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rateable share, under s. 295 of the Civil Procedure Code, out of the assets realized by this Court.

"The question, then, is, are they entitled, under the aforesaid circumstances, to claim such share? I am of opinion that they are not.* * *

[473] I have, therefore, held, subject to the opinion of the Honourable the High Court, that, under the circumstances above set forth, the decree-holders of the Subordinate Judge's Court are not entitled to share rateably in the assets realized by this Court."

The parties did not appear either in person or by pleaders.

JUDGMENT.

WESTROPP, C.J.—The Court is of opinion that the decree-holders in the Subordinate Judge's Court are not entitled to any share in the assets realized by the Small Cause Court, until after satisfaction of the decrees in that Court mentioned by the Judge of the Small Cause Court.

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Before Sir Michael Roberts Westropp, Kt., Chief Justice and Mr. Justice M. Melvill.

RANGA (*Original Defendant*), *v.* SUBA HEGDE (*Original Plaintiff*), *Respondent.** [23rd March, 1880,]

Mula-vargdars, *power of, to raise rent of* mul-gainidar—Mul gainidar—*Enhancement of assessment—Power of the State.*

A *mula-vargdar*, or superior holder, cannot raise the rent of his *mul-gainidar* or permanent tenant holding at a fixed rent, on the ground that the assessment on the land has been enhanced at the Government survey.

Babshetti v. *Venkataramana* (1)and *Ramakrishna Kine* v. *Narshiva Shanbog*(2) (S.A. No. 46 of 1879) followed.

Vyakunta Bapuji v. *The Government of Bombay* (3) referred to.

The plaintiff, who was a *mula-vargdar* (superior holder) of certain land situated in a village in the district of Kanara, sued to recover from the defendant, his *mul-gainidar* (permanent tenant), the enhanced assessment levied on the land by Government, and the local cess. Plaintiff also claimed rent for one year. The plaint alleged that the assessment had been enhanced, because of the defendant's encroahment on the adjoining land. The defendant denied his liability for the enhanced assessment, as he was a *mul-gainidar*, and only liable to pay the fixed annual rent reserved in the lease. He also denied having made any encroachment, and contended that the land, alleged to have been acquired by encroachment, had been included in the lease. Both the lower Courts allowed the plaintiff's claim with respect to the enhanced assessment and local cess, together with rent for one year. On an issue being sent to the District Judge by the High Court [474] on second appeal, it was found, that defendant was in possession of land other than that which he held under the lease; that he had acquired this other land by encroachment subsequently to the date of the lease; that both the lands were entered in the plaintiff's name in the Government survey at which the assessment on the land originally demised to the defendant, was raised to Rs. 36-12-0 (the original assessment being Rs.12), while the land subsequently acquired by defendant was assessed at Rs. 5.

Held, that the plaintiff could not recover from the defendant any more than the rent reserved in the lease in respect to the land originally demised, but that

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* Second Appeal No. 273 of 1879.

(1) 3 B. 154. (2) Printed Judgments of 1879, p. 294.

(3) 12 B.H.C.R. 1 (Appx.).

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he was subject to no such restriction in respect to the land subsequently acquired by encroachment.

Held, also, that the defendant was liable for the local cess in respect of both the lands.

It is not within the power of a Court of law, in the face of the contracts originally made between the *mula-vargdars* (superior holders) and their *mul-gainidars* (permanent tenants), to relieve the former from the hardship caused to them by reason of the enhancement, by Government, of the assessment on their lands to an amount exceeding or equal to the rent received by them (*mula-vargdars*) from the *mul-gainidars*.

It is doubtful whether Government, in its executive capacity, has any more power than Courts of law to interfere with contracts made between private persons. The remedy lies rather in the hands of the Legislature.

[F., 17 B. 54 (56); 17 B. 422 (424); 30 M. 375=17 M.L.J. 337=2 M.L.T. 320; R., 34 M. 231 (244)=7 Ind. Cas. 321=20 M.L.J. 640=8 M.L.T. 173; 4 Ind. Cas. 1112 =5 M.L.T. 200; 9 Ind. Cas. 263 (269)=9 M.L.T. 335; D., 26 B. 504 (516).]

