

1878
 NANCHAND
 HANRAJ
 v.
 BA'PUS'AHAR
 BUSTAMRAHAI

For the period, therefore, subsequently to the 4th November, 1872, the Courts below were only bound to award damages for non-payment, and in so doing they would not have been called upon to award more than six per cent. on the amount of principal due. The sum awarded by the Courts below is in excess of that which the plaintiff would have been entitled to recover under this view; and on this ground we confirm the decrees of the Courts below, with costs of this appeal on the appellant.

Decrees affirmed.

APPELLATE CIVIL.

(27)

Before Mr. Justice West and Mr. Justice Pinhey.

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 November 26.

D. R. BAM (ORIGINAL PLAINTIFF), APPELLANT, v. THE SURVEY COMMISSIONER AND THE COLLECTOR OF RATNAGIRI (ORIGINAL DEFENDANTS), RESPONDENTS.*

Khots—Landlord and tenant—Mistaken entry in Register—Survey Act.

The mere entry of the names of the tenants of a *khot* in the Government registers as occupants under the Revenue Survey Act No. 1 (Bombay) of 1865, does not constitute an injury to the landlord of a tangible kind, of which the Civil Courts can take cognizance. The *khot's* rights as landlord, if they can be established, cannot be prejudiced by any proceeding under the Survey Act, there being nothing in that Act, or the rules framed under it, which affect the rights of subjects of the Government *inter se*.

The utmost benefit which the tenants can derive, as against their landlord from being entered as occupants under the Act, is a right to claim a deduction of the amount of assessment paid by them by direct to the Government. If they deny his title, he can sue them either to establish his title and recover the full rent due to him under his contract with them, or to object them as holding possession of his lands by a title which they themselves repudiate.

This was an appeal from the decision of C. B. Izon, Acting Judge of Ratnagiri, rejecting the plaintiff's claim.

In his plaint the plaintiff set forth that Kolthas, in the Ratnagiri Collectorate, was a *dhara* village,—that is, one in which there were originally no *khoti* lands; that it was surveyed by the defendant No. 1, the Survey Commissioner that certain lands belonging to the plaintiff should have been included in his *dhara* holding, and should not have been entered, as was done, in the

*Appeal No. 4 of 1878.

names of tenants as if the village were a *khoti* village; that this was contrary to custom, and an unauthorized proceeding; and that the defendant No. 2, the Collector of Ratnágiri, illegally collected rents from the tenants. The plaintiff, therefore, prayed for the entry of those lands as his *dhara*, or private holding, and claimed, moreover, damages and mesne profits.

The defendants answered that the lands in dispute were *gayali* (*i. e.*, abandoned by the *dharaháris*), and as such entered as *khoti nisbat* (belonging to the *khot*); that they were not part of the plaintiff's *dhara*, as had been admitted by the plaintiff himself, the *khot* of the village.

The District Judge found that the lands were not the plaintiff's *dhara*, or private holding, but that they were *khoti* lands, and rightly dealt with as such by the defendants, who recognized the tenants as independent holders, and levied assessment from them direct.

Nov. 26.—Ráv Sáheb *Vishvanáth Narayan mandlik* and *mahadev Chimnaji Apte* for the appellant.

Nandhbái Haridás, Government Pleader, for the respondents.

The Judgement of the Court was delivered by

WEST, J.—The plaint in this case rests on an injury which the plaintiff says he has sustained through his tenants in several instances being recognized as independent holders of the lands in their occupation, and entered in the Government registers as occupants under the Revenue Survey Act. There appears to be evidence that in some instances this position has been assigned to persons who had admitted themselves to be tenants under the plaintiff, which evidence, however, is met by counter testimony produced on the part of the defendants. But, assuming that the survey officers have erroneously recognized the plaintiff's tenants as occupants, that recognition is not intended to affect, and cannot legally affect, the contractual relation subsisting between these persons and their landlord. If, in consequence of being entered as occupants, they pay the assessment direct to Government which the plaintiff would otherwise have to pay, the utmost benefit which, as against him they can derive from these payments is a right to deduct them, should their leases allow it, from the rent for which they are answerable. For that rent, being as tenants responsible

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before the survey, they are equally responsible after it; and if they should pay the assessment in such a way and with such an assertion of rights vested in themselves as might prejudice their landlord, they would find their own position very much endangered by it. If being tenants, they should, on the strength of their being made occupants for land-revenue purposes, deny their landlord's title, he could forthwith sue them, either to establish his title and recover the full rent due to him, or to eject them as holding possession of his lands only by a title which they themselves repudiate. In the event of his succeeding in such a suit, as he must, if he proved a title and a fraudulent denial of it, his own name, as his admitted, would be substituted in each case as occupant in stead of that of the ejected tenant. Should the tenant in any case seek injure him by failing to pay the assessment, and getting the land sold under the title paramount of the Crown, here too, as is admitted, the assessment tendered for entry in the tenant's name, but really; as plaintiff says, due by himself as landlord, would be received from him, and the estate would thus be preserved. He could then proceed to eject the fraudulent tenant.

Thus in no case can the plaintiff's right as landlord, supposing he is really able to establish that right, be prejudiced by the proceedings of the revenue officers in carrying out the revenue survey and assessment. There is nothing, it is admitted, in the Act (Bombay Act I of 1865), or the rules framed under it, which gives to the operations of the survey officer, or the Collector acting under it, the effect of changing the rights of subjects of the Government *inter se*. This being so, the mere entries of which the plaintiff complains, and the offer which they involve to receive the assessment from his alleged tenants, do not constitute an injury of a tangible kind of which the Courts can take cognizance. Who shall be called for revenue purposes an occupant in the technical sense, rest on the discretion of the revenue officers governed by the appropriate administrative rules. What rights arise from it may be seen from the Survey Act, and this does not say that a mistaken entry shall deprive a landlord of his ownership.

We confirm the decree on these grounds, with costs.

Decree confirmed.