APPELLATE CIVIL.

(70)

Before Mr. Justice M. Melvill and Mr. Justice Kemball.

1879
June 18.

PARSOTAM KESHAVDAS (ORIGINAL PLAINTIFF), APPELLANT, *v.* KALYAN RAYJI (ORIGINAL DEFENDANT), RESPONDENT.*

Inamdar—Permanent—tenant—Enhancement of rent.

In every part of India the Government or its alienee is debarred, if not by law (as in Bengal) yet by the custom of the country, from enhancing the assessment of permanent tenants beyond a certain limit. What that limit is, must be determined by the circumstances of each case.

In a suit by an *inamdar*, holding under a grant from Scindia made in 1793, against his permanent tenant for an enhanced rent, the Court, in the absence of law or contract to the contrary, affirmed the plaintiff's right to enhance the assessment to the extent to which, according to the old custom of the country, Scindia would have been entitled to enhance it; and upon a virtual admission of the defendant allowed enhancement to the extent of one-half the produce.

THIS was a second appeal from the decision of A. D. Pollen, LL. D., Judge of the district of Surat, substantially confirming the decree of Rao Saheb Chunilal Maneklal, Joint Subordinate Judge of Broach.

The facts of the case, in so far as they are material, are as follows:—

The taluka of Broach belonged to Scindia between the years 1783 and 1803 by cession from the British (*vide* Bombay Gazetteer, Vol. II, pp. 474-5). Mahadaji Scindia during this period—that is to say, in 1793—granted to the plaintiff's ancestor the village of Adole, in this taluka, in *inam*, whereby Scindia alienated "*kulbab, kulkarmi*" cesses and taxes, as well as "*jal, tarn trun, pashan, nidhi nikshep*," water, trees, grass, stones and treasure-trove. At the date of this grant the ancestors of the defendants were in possession of certain lands of this village as occupants. It was admitted that their holding had been hereditary, and that they had the power of mortgage and sale.

Under these circumstances the plaintiff, on the 26th October 1873, served a notice on the defendants, calling upon them to enter into an agreement with him for the rent of the lands held by them, and, in the event of their failing to do so, he intimated that rent,

*Second Appeal, No 370 of 1878.

1879

PARSOTAM KESHAVDAS v. KALYAN RAYJI.

at the enhanced rate of Rs. 10 *per bigha*, would be levied from them. The defendants did not comply with the notice, and the plaintiff brought this suit to recover the enhanced rent with, arrears.

The defendant (*inter alia*) contended that the plaintiff had no right to demand the enhance rent.

Both the lower Courts held that the plaintiff's right to enhance was not unlimited, but was restrained by the custom of the country. The Court of first instance awarded Rs. 4-8 for some and Rs. 5-8 for other kinds of lands; the Court of Appeal awarded Rs. 3 and Rs. 6, respectively, instead.

The sole contention before the High Court was whether there was any, and if so what, limitation to the plaintiff's right to enhance.

Nanabhai Haridas, Government Pleader (with him *Shantaram Narayan*) for the appellant.—Our grant is one of the soil, not of revenue merely. The plaintiff is the absolute proprietor of the village, and can turn out his tenants independently of the fact of their paying or not paying the rents. The evidence shows a variation in the amount of rent. The right to enhance rent may be limited by law, contract or custom. There is no question that no limitation has been placed in this case either by law or contract; no custom has been proved to establish such a limitation. The question depends on the character of the tenancy. The defendants tried to prove that they were permanent tenants by attempting to show that there were *bhagdars*, who, along with *narvadars* and *talukdars*, are his only permanent tenants in Gujarat. In this attempt the defendants have failed. The *inamdar* has an unlimited power to enhance: *Vishnubhat* v. *Babaji*.(1) The judgment of the Chief Justice in that case is not affected by the judgment of West, J., in *Prataprav Gujar* v. *Bayaji Namaji*.(2) The result of the decision is, that permanent tenancy is not incompatible with variation of rent, and that, if there be no limit to the plaintiff's right to enhance, the question—whether the rent demanded by the *inamdar* is moderate or not?—is quite immaterial. It lies on the tenant to prove that their tenancy is other than that from year to year. The following cases were also cited;

(1) *Supra*, p. 315, note. (2) I. L. R. 3 Bom. 141.

1879

PARSOTAM KESHAVDAS v. KALYAN RAYJI.

