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[133] APPELLATE CIVIL.

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

GOPAL KRISHNA PARACHURE (*Original Plaintiff No. 2*), *Appellant v.* SAKHOJIRAV (*Original Defendant*), *Respondent.** [30th January, 1893.]

Khoti Act (Bombay Act I of 1880, *ss.* 17 †, 20 ‡, 21 § *and* 22¶)*—Entry in the Settlement Officer's record—" Conclusive and final evidence of the liability "—Reference to debate in Legislative Council—Construction.*

An entry in the Settlement Officer's record referred to in s. 17 of the Khoti Act (Bombay Act I of 1880) is conclusive as to the nature and amount of rent. The words "conclusive and final evidence of the liability " in s. 17 have the effect of shutting out any other evidence on the subject which might be adduced before the Civil Court.

The words " when not final " in s. 21 of the Act refer to the finality ascribed in s. 17 to the entries of the nature therein mentioned, and which follow as contemplated in s. 20 on the survey officer arriving at his decision.

For the purpose of construing an Act, the debate upon the Bill when before the Legislative Council is not to be referred to.

[F., 20 B. 475; 20 B. 729 (731); 21 B. 467 (472); R., 21 B. 235 (242); 21 B. 480 (487).]

SECOND appeal from the decision of J. Fitzmaurice, Acting District Judge of Ratnagiri.

[134] The plaintiff sued to recover from the defendant the balance of profits for the years 1886-1887 and 1887-1888 on account of the cultivation of certain lands in a village of Doncavali, of which the plaintiffs' agent was the managing khot. The suit was filed on the 20th July, 1888.

Defendant contended (*inter alia*) that the plaintiff was not entitled to recover *thal* (rent in kind) for the lands which were liable only to a permanent *makta* (rent in cash); that on the 12th June, 1887, it had been decided by the Special Assistant Collector and Settlement Officer that the lands were liable to *makta*; that the suit not having been instituted within one year from the date of that decision was time-barred; that the *makta* for the year 1886-1887 was already paid, and that he was ready and willing to pay the balance of *makta* for the year 1887-1888, but the plaintiff had declined to accept it.

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* Second Appeal, No. 725 of 1891.

The following are the sections of the Act referred to:—

† 17. The other records prepared under the said section shall specify the nature and amount of rent payable to the khot by each privileged occupant according to the provisions of s. 33, and any entry in any record duly made under this section shall be conclusive and final evidence of the liability thereby established.

‡ 20. If it shall appear to the survey officer, who frames the said register or any other record, that there exists any dispute as to any matter which he is bound to record, he may, either on the application of any of the disputant parties, or of his own motion, investigate and determine such dispute and frame the said register or other record accordingly.

§ 21. In any such matter the decision of the said survey officer, when not final, shall be binding upon all the parties affected thereby until reversed or modified by a final decree of a competent Court.

¶ 22. No suit shall lie against the said survey officer, or against Government, or any officer of Government to set aside any such decision of a survey officer; but the record from time to time be amended by the said survey officer, or when the survey settlement is concluded by the Collector, in accordance with any such decree as aforesaid which the parties may obtain *inter se* on an application, accompanied by a certified copy of such decree, being duly made to the said survey officer, or to the Collector for that purpose.

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The Subordinate Judge found that the custom of the payment of the *makta* alleged by the defendant was proved: that the suit was not barred by the order passed by the Settlement Officer, but that it was barred by art. 14, sch. II of the Limitation Act (XV of 1877) only with respect to the lands comprised in that order and not with respect to others. The Subordinate Judge, therefore, allowed the claim to the extent of Rs. 28-3-10.

The plaintiff appealed to the District Court, and the defendant presented cross-objections under s. 561 of the Civil Procedure Code (Act XIV of 1882).

The District Judge held that the entries of the nature of the amount and rent contained in the decision of the Settlement Officer were absolutely final. In his judgment he said:—

"Now s. 17 of the Khoti Settlement Act, 1880, says that 'any entry in any record duly made under this section shall be conclusive and final evidence of the liability thereby established.' Sections 20 and 21 must relate to disputes as to other matters than 'the nature and amount of rent payable to the khot by each privileged occupant;' for s. 21 says 'in any such matter the decision of the said survey officer, when not final, shall be binding * * * until reversed or modified by a final decree of a competent Court.'

