APPELLATE CIVIL.

(29)

Before Mr. Justice West and Mr. Justice Pinhey.

1878.
December 9.

PRATAPRAV GUJAR (ORIGINAL PLAINTIFF), APPELLANT, *v.* BAYAJI NAMAJI AND OTHERS (ORIGINAL DEFENDANT), RESPONDANT.*

Inam—Miras—Power of Inamdar to enhance Rent.

An *inamdar's* power to enhance the rent of *mirasi* tenants is limited. He cannot demand more rent than what is fair and equitable according to the custom of the country.

THIS was a second appeal from the decision of R. F. Mactier, Esq., Judge of the District of Satara, confirming the decree of the Subordinate Judge of Satara.

The plaintiff Prataprav was the *inamdar* of the village of Arphal, in the Satara Collectorate ; the defendant No. 1, Bayaji, was a *mirasdar* of a piece of land situated in this village, and forming part of the plaintiff's *inam*. The other defendants were sub-tenants. By notice given by Prataprav to Bayaji, the former demanded a rent of Rs. 62-8-0 instead of Rs. 50 hitherto payable. In the event of non-payment of this increased rent the tenants were required to vacate the land. Both the lower Courts rejected the plaintiff's claim.

Dec. 9.—*Shantaram Narayan* for the appellant.

Ghanasnam Nilkanth for the respondent.

The argument and authorities appear from the following judgment delivered by

WEST, J.—It is admitted that notice of intended enhancement by the *inamdar* not having been given before the 1st March 1874, the claim to a payment higher than had been usual for the years 1871-74 cannot be sustained. The notice calls on the defendant Bayaji to pay a rent proportional to the value of the land occupied by him, and come in and pass a *kabulayat* at a rate to be settled conformably to this principle between him and the *inamdar's* agent. "Should you fail to do so," Bayaji is informed, "rent, equal to one and a quarter times the *vasul* you are now paying, shall be exacted until another settlement is made." What Bayaji was then paying was, as the Courts below

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have found, Rs. 50 a year. The notice, tharefore, is one of an enhancement to Rs. 62-8-0 a year, and if he should not pay according to this notice, he is threatened with ejectment.

The main question now, therefore, is, whether too right to enhance to this extent was vested in the *inamdar*. For the defendants it has been urged that there was no right to enhance at all; as the finding, that Bayaji had never paid more than Rs. 50 a year, gave him a prescriptive right to hold perpetually as a rent of that amount. At any rate, it was contended no more than a reasonable rent could be demanded, and the District Judge has found that the plaintiff has failed to prove that the land can bear a higher rent than the rent of Rs. 50, which has been paid for it for many years. In support of this latter contention, Mr. Ghanasham relies on *Lakshman* v. *Ganpatrav Ballal*,(1) in which the land being admittedly *miras*, Melvill and Kemball, JJ., ruled that the question of rate of rent between the *inamdar* and the *mirasdar* was to be determined by what, according to the custom of the district, was fair and equitable.

In *Vishnubhat* v. *Babaji*,(2) on the other hand, there are some expressions in the judgment of the learned Chief Justice which seem to imply that, failing a *mirasdar's* proof of absolute fixity of rent recognized prior to the grant of the *inam*, the *imamdar* is subject to no restriction except such as may have been imposed on him by some special contract. On referring to the judgement of the Distrsct Court, however, and to the notes of Pinhey J., in that case, we do not find that the case of *Vishnubhat* v. *Babaji* was referred to, or that the question of a limit to the *inamdar's* right, apart from the absolute fixity of rent relied on by the defendants, was dwelt on in argument here, any more than it was dealt with in the judgment of the District Court. The parties seem to have been content to place their cases, respectively, on the alternative between an invariable limitation on the one hand and an absolutely unlimited right to enhance on the other. Had they desired to submit the question of a merely reasonable enhancement to the Court, they would, doubtless, have referred to *Vishanubhat* v. *Babaji* Confining the remarks of the learned

(1) Sp. Ap. No. 344 of 1876. See note, P. 145 *infra*.

(2) Sp. Ap. No. 89 of 1877. See Printed judgments for 1877, P. 146.

learned Chief Justice, then, to the case then under trial as it was actually submitted to the Court, it does not appear that they are necessarily in contradiction to the principle laid down in the earlier decision, and it was not the intention of the Court, we think, to say that in no case whatever can an *inamdar* be subject to any limitation at all in enhancing rent, except where the rent is quite invariable. It is a matter as to which custom, like the enacted law, may differ in different localities; and evidence may establish that the rent in particular cases has been determined by a rule leading to pecuniary variations. When such a rule prevails it is taken for granted, even in contracts that do not expressly exclude it; and a customary law necessarily governs the relations that fall within its secope. Such a law, it is at least conceivable, might control the exactions leviable from a ryot by an alience of the land-revenue of a village, since both alike are entitled to protection from the State; and regarding the *inamdar* as the assingnee of the Government's pecuniary, but not of its sovereign rights, his rightfull demands would very according to the circumstances which would be regarded by the Government as necessitating an increase or diminution of the land-tax. The consideration of these circumstances by the Government is the exercise of a sovereign function which can be discharged impartially by an authority standing between or superior to the several individuals and classes of the community; and it has not, in the division of the functions of the Government, been delegated to the judiciary body but a private person is in quite a different position from the Government. He cannot be impartial. His interest is directly at variance with that of the tenant from whom he naturally seeks the highest rent he can get. Pushed to can extreme, the rights of an *inamdar*, supposing there is no limit to the rent he may demand, would immediately destroy the *miras* tenure by making it simply precarious. As between the *inamdar*, therefore, and the other subject of the Crown from whom he demands rent on account merely of his occupation of the land and the profits he derives from it apart from contract, the Courts, to which this function is assigned, must adjudicate on the justice of the claim by its conformity to accepted rules of moderation and public policy. A principles operates even when it is not expressly