Annaji v. *Kasi*;(1)*Bai Ganga* v. *Dullabh*;(2)*Hari* v. *Naryan*,(3) *Endar* v. *Lallu*,(4)*Naryan* v. *Lakshman*,(5) *Hari* v. *Parshram*.(6)

Macpherson (with him *Pandurang Bulibhadra*) for the respondent.—The only questions for determination are questions of fact, viz., (1) have the defendants a proprietary title, and (2) is the rate fixed by the lower Courts reasonable? The Courts have found our tenancy to be of a proprietary and hereditary character.

Nanabhai Haridas.—The appellant is willing to accept half the produce.

The judgment of the Court was delivered by

M. MELVILL, J.—The District Judge has found, on a review of the history of the village of Adole, that although it is not a *bhagdari* village in the full sence of the term, yet that the rayats, who occupied lands prior to the grant to the *inamdar*, possess a tansferable and hereditary interest in their lands, subject only to the payment of rent or assessment to the Government or its alienee. We think that this finding was fully justified by the evidence in the case, as stated by the District Judge. "It is shown," he says, "by the evidence in the present case, (and it has not been disputed before me, that at the time of the grant to the plaintiff's ancestors," (and this was more than eighty years ago,) "the ancestors of the defendant were in possession of lands in the village as occupants. It is also proved, and it has not been disputed, that the rayats in this village have possessed and exercised the rights of mortgaging, transferring and alienating their lands to other people, and all so that the holdings are hereditary, and that the *inamdars* have never challenged these rights, or interfered with their exercise. It is also proved that the rayats have paid rent at one common rate. The rate has varied at different times; but whatever it has been, all the tenants pay at the same rate." It is also found that, for more than thirty years preceding the institution of the suit, the rent has been uniform. It would be difficult to have stronger evidence that the defendant has a proprietary right

(1) 3 Bom. H. C. Rep. (A. C. J.) 124.
(2) 5 Bom. H. C. Rep. (A. C. J.) 179.
(3) 6 Bom, H.C. Rep. (A, C. J.) 23.
(4) 7 Bom. H. C. Rep. (A. C. J.) 111.
(5) 10 Bom. H. C. Rep. 324.
(6) 11 Bom. H. C. Rep. 23.

in his lands, and is not a mere tenant at will; and this being established, we agree with the District Judge that the existence of a right of permanent occupency in the defendant necessarily involves a limitation of the *inamdar's* right to enhance the assessment. It would be a contradiction in terms to say that a landholder cannot eject a rayat, but that he may at his pleasure enhance the assessment to such an amount as would render it impossible for the rayat to continue to hold the land. We entertain no doubt that, in every part of India, the Government or its alience is debarred, if not by law, (as in Bengal,) yet by the custom of the country, from enhancing the assessment of permanent tenants beyond a certain limit. So far we are in accord with the Courts below, and have nothing to add to the able judgments in which the Subordinate Judge and the District Judge have recorded their opinions. But we are unable to agree with the District Judge in holding that the plaintiff can be limited to a nominal enhancement of the assessment. One reason assigned by the District Judge for this conclusion was that there had been in the Broach District an average decline of twenty-nine per cent. in the price of all the chief grain crops and cotton between the years 1847 and 1870, when the new settlement was introduced by Government. He refers to the Bombay Gazetteer in support of this statement. But the Gazetteer (Vol. II, p. 492) really shows that the price of cotton and grain in 1870 was more than 200 per cent. in excess of the price in 1843; and the fall in the value of the rupee, which has occurred since 1870, must have tended still further to increase the value, in rupees, of all exportable produce. The District Judge's *data* are, therefore, incorrect: and, even if they were correct, they would not, in our opinion, be the *data* on which our decision should be based. As the alienee of all Scindia's rights, we must hold that the plaintiff has, in the absence of law or contract to the contrary, the right to enhance the assessment to the full extent to which, according to the old custom of the country, Scindia would have been entitled to enhance it. Such maximum of assessment may appear to us excessive; but we do not see on what principle we can limit the alienee of Scindia's rights to anything short of that maximum. If the rayats of a land holder are to be protected to any greater extent than this, it can