[135] "A distinction is plainly made between the effects of entries in regard to the particular matters referred to in s. 17 and the effects of those made under s. 20, the latter being liable to be upset by the Civil Courts, while the former are 'conclusive and final evidence of the liability thereby established.'

"That the entries under s. 17 are intended by the Legislature to be final,—that is, not liable to be upset by the Civil Court,—is, I think, shown by the debate in Council on the Bill, which took place on the 6th January, 1880." (The Judge then quoted passages from the debate and continued:—) "I am, therefore, of opinion that the entries shown in Ex. 18 referring to some of the lands in dispute are final evidence that those lands are liable to *makta* at the rates laid down."

The Judge having come to the above conclusion, the parties consented to a decree being passed for the plaintiff for the amount awarded by the Subordinate Judge with costs; the right of appealing against the decision of the Judge being reserved.

The plaintiff preferred a second appeal to the High Court.

Ganesh Krishna Deshamukh, for the appellant (plaintiff):—The lower Court has misconstrued s. 17 of the Khoti Act. That section must be read along with s. 22. An entry made by a settlement officer under the provisions of s. 17 is conclusive of the liability mentioned in the entry itself and no further. The entry is final and conclusive so long as it exists, but not for ever. Section 22 contemplates the modification of the entry made under s. 17. Section 17 should be construed in a manner consistent with the tenor of the whole Act. A Civil Court cannot go behind the entry so long as it stands, but a Civil Court may entertain a suit for the cancellation of the entry. If the Legislature had intended that the entry should be final, then the section would have ended with the word "final," and there would have been no addition of the other words. The present suit is brought for the purpose of getting the entry cancelled. In interpreting ss. 17 and 21 of the Khoti Act the Judge was wrong in

referring to the debate in the Legislative Council. Act X of 1876, s. 12, was cited.

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[136] *Ganpat Sadashiv Rao*, for the respondent, was not called upon.

JUDGMENT.

SARGENT, C. J.—The District Court was wrong in referring to the debate on the bill for the purpose of construing s. 17 of the Act, but we agree with him in his conclusion that the entry in the Settlement Officer's record was conclusive as to the nature and amount of the rent. The words "conclusive and final evidence of the liability" must, in the ordinary and grammatical meaning, have the effect of shutting out any other evidence on the subject which might be adduced before the Civil Court.

It was argued indeed that s. 21 provides for the entries being only binding on the parties until the decision of the survey officer has been reversed by a competent Court, and that the words "when not final" in s. 21 refer only to such matter as by the Revenue Jurisdiction Act of 1876 has been withdrawn from the jurisdiction of the Civil Courts. If that had been the intention we should expect it to be expressed in very different terms. The object of ss. 20, 21, 22 is to point out the course the survey officer is to pursue, when there are disputes between the parties, in order to enable him to make the entries required by s. 17. And the words "when not final" can only, therefore, properly refer to the finality ascribed in s. 17 to the entries of the nature therein mentioned and which follow as contemplated by s. 20 on the survey officer arriving at his decision.

We must, therefore, confirm the decree with costs.

Decree confirmed.

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APPELLATE CIVIL.

Before Mr. Justice Candy and Mr. Justice Fulton.

DEVSHANKAR NARANBHAI AND OTHERS (*Original Plaintiffs*), *Appellants v.* MOTIRAM JAGESHVAR (*Original Defendant*), *Respondent.** [30th January, 1893.]

Hindu law—Will—Bequest to dharmada—Dharmada—Dharma.

A bequest in favour of *dharmada* is void by reason of uncertainty. The law on this point is the same in the Mofussil as in the Presidency town.

[R., 22 B. 774 (773); 31 C. 895 (897)=8 C. W. N. 653.]

[137] SECOND appeal from the decision of G. McCorkell, District Judge of Ahmedabad, reversing the decree of Rao Saheb Maneklal Narotamdas in suit No. 589 of 1889.

The plaintiffs sued, as executors of the will of one Jethalal Jageshvar, to recover possession of certain moveable property belonging to the testator, or for its value, and for an injunction restraining the defendant from obstructing them in taking possession of the property in dispute.

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* Second Appeal, No. 864 of 1891.