. December 8, 9, 20, 21 and 23.

SHAIK GULA'M MOHIDIN ..... *(Plaintiff) Appellant,*

vs.

THE COLLECTOR OF AHMEDABAD. *(Defendant) Respondent.*

Exemption from assessment—Tálukdári village—Wántá or rent-free lands —Summary Settlement—Bombay Act VII. of 1863*—Tálukdári Settlement —Bombay Act VI. of* 1862*—Right to hold Wántá lands free of assessment —Jurisdiction.*

The lands in dispute, now forming part of the hamlets of Hirápur or Rasulpur, originally formed part of the tálukdári village of Kuwar. About the year 1843 the tálukdár mortgaged the lands to P, and two years afterwards, in order pay off P, the tálukdár mortgaged the same lands to the plaintiff's father, and in or about 1858 gave him a deed of sale.

On the passing of the Tálukdári Settlement Act (Bombay Act VI. of 1862) the village of Kuwar was brought under its operation, and placed under Government management. While the village was under Government management, the Summary Settlement Act (Bombay Act VII. of 1863) was passed, and the Tálukdári Settlement Officer, acting apparently under section 3 of the Act, made an order directing the plaintiff to pay assessment to the extent of Rs. 2,000. Part of the lands held by the plaintiff were entered in the Government *khardás* as *wántá*. In a suit brought by the plaintiff to establish his right to hold all the lands rent-free, the District Judge held that the plaintiff had failed to prove that the lands were rent-free, and that he was liable to pay the assessment, and he, therefore, rejected the plaintiff's claim.

Held on appeal that the Government was bound by the statements in its own *khardás*, which admitted that part of the land was *wántá*, which must be regarded as meaning rent-free or tax-free land, and that it lay upon Government to prove that land so denominated was assessable, which it had failed to do ; the plaintiff, therefore, as to so much of the land as was entered in the Government *khardás* as *wántá*, was entitled to hold it free of Government assessment. But as to the residue of the land in the hands of the plaintiff, and to which as against the tálukdár the plaintiff was entitled, the Court could not interfere with the rate of assessment fixed upon it by the Government. There not being any specific limit fixed by law, grant, *sanad*, contract, or otherwise, to the assessment of that residue for the purposes of land revenue, the Civil Courts had no jurisdiction to regulate such assessment, even if, having regard to the value of the land, it were excessive.

THE lands in dispute in this case, now forming part of the hamlets of Hirápur or Rasulpur, originally formed part

1875.

SHA'IK GULA'M MOHIDIN v. THE COLLECTOR OF AHMEDABAD.

of the tálukdári village of Kuwar. About the year 1843 the tálukdár mortgaged the lands to one Pánáchand. Two years afterwards the tálukdár, in order to pay off Pánáchand, effected a mortgage of those lands with the plaintiff's father, and in or about 1858 gave him a deed of sale.

On the passing of the Tálukdári Settlement Act (No. VI. of 1862) by the Bombay Legislative Council the village of Kuwar was brought under its operation, and placed under Government management. While the village was under Government management the Summary Settlement Act (Bombay) No. VII. of 1863 was passed; and the Tálukdári Settlement Officer, acting apparently under Section 3 of the Act, made an order directing the plaintiff to pay assessment to the extent of Rs. 2,000. The plaintiff sought in this suit to establish his right to hold the lands rent-free. He alleged in his plaint that the lands in dispute had always been held as "*wántá nákrá*" or rent-free, and, consequently, that the Summary Settlement Act had no application. The defendant, the Collector of Ahmedabad, on behalf of the Government denied that the lands were "*wántá*" or rent-free, and contended that the Act had been properly applied.

The District Judge of Ahmedabad, after going through the oral and documentary evidence adduced on both sides, came to the conclusion that the plaintiff had failed to prove that the lands were rent-free, and that he was liable to pay the assessment fixed. He, therefore, made a decree rejecting the claim.

The plaintiff appealed.

The appeal was heard by Westropp, C. J., and Melvill, J.

Inverarity and *Shántárám Náráyan* for the appellant the plaintiff.

Farran and *Dhirájlál Mathurádás*, Government Pleader, for the respondent, the defendant.

WESTROPP, C.J.:—The plaintiff has not, we think, established his claim to *wántá* land to the full extent of that claim, viz., 4,100 bighas. He rested it mainly upon the remarks as to *wántá* land, which accompany the report of

1875.

SHAIK GULA'M MOHIDIN v. THE COLLECTOR OF AHMEDABAD.