THIS was a second appeal from the decision of A. L. Spens, Judge of the District Court of Kanara, in Appeal No. 101 of 1877, affirming the decree of the Second Class Subordinate Judge of Kumta.

The plaintiff was the *mula-vargdar* (superior holder) of certain land situated in Gokurn in the taluka of Kumta. The defendant occupied and cultivated this land, on payment of a fixed annual rent of Rs. 39, under a *mul-gaini* lease (Ex. No. 26). The original assessment on the land was Rs. 12, but it was raised to Rs. 36-12-0 at the Government survey which was introduced into the district of Kanara in 1872. The plaintiff had also to pay Rs. 2-4-9 on account of the local cess. He, therefore, sued to recover from the defendant the amount of the enhanced assessment and local cess, together with the rent for one year, 1873-74. He alleged that the assessment had been enhanced, because the defendant had encroached upon the adjoining land, and included it in the land held by him from the plaintiff.

The defendant answered that he was not liable for the enhanced assessment, as he was a *mul-gainidar*, and liable to pay, under his [475] lease (Ex. No. 26), a fixed annual rent of Rs 39 only. He denied that he had made any encroachment, and contended that the land, alleged to have been acquired by encroachment, had been included in his lease.

The Court of first instance held the plaintiff entitled to recover the enhanced assessment and local cess from the defendant, and made a decree in his favour for the same, together with rent for one year, as claimed by him. The District Judge upheld that decree in appeal.

On the 21st June, 1879, the defendant preferred a second appeal to the Hight Court. The appeal came on in the first instance before Sargent, C.J. (officiating), and M. Melvill, J., who sent down an issue to the District Judge, requiring him to find whether the defendant was in possession of any land belonging to the plaintiff other than that included in the lease (Ex. No. 26), and, if so, under what circumstances and since what date. The District Judge returned his finding on the 21st January, 1880, to the effect that the land in the defendant's possession, under Ex. No. 26, was two acres and twenty-six guntas; that he was in possession of other land measuring fourteen acres and seven guntas which he had acquired by encroachment subsequent to the date of the lease (Ex. No. 26); that all the lands were entered in the plaintiff's name at the Government survey, at which the land subsequently acquired by defendant was assessed at Rs. 5, while the assessment on the land leased to the defendant was raised

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to Rs. 36-12-0. On the return of this finding, the case was again heard by Westropp, C.J., and M. Melvill, J.

Shamrao Vithal, for the appellant.—The decision of the District Judge is contrary to the terms of the *mul-gaini* lease (Ex. No. 26), under which the appellant holds the land in dispute. It does not provide for the payment of the enhanced assessment claimed by the respondent. A *mula-vargdar* has no right to demand increased rent from his *mul-gaini* tenant, by reason of the enhancement of the assessment by Government, as ruled in *Babshetti* v. *Venkataramana* (1) and *Ramkrishna Kine* v. *Narshiva Shanbog* (2).

[476] *G. N. Nadkarni*, for the respondent.—The enhanced assessment leaves little or nothing to the *mula-vargdar* in present case. It would be a great hardship upon *mula-vargdars* if they were held not entitled to recover the amount of the increased assessment and of a new tax, like the local cess, from their tenants.

The following is the judgment of the Court:—

JUDGMENT.

