1890
JULY 7.
APPELLATE CIVIL.
15 B. 67.

viz., by forfeiture of the occupancy or alienated holding in respect of which the arrear of land revenue is due under s. 153, and by sale of the defaulter's immoveable property under s. 155. If the former method is adopted, then, under s. 153, the Collector may declare the occupancy or alienated holding, in respect of which the arrear is due, to be forfeited to Government, and sell or otherwise dispose of the same under the provisions of ss. 56 and 57. If the latter is adopted, then the Collector may, under s. 155, cause the right, title, and interest of the defaulter in any immoveable property, other than the land on which the arrear is due, to be sold. In the former case, the land is sold freed from all incumbrances created by the occupant, as provided by s. 56. In the latter case, the rights of incumbrancers are not touched.

The effect of s. 187 of the Code is clearly to make applicable the provisions of ss. 153 and 56, and also of s. 155, to sales for the recovery of charges assessed under s. 122. And the question is, whether, in the present case, the Collector declared the occupancy of the land in suit forfeited to Government under s. 153 and thereupon sold it under s. 56; or whether he sold only the right, title, and interest of the occupant, under s. 155, the land being land other than that in respect of which the charges on account of boundary marks were due. Neither of the Courts below has dealt with this question; nor does the evidence on the record enable us to answer it.

We therefore reverse the order of the lower appellate Court and remand the case for a re-hearing of the appeal by that Court. Costs to abide the result.

Remand order reversed and case sent back.

---

[71] 15 B. 71.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Telang.

ONKARAPA AND OTHERS (*Original Defendants*), *Appellants v.* SUBAJI PANDURANG (*Original Plaintiff*), *Respondent*;
AND SUBAJI PANDURANG (*Original Plaintiff*), *Appellant v.* ONKARAPA AND OTHERS (*Original Defendants*), *Respondents.**
[10th July, 1890.]

Landlord and tenant—Ejectment suit—Tenant expending money on the premises.

In a suit for ejectment it appeared that the defendants and their father had occupied the premises in question for over forty years, and that the house, which had originally been a cow-house, had been altered by the defendants and converted into a dwelling-house. The District Judge found that as the plaintiff had allowed the defendants to rebuild and virtually erect a new house, it would not be equitable to allow him to eject them from it, and he accordingly refused the plaintiff a decree for ejectment, but gave him a decree against the defendants for three years' rent. On appeal to the High Court the decree was varied by directing that the plaintiff should recover possession of the land and house, there being no evidence that the defendants had entered on the land, for building purposes or had built "in the hope or encouragement by the plaintiff of an extended term or an allowance for expenditure" (*Ramsden* v. *Dyson* (1)), and, consequently, the defendants had no equity against the plaintiff.

---

* Cross Second Appeals Nos. 229 and 246 of 1889.

(1) L.R. 1 H.L. 170.

1890
JULY 10.

APPELLATE CIVIL.

15 B. 71.

EJECTMENT suit. These were cross second appeals from a decision of J. L. Johnston, District Judge of Dharwar.

The plaintiffs sued to eject the defendants from a certain house and to recover Rs. 12 for three years' rent.

It appeared that the house was originally let to the defendants' father many years previously; that when it was first let, it was a cow-house, but that the defendants had made alterations in it, and had converted it into a dwelling-house.

The defendants denied the plaintiff's title, alleging that the house was their ancestral property.

The Court of first instance dismissed the suit.

On appeal, the District Judge held that the plaintiff was the owner of the house, and that he was entitled to recover rent from the defendants at the rate of Rs. 4 *per annum*. He further held, however, that the plaintiff was not entitled to eject the defendants, as he had allowed them to rebuild and virtually to build a new house.

[72] The following is a portion of his judgment:—

"* * *. It appears, on the whole, that the defendants have been using the cattle-house of the plaintiff's family for forty years and that they have virtually made it into a new house. They have denied plaintiff's tenancy, and are liable to be ejected now; but I do not think that equity would be done thereby, for plaintiff has allowed them to rebuild and virtually build a new house on his site. All that equity requires is that plaintiff should get his rent for the three years as claimed * * *."

Both parties preferred appeals to the High Court.