Captain Cruikshank, (Exhibit No. 50,) in relation to his survey made in Samvat 1880 (A. D. 1822-23). But that survey was only for the purpose of ascertaining the boundaries of estates in their entirety, and not, in so far as it consisted of actual measurement, for the purpose of distinguishing the proportion in which *wántá* land stood to *talpád* land. Captain Cruikshank admits in his remarks that his information as to the extent of *wántá* land was derived from others, and could not be regarded as trustworthy. We agree, therefore, with the District Judge and Mr. Richey that the *khardás* of early date are, so far as they relate to the extent of *wántá* land, deserving of more reliance than the report of Captain Cruikshank, resting, as it did in that particular, upon the allegations of the tálukdárs themselves, who were interested in representing the *wántá* land to be much greater in extent than it really was. We, however, think that Government is bound by the statements in its own *khardás*, which admit that, in the present instance, 500 bighas of the land were *wántá*, and we find ourselves unable to act upon the general theory adopted by Mr. Richey that *wántá* land is assessable like other land. The proved acts of Mr. Fawcett, Mr. Blane and Mr. Rogers with respect to the *wántá* land in this case are incompatible with that view. We think that, in this case at all events, we must regard "*wántá*" as meaning what even Mr. Peile in his memorandum, in which he speculates upon the origin of *wántá* land, at page 52, para. 7, and page 57, para. 20 of No. CVI of the New Series of the Selections from the Records of the Bombay Government, admits that its name is (at least in Dholka, where the land of the plaintiff is situated) understood to imply, viz., rent-free or tax-free land, and in the last-mentioned paragraph he refers to this very land as tax-free and as alienated by the tálukdár. We are also of opinion that it lay upon Government to prove that land so situated and so denominated is assessable, which, in this instance, it has failed to do. Indeed, Mr. Peile (see paragraphs 21 and 25 of the same memorandum) would seem to have been of opinion that legislation would be

necessary to carry out his views in favour of assessment of *wántá* land held by a man who holds the residue of his estate on tálukdári tenure. Although, so far as respects the quantity of *wántá* land, we regard the early *khardás* as approaching more closely to the truth than the information given by the tálukdár or his people to Captain Cruikshank and recorded by him, we cannot hold the *khardás* to be absolutely correct. It is not contended that the quantities, either of *talpád* or of *wántá* land, as given in those *khardás* were arrived at by actual measurement. It would rather appear that those quantities were estimated by inspection without measurement. The extent of the whole estate, which was arrived at by Captain Cruikshank by actual measurement, has been admitted on both sides to be correct. It is 9,930 bighas, and shows how very inaccurate the estimate (howsoever made) in the *khardás* of the whole estate was, viz., 6,574 bighas. As it has not been contended that the revenue officers, in framing that latter estimate for the *khardás*, adopted different means from those used by them in calculating the extent of the *wántá* land at 500 bighas, we think that justice requires that we should hold that the deviation by them from the actual extent of *wántá* must be deemed to be proportionate to their admitted deviation from the actual extent of the whole estate, and, therefore, that as 6,574 bighas are to 9,930 bighas, so will be 500 bighas to the actual extent of *wántá* land—which proportion gives to us, for the last-mentioned quantity, 755½ bighas. As between the plaintiff and the Collector we, accordingly, hold that 755½ bighas of the land held by the plaintiff are *wántá* and unassessable. As to the residue of the land which is in the hands of the plaintiff, and to which, as against the tálukdár, the plaintiff undoubtedly is entitled, we cannot interfere with the rate of assessment which Government has fixed upon it. There not being any specific limit fixed by law, grant, *sanad*, contract, or otherwise, to the assessment, for the purposes of land revenue, of that residue, the Civil Courts have not any jurisdiction to regulate such assessment, even if, having regard to the value of the land, it be excess-

1875.

SHAIK GULA M MOHIDIN v. THE COLLECTOR OF AHMEDABAD.

ive;[1] but we do not for a moment suppose that Government will sanction any vindictive assessment of that residue, because the Collector has failed in establishing the assessability of the *wántá* land.

The revenue officers, having manifestly assisted the tálukdár against his rightful vendee, the plaintiff, the Collector (Government) must pay to the plaintiff his costs. If there were any fraud in the suggestions made to Captain Cruikshank as to the extent of the *wántá*, such fraud was that of the tálukdár or his people, and not that of the plaintiff, who subsequently became a mortgagee and eventually a vendee.

We reverse the decree of the District Judge, and declare that the plaintiff is entitled to hold 755½ bighas of the land in the plaint mentioned and in the plaintiff's possession under Exhibit 18 (the mortgage-deed dated 15th February 1845) and Exhibit 19 (the conveyance dated 9th May 1858) as *wántá* land—that is to say, as free of Government assessment; and further declare that the residue of the said land in the plaint mentioned, and in the possession of the plaintiff under and by virtue of the said Exhibits Nos. 18 and 19, is liable to Government assessment. The said 755½ bighas of *wántá* land in the plaintiff's possession, and which he is entitled to hold free of Government assessment, are delineated upon the plan annexed to this decree and are coloured green. The said residue of the land in the plaintiff's possession, and which is, as aforesaid, liable to Government assessment, is coloured red. The defendant is hereby directed to pay to the plaintiff his full costs of the suit and of this appeal.

Decree reversed.

(1) See *Vyakunta Bapuji* v. *The Government of Bombay, supra*, Appx. p. I, and *The Government of Bombay* v. *Haribhai Monbhai, supra*, Appx. p. 225.