MELVILL, J.—It must be taken as established by previous decisions of this Court—*Babshetti* v. *Venkataramana* (1) and *Rkmkrishna Kine* v. *Narshiva Shanbog* (2)—that a *mula-vargdar*, or superior holder, cannot raise the rent of the *mul-gainidar*, or permanent tenant holding at a fixed rent, on the ground that the assessment on the land has been enhanced at the recent Government survey. This is, undoubtedly, a hardship upon the *mula-vargdar*, as was pointed out in *Vyakunta Bapuji* v. *The Government of Bombay* (3). It may be well to quote the remarks there made upon this subject. "The result of an enhancement, by the State, of the *mula-vargdar's* assessment to an amount exceeding or equalling the rent received by him from the *mul-gainidar*, would be an annihilation of the interest of the *mula-vargdar* in his property, if the State had not, or failed to exercise, the power, imputed to it by Munro, of raising the *mul-gainidar's* rent in proportion to the enhancement of the assessment on the *muli-varg*. For the plaintiff it was said, in the course of the argument, that, in several instances in Kanara and Soonda, the property of *mula-vargdars* had been thus extinguished during the recent revenue survey; but, on behalf of the defendants (*i. e.*, the Government of Bombay), it was replied that, on those cases being brought to the notice of Government, relief against the assessment had been granted to the *mula-vargdars*, and that directions had been given that, in future, in making the new assessment, allowance should be made to the raiyat or *mula-vargdar*, where *mul-gaini* tenancies existed." To what extent the Government has carried the promised indulgence, we are not aware; but every case of this description, which comes before us, impresses us with the conviction that justice repuiries some adjustment of the relations between *mula-vargdars* and the **[477]** *mul-gainidars*. It is clear that, unless the assessment levied on the superior holder be reduced below the level of the rent paid by the tenant, the former realizes no profit, and it is no longer worth his while to hold the land. On the other hand, there seems no reason why the State should forego its right to the full assessment which the land can fairly bear. The remedy lies in an enhancement of the rent paid by the tenant to such an amount as will leave a fair profit to the landlord after payment of the Government

(1) 3 B. 154. (2) S. A. 46 of 1879, Printed Judgments of 1879, p. 294.
(3) 12 B. H.C.R. Appx. 21.

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assessment. Such enhancement is the object sought in the present and similar suits; but we have been compelled to hold that, in the face of the contracts originally made between the *mula-vargdars* and their permanent tenants, it is not within the power of a Court of law to grant the relief sought for. Notwithstanding the remark of Sir Thomas Munro, that the Government can raise the rent of the *mul-gainidars*, when an additional assessment is imposed on the landlords, it may well be doubted whether (whatever a despotic Government, such as that of Hyder Ali or Tippu Saheb, may have felt itself at liberty to do), the present Government, in its executive capacity, has any more power than the Courts to interfere with contracts made between private persons. The remedy appears to lie rather in the hands of the Legislature.

In the present case the plaintiff cannot recover from the defendant, in respect of the land originally demised, any more than the rent reserved in the lease. But, for the additional land which the defendant has acquired by encroachment, the plaintiff is subject to no such restriction. The defendant has acquiesced in the entry of this land in the plaintiff's name, and in his written statement he contended that the land was included in the lease executed to him by the plaintiff. There is, therefore, no dispute, on his part, as to the plaintiff's title, and he has shown no right in limitation of the plaintiff's rights as landlord. The plaintiff has not, in this suit, demanded, in respect of this land, more than the amount of the Government assessment, and to this amount, at least, he must be held entitled.

We are of opinion that the defendant is liable for the local cess, both in respect of the land originally demised and of the land [478] subsequently acquired by encroachment. The cess is distinct from rent, and, not having been in existence at the time when the lease was made, it is, of course, not provided for in that lease. In the absence of any contract to the contrary, we think that it is equitable, and in accordance with the intention of the Legislature, as shown in s. 8 of Bombay Act III of 1869, that the cess should be ultimately paid by the tenant.

We, accordingly, vary the decree of the Court below, and award to the plaintiff the following sums:—

	Rs.	A.	P.
Rent for 1873-74 for the land leased under Ex. No. 26, measuring 2 acres, 26 guntas	39	0	0
Assessment on land subsequently acquired by defendant, measuring 14 acres, 7 guntas...	5	0	0
Local cess on the whole land	2	4	9
Total Rs. ...	46	4	9

The parties to bear their own costs throughout.

Decree varied.