1879
PARSOTAM KESHAVDAS v. KALYAN RAVJI.

only be by legislation, such as has been found necessary in Bengal and the North-West Provinces, limiting the demands of landowners upon certain specified classes of tenants. Now, there is authority for holding that, under the native governments, the sovereign's full share was one-half the produce (*Vyakunta Bapuji* v. *The Government of Bombay* (1); and it is said that in the Broach District the Britsh Government has levied assessment up to this extent.(2) It is not necessary for us to decide whether these authorities are sufficient to established that an *inamdar* may in all cases enhance the assessment up to the limit of one-half of the produce. We are saved from this necessity by the virtual admission of the defendant in the present case that, in the village of Adole, the full Government share, under the native Government, was one-half of the produce. In his petition of appeal to the District Court he complains of the award of Rs. 4-8 *per bigha* by the Subordinate Judge, on the ground (*inter alia*) that" it is not proved that the sum of Rs. 4-8 represents half the produce, which was the maximum proportion taken under the old *regime*." The defendant himself, therefore, suggests this test; and as the plaintiff, through his pleader, expresses his willingness to be satisfied with half the produce, we must, in this particular case, decide that the plaintiff is entitled to enhance the defendant's assessment to any extent not exceeding one-half of the gross produce.

There has been no argument before us on the question of the plaintiff's right to assess the grass-land, and we shall, therefore, not interfere with the District Judge's order, negativing this right. Nor has it been shewn to us that the District Judge was in error in holding that the arrears due by the defendant for *Samvat* 1929 amount to Rs. 2-2-8 only. His decree on this point must, therefore, be affirmed.

We amend the District Judge's decree by awarding to the plaintiff, (instead of the rates of Rs. 3 and Rs. 6 allowed by the District Judge,) the value of one-half the gross produce of the lands cultivated by the defendant in the year *Samvat* 1931, provided that such value do not exceed the sum of Rs. 10 *per bigha*, claimed by the plaintiff, and we direct that the amount of such

(1) 2 Bom. H. C. Rep. Appx. 60, 63. (2) Briggs' Land Tax in India, p. 304.

Produce be determined in the execution of this decree. In other respects the decree of the District Judge is affirmed.

The parties will bear their own costs in this second appeal.

Decree amended.

APPELLATE CIVIL.

(71)

Before Sir M. R. Westropp, Kt., Chief Justice, and Mr. Justice Kemball.

SAKHARAM SADASHIV ADHIKARI (ORIGINAL PLAINTIFF), APPELLANT, *v.* SITABAI (ORIGINAL DEFENDANT), RESPONDENT.*

May 3.

Hindu Law—Inheritance—Right of sister to inherit in preference to half-brother —Mitakshara and Mayukha, authority of.

A Hindu died possessed of certain immoveable property situated in the district of Thana, in the Northern Konkan, leaving him surviving a mother, a full-sister and a separated half-brother. His mother succeeded to his estate, and held it till her death. The half-brother then sued for a declaration of his right to the estate of his deceased brother.

Held that the full-sister and not the half-brother was entitled to succeed as heir to the estate of her deceased brother.

Held, also, that the decision in *Vinayak Anandrav* v. *Lakshmibai*(1) must be regarded as of general authority in the Presidency of Bombay, except where an invariable and ancient special usage to the contrary is alleged and proved.

Semble the law of the Mayukha should prevail in the Northern Konkan.

Krishnaji v. Pandurang(2) *and Lallubhai Bapubhai* v. *Manluverbai*(3) referred to.

It is settled law that a mother succeeding, on the death of her son, to his immoveable property, takes only such a limited estate in it as a Hindu widow takes in the immoveable property of her husband dying without male issue, and that, on her death, her son's heir succeeds to such property.

THIS was a special appeal from the decision of W. M. Coghlan, Judge of the district of Thana, in appeal No. 165 of 1874, reversing the decree of Narayan Govind, Second Class Subordinate Judge at Panvel, in original suit No. 805 of 1873.

Sakharam Sadashiv brought this suit against Sitabai in the Subordinate Judge's Court at Panvel, and prayed for a declaration of his right to one-half of certain salt-works situated at Sonari,

* Special Appeal, No. 34 of 1875,

(1) Bom. H. C. Rep. 117, 126; S. C. 9 Moo. I. A. 516; S. C. Calc. W. Rep. P. C. 41.

(2) 12 Bom. H. C. Rep. 65.

(3) I. L. R. 2 Bom. 418, 419, 420.