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formulated, like that which under the laws of William the Conqueror controlled the exactioned of grantees of manors. "*Coloni non vexentur ultra debitum et statutum, nec liceat dominis remover colonos a terris pummodo debita servitia persolvant.*" A regulated, not an unlimited proportional contribution has always been the recognized service of the Hindu cultivator holding lands as his own.(1) Such has been the custom; and custom, when the Courts must recognize, may impose a limit of reasonableness on the lord's demand. Such a custom is almost a necessary condition of the existence of the *miras* tenure in the sense in which it is generally understood, and which naturally conforms to, or constitutes, the common legal consciousness of what that particular legal institution is.

We therefore remit this case for the determination of the following issue by the Courts below:—

(1) Was the defendant Bayaji or a person whom he now represents, in possession of the lands in question as tenant at a perpetually fixed rent before the grant of the *inam* under which the plaintiff claim ?

The proof of the affirmative rest on the defendants.

(2) Was he, or his predecessor in title prior to the grant of the *inam*, a *mirasdar* of the said lands or a tenant by any other title than that of tenant from year to year ?

Proof of the affirmative on the defendants.

(3) Does the tenure by which the lands are held impose, according to the customary law of the district, any, and what limits upon the power of grantee from the Government in *inam* to enhance the rent or assessment payable on account of the said lands.

(4) Does the sum of Rs. 62-8-0 a year, demanded in his notice No. 54 by the plaintiff as rent, exceed the limit, if any which, according to the principle determined on the third issue and the terms of the great, controls the amount of rent that may rightfully be exacted on account of the lands in question ?

(1) *Vasudev Sadasiv Modak* v. *The Collector of Rattnagiri*, L.R. 4 Ind. Ap. 119. See p. 125.

(5.) Is the plaintiff, according to the customary law, on failure of the defendant Bayaji to pay the rent properly and legally demanded from him, entitled, to re-enter on the lands held by the said Bayaji or to any other, and to what relief awardable by a Civil Court, and under what conditions, if any, as to lapse of time after failure of payment and as to notice and the life?

Evidence on these questions may be produced by the parties respectively.

Further proceeding here adjourned.

The findings and evidence to be sent up within two months.

Order accordingly.

NOTE.—In *Lakshman* v. *Ganpatrav Ballal*, Melvill and Kemball, JJ., said: "The plaintiff claims to levy any assessment he pleases; the defendant claims to hold at a fixed assessment. The real question appears to us to be, whether the rent claimed by the plaintiff is a fair and equitable rent, and such as, according to the custom of the country, is leviable on *miras* land of the description held by the defendant. We think that an *inamdar* is entitled to enhance rents within the limits thus indicated, but not beyond them."

In *Vishnubhat* v. *Babuji* (Printed Judgments for 1877, p. 146.) Westropp C.J., said: "Assuming that the defendants are right in saying that exhibit 27 relates to the *harali* which is the subject of this suit, and that the first and second defendants are *mirasdars*, as the first defendant is in that exhibit described to be, it does not thence follow that the defendants are, or either of them is, entitled to hold *harali* at an invariable rent. (See *Vyakunta Bapuji* v. *The Government of Bombay*, 12 Bom. H.C. Rep., Appx. p. 71 and pp. 50,100, note (o), and 171.) If *mirasi* land ever was extensively held at a permanently fixed rent, it has, as the authorities referred to in that case show, long since generally ceased to be so. There must be further proof than the fact that the defendants have been styled *miraslars* to entitle them to fixity of rent. The District Judge and Subordinate Judge have not arrived at any finding upon the material issue in this case, viz.: Where the first and second defendants, or either of them, and their father or other ancestors entitled to hold the land in dispute under the Satara Government previously to the grant of the same in *inam* to the plaintiff's father Atmaram in perpuity at an invariable rent? The question whether or not the land can bear the rent, which the plaintiff has by his notice demanded, is perfectly immaterial whether the rent be invariable or whether it be not. If the first and second defendants are entitled to hold at an invariable rent, the plaintiff has no right to enhance it either moderately or immoderately. If the first and second defendants are not entitled to hold the land at an invariable rent, the plaintiff may, in the absence of any special contract by him with the defendants to the contrary, demand such rent for it as he pleases; and if the defendants be, as is alleged, *mirasdars*, they will be entitled to hold the land at such rent as the plaintiff thinks fit to demand, or, if they think his dem and too high, to surrender the land to him."