4 B. 478-N. = Unrep. P.J. B. H C. (1878—1880) 386.

NOTE.—In *Ramkrishna Kine* v. *Narshiva Shanbog* (S. A. No. 46 of 1879), above referred to, the plaintiff Narshiva, who was the *mula-vargdar* of certain land situated at Kumta, in the district of Kanara, sued to recover from the defendant Ramkrishna the amount of the enhanced assessment and local cess levied by Government on the land which the defendant held from the plaintiff under a *mul-gaini* lease. The plaintiff also claimed three years' arrears of *mul-gaini* rent for the land. The defendant denied his liability for the enhanced assessment and local cess, as he was a *mul-gainidar*, and liable to pay only the rent permanently fixed in the lease. The Subordinate Judge of

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Kumta held the plaintiff entitled to recover the enhanced assessment and local cess, together with the arrears of rent sued for. He made a decree, accordingly, in favour of the plaintiff. The District Judge of Kanara (Mr. A. L. Spens) affirmed it in appeal. The defendant thereupon appealed to the High Court. The appeal was heard by M. Melvill and Pinhey, JJ. In the High Court it was contended on behalf of the defendant, that the lower Courts were wrong in holding him liable to pay the enhanced assessment and local cess, and that he was liable for nothing more than the rent payable in kind fixed in the *mul-gaini* lease.

The following is the judgment of the Court delivered on the 15th April 1879 :—

JUDGMENT.

MELVILL, J.—The judgment in this case must follow the judgment in second appeal No. 422 of 1878, decided on the 20th February last. Defendant holds the land on a prepetual lease at a fixed rate, and plaintiff can claim no more than he [479] is entitled to under that lease. The fact that Government have increased the assessment for which plaintiff is liable, cannot be allowed to alter the terms of the contract entered into between the parties, albeit plaintiff may have acted improvidently in granting any such lease to the defendant.

The decree of the District Court must be amended, and defendant decreed to pay plaintiff the amount due as rent for the years under the lease No. 24 (*i.e.*, 22½ khandis of rice) which he has all along admitted his liability to pay, and plaintiff must bear all costs in all Courts.

[This case is followed in 4 B. 473 (476).]

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4 B. 479.

APPELLATE CRIMINAL.

Before Mr. Justice M. Melvill and Mr. Justice F. D. Melvill.

IMPERATRIX *v.* IRBASAPA.* [29th April, 1880.]

Giving false evidence before a police patel—Sanction—Bombay Act VIII of 1867 *(Village Police), s.* 13—*Indian Penal Code (XLV of* 1860), *ss.* 181, 191 *and* 193—*The Code of Criminal Procedure (X of* 1872), *ss.* 467 *and* 468.

A person who makes a false statement upon oath before a police patel acting under s. 13 of Bombay Act VIII of 1867 gives false evidence within the meaning of s. 191 of the Indian Penal Code, and is punishable under s. 193; but his trial for that offence requires no sanction, a police patel not being a Criminal Court within the definition of s. 4 of the Code of Criminal Procedure (see s. 468), although offences under Chap. X of the Indian Penal Code committed before the same officer cannot be tried without a sanction. (See s. 467 of the Code of Criminal Procedure).

THIS was a reference by A. C. Watt, Acting Judge of Dharwar, under s. 296 of the Code of Criminal Procedure.

The material circumstances of the case are as follows :—

During an investigation by a police patel, held under s. 13 of the Village Police Act, Bombay (VIII of 1867), one Irbasapa was examined as a witness, and his evidence was recorded by the patel, on solemn affirmation on behalf of the complainant, who had accused four persons of having voluntarily caused hurt to him. The evidence was forwarded, in due course, to the Subordinate Magistrate who tried the case. At the trial, Irbasapa having made a statement contradictory of that which he had made before the police patel, the Magistrate discharged the [480] accused persons, and sanctioned the prosecution of Irbasapa for giving false evidence either before the police patel or before himself.

Irbasapa was, accordingly, tried by Mr. Hughes, Magistrate (First Class), and sentenced to rigorous imprisonment for six months.

* Criminal Reference No. 74 of 1880.