Branson (*Ghanasham Nilkanth Nadkarni* with him), for the plaintiff.—The District Judge was wrong in holding that the defendants should not be ejected. The defendants have denied their tenancy and set up ownership. The land was not let for agricultural purposes, so that the presumption of permanent tenancy can arise—*Gungadhur Shikdar* v. *Ayimuddin Shah Biswas* (1). The mere circumstance that the defendants were allowed, as they allege, to rebuild the house, does not give them the equitable right to remain in possession, unless they can show that the plaintiff has by his words or conduct sanctioned their doing so—*Ramsden* v. *Dyson* (2). The defendants have built at their own risk. It may be conceded that the defendants should be allowed some compensation, but the land should be delivered over to the plaintiff.

Narayan Ganesh Chandavarkar, for the respondents.—The evidence in the case shows that the present house has been standing for nearly forty-five years. If it could be held that the house, which formerly stood in its place, belonged to the plaintiff, we contend that the defendants were induced by the silence of the plaintiff, when the present house was built, to build it. The house is in the vicinity of the plaintiff's house, and the presumption is that the plaintiff allowed it to be built. The fact that it has been there for so many years may well bring the plaintiff's case within the application of the rule laid down in *Gungadhur Shikdar* v. *Ayimuddin Shah Biswas* (1).

JUDGMENT.

[73] SARGENT, C. J.—The District Judge has not found that the defendants originally entered on the land in question for building purposes,

(1) 8 C. 960.

(2) L.R. 1 H.L. 170.

1890 JULY 10. APPELLATE CIVIL. 15 B. 71.

in which case the decision in *Gungadhur Shikdar* v. *Ayimuddin Shah Biswas* (1) would apply, but that they have since been allowed to spend money on the cow-house and convert it into a dwelling-house; and he considered that under such circumstances it would not be equitable to allow the plaintiff to eject them. But to give the defendants such an equity it was necessary for them to prove that they built "in the hope or encouragement by the plaintiff of an extended term or an allowance for expenditure," as explained by Lord Kingsdown in *Ramsden* v. *Dyson* (2). But there is no admission by plaintiff, nor any evidence whatever, that such was the case. We may also remark that here the defendants have been in possession for forty years, and have probably had the full benefit of their expenditure.

We must, therefore, vary the decree of the Court below by directing that the plaintiff be put into possession of the land and house, with costs on defendants throughout. The defendants' cross appeal is dismissed with costs.

Decree varied.

---

15 B. 73.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice Birdwood and Mr. Justice Telang.

RAMCHANDRA VASUDEVSHET (*Plaintiff*) *v.* BABAJI KUSAJI (*Defendant*).* [15th July, 1890.]

Stamp Act I of 1879, sch. II, art. 13 (b)—Construction—Lease for planting cocoanut trees.

A person whose occupation is that of a cultivator and takes a lease of land for planting cocoanut trees is, in respect of that occupation, a "cultivator." A lease given by him is one exempt from stamp duty under art. 13 (*b*) of sch. II of the Stamp Act I of 1879 if the annual rent reserved thereby does not exceed one hundred rupees.

[74] THIS was a reference by Rav Sabeb S. N. Karandikar, Subordinate Judge of Malvan, under s. 49 of the Stamp Act I of 1879.

The question referred by the Subordinate Judge for the High Court's decision was :—

Whether the exemption contemplated by art. 13, cl. (*b*) of sch. II of the Stamp Act I of 1879 extends to leases and *kabulayats* for land taken up for growing trees, and whether the Ex. 12 is exempt from duty?

The Subordinate Judge's opinion on the point was in the negative.

(Translation of Exhibit 12.)

Shri (*i.e.*, prosperity, &c.)

Kabulayat to Rajashri Ramchandra Vasudev Set Adari, inhabitant of Malvan, by Babaji Kusaji Vaigankar, inhabitant of Malvan. I give this *kabulayat* in writing as follows:—You are at present enjoying your *thikan* (*i.e.*, land) Cubarbaug situate at the village of mauje Malvan, in

---

* Civil Reference No. 6 of 1890.

(1) 8 C. 960.

(2) L.R. 1 H.L. 170.