

1881

NARAYAN  
BHIVRAV  
v.  
KASHI.

on the question of title, viz., whether the defendant, as *inamdar*, to whom this portion of the land has been allotted under the partition decree, is entitled to recover the land even on due notice to quit. We are not, however, to be understood as advising the plaintiffs to waive their right to restitution on the mere ground of expulsion from possession without notice to quit. They may, if they please, leave the defendant to serve his notice to quit hereafter, and in a new suit, to be brought by the defendant, to prove, if he can, that on such notice he has the right to eject the present plaintiffs.

If the plaintiffs now elect to waive the notice, and prefer to have in this suit a decision on the right of the defendant to eject them even upon notice, then some such issue as that directed by the District Judge should be laid down and tried. The issue suggested by the District Judge may, perhaps, be advantageously paraphrased thus: "Is the *inamdar*, under his grant in *inam* (*sanad*), or otherwise entitled to obtain possession of the land in the plaint mentioned?" Subject to the above remarks we affirm the order of remand of the District Judge; and the Subordinate Judge is, upon the new trial, to be guided by those remarks. The costs of suit and of both appeals are to abide the final result of such new trial.

*Order of remand affirmed.*

## APPELLATE CIVIL.

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

1880  
November 16.

PA'NDURANG SAKHA'RA'M AND OTHERS (ORIGINAL DEFENDANTS),  
APPELLANTS, v. YEDNESHWAR SHITA'RA'M CHITNIS (ORIGINAL  
PLAINTIFF), RESPONDENT.\*

*Inamdar—Landlord and tenant—Notice to quit—Ejectment.*

Tenants cannot be ejected as mere trespassers. If they are yearly tenants, they are entitled to a clear six months' notice to quit before they can be evicted. If they are tenants for a term of years or for a life or lives, there must be proof of an expiration of the term by effluxion of time or of the falling of the life or lives.

THIS was a second appeal from the decision of R. F. Mactier, District Judge of Satara, affirming the decree of P. S. Binivale, First Class Subordinate Judge at the same place.

\* Second Appeal, No. 313 of 1880.

The plaintiff, Yedneshwar, brought this suit for possession of certain land, alleging that he had obtained a decree in a partition suit against one Khanderav Balvant for certain *inam* lands, including the land in dispute ; that he had been obstructed by the defendants in obtaining possession of the land ; that, therefore, he prayed for the removal of their obstruction and possession of the land.

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The defendants Pandurang and two others answered (*inter alia*) that the *inamdar* never held the land, but only received rent ; that they were permanent occupants as *mirasdars*.

Both the lower Courts awarded the plaintiff's claim.

The defendants appealed to the High Court.

*Shantaram Narayan* appeared for the appellants.

The Hon. Rao Saheb *V. N. Mandlik* appeared for the respondent.

The following is the judgment of the Court delivered by

WESTROPP, C. J.—The plaintiff is a member of a family alleged to be owners of certain lands (including the land in dispute), which lands are contained in the village of Vargaon. That village was granted, A.D. 1752, to their ancestor, Ramrav Jivaji. The plaintiff alleges that by a decree in a partition suit, in which he was plaintiff and Khanderav Balvant Chitnis was a defendant, the lands in dispute were allotted to him as part of his (the plaintiff's) share in the village. Neither that decree nor any copy of it has been given in evidence in this case—an omission which ought not to have been permitted by the Courts below. The defendants' written statement admits that there has been a decree in a partition suit, and that a sixteenth share in the village has been awarded to the plaintiff, but it does not admit that the lands in dispute were awarded by that decree to the plaintiff. On the plaintiff's own showing, that decree was the foundation of his title, and yet he has not placed it on record. Assuming, however, that such a decree was made, and that it awarded the land in dispute to the plaintiff, that alone would not entitle the plaintiff summarily and without due notice to eject tenants on the land previously to the decree for partition and not parties to the suit in which it was

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made. It should be shown that their right of tenancy had terminated. Assuming that their tenancy was merely from year to year, there has not been any proof of its determination by a six months' notice to quit, nor is there any allegation of a refusal by the defendants to pay their usual annual rent as such yearly tenants. Assuming their tenancy to be for a term of years or for a life or lives, there is not any proof of an expiration of the term of years by effluxion of time, or of the falling of the life or lives. The plaintiff, although in his evidence he admits that the defendants have held the lands for twenty or twenty-two years, has ventured in his plaint to treat them as trespassers who have prevented him from taking possession of the lands. To treat as simple trespassers persons who are admitted to have occupied the lands for twenty years or upwards, and who are not alleged to have failed or refused to pay their usual rent, and to turn them out of possession summarily and without notice is, even though they may be only yearly tenants, such a high-handed proceeding as cannot be properly countenanced by any Court of Justice.

Again, we see no satisfactory investigation of the claim of the defendants to a *mirasi* or perpetual tenancy. The village books do not appear to have been examined for the purpose of ascertaining when the tenancy of the defendants and their predecessors commenced. Nor is there any other clear evidence on that point which has been brought to our attention. If the tenancy were in existence previously to the granting of the *sanad* of A.D. 1752 to Ramrav Jivaji, and there has been no evidence of its being renewed from time to time by him and his successors, there would be strong reason for inferring that the defendants and their predecessors held in *miras*. We have not any intention of now determining whether or not the defendants are entitled to a perpetual tenancy. But we are clear that, at all events, they cannot be ejected, as this suit seeks to eject them, as mere trespassers. If they be only yearly tenants, they are entitled to a clear six months' notice to quit before they can be evicted. That notice they have not had: so we reverse the decrees of the Courts below, with costs of suit and of both appeals to be paid by the plaintiff.

*Decrees reversed.*