1893
MARCH 22.
APPELLATE CIVIL.
18 B. 244.

made by the survey officer between the parties; and even if "the framing the register" be regarded as an "act" of the survey officer, the section provides, as before mentioned, for its being amended by the Collector himself, in accordance with the decision of the Civil Court. Lastly, in the present case it is to be observed that the "act" was not done until 1889 nearly two years after the filing of the suit. For these reasons, we are of opinion that the claim is not affected by the art. 14 of the Statute of Limitation.

As to the contention that the defendant had acquired a title by adverse possession to hold the lands as *dhara*, we agree with the lower Court that although the defendant may, as a fact, have paid only the assessment before 1878-79, adverse possession would not begin to run against the plaintiff until 1878-79 when such a claim was actively advanced by the defendant, and no title by adverse possession was, therefore, acquired by the defendant when the present suit was instituted in 1887. A cause of action, however, arose in 1882 when the survey officer determined that the lands were *dhara*, and the present suit, which is brought within six years to reverse that decision, is, therefore, in our opinion, in time. We must, therefore, reverse the decree of the Court below and send back the case for a decision on the merits. Costs to abide the result.

Decree reversed and case sent back.

---

18 B. 250.

APPELLATE CIVIL.

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

RAMBHAT (*Original Plaintiff*), *Appellant v.* BABABHAT AND OTHERS (*Original Defendants*), *Respondents.** [22nd March, 1893.]

Landlord and tenant—Non-payment of rent by tenant to landlord—Acquiescence of landlord—Effect of acquiescence—Subsequent suit by landlord for possession—Practice—Finding of fact not accepted in second appeal—Inam land—Sub-alienee—Wrongful surrender by the village inamdar to Government—Khalsat.

The plaintiff, a sub-alienee from an inamdar of certain inam, leased it to D, prior to the year 1858. In 1860 the land was wrongfully surrendered by the inamdars [251] of the village to Government as lapsed old service inam and was made *khalsat*. In 1863, the plaintiff protested against this being done, and the Collector referred him to a civil suit against the inamdars. From the year 1863 the plaintiff received no rent from D., or after D's death from his heirs, who paid the assessment to Government. In 1889, the plaintiff brought the present suit against the representatives of D, and the village inamdars to recover possession. The District Judge dismissed the suit, on the ground that the plaintiff must be held to have acquiesced in the loss of the land, and by his conduct since 1863 must be taken to have designedly abandoned all his interest in the land, and that his suit was barred.

Held, that the plaintiff did not acquiesce in the surrender by the inamdar in 1860, to Government, as he distinctly protested against it in 1863, and that as to his conduct since 1863 nothing had taken place to deprive him of such legal rights as he possessed against the tenant D, in 1863, if they were not barred by the Statute of Limitation;

and as to limitation, *held* that as the District Judge had decided the point under the influence of the view taken by him as to the plaintiff's conduct, the case should be remanded for a fresh finding on that point.

* Second Appeal No. 627 of 1891.

1893
MARCH 22.

APPELLATE CIVIL.

18 B. 250.

Held, further, that the mere circumstance that D., after the land was treated as *khalsat*, paid assessment to Government, and had not paid rent to plaintiff, could not affect the relationship of landlord and tenant which admittedly existed between them in 1863.

[R., 15 C.P.L.R. 9 (10).]

THIS was a second appeal from the decision of Dr. A. D. Pollen, District Judge of Belgaum.

Suit to recover certain land situate in the village of Kalol which was held in inam by defendant No. 6 and his kinsmen.

The plaintiff alleged that the land in question was originally given in inam by the Maharaja of Kolhapur to one Baburao Katre, and that Baburao had granted it as sub-inam to his (plaintiff's) father early in the present century. The plaintiff stated that in 1858 he had mortgaged it to Dadambhat, the father of defendants Nos. 1 and 3 and grandfather of defendant No. 2, who had previously been his tenant, but that the mortgage-debt was now satisfied out of the profits of the land.

Defendants Nos. 1 to 4 denied the plaintiff's statement. They denied that he was the owner of the land, and they denied the tenancy and mortgage alleged by him. They alleged that defendant No. 6 was the village *khatedar* of the land as well as one of the inamdars of the village, and that they held the land as his tenants. They further pleaded that the land was made *khalsa* in 1863 by [252] the British Government, and that Dadambhat had subsequently got a permanent lease from defendant No. 6 under two *kowls* dated September and December, 1864. They further pleaded that the suit was barred by limitation, alleging that there had been a dispute in 1863 about the lands between the inamdar and the plaintiff, and that in that year the plaintiff was referred to a Civil Court by the Collector.

Defendant No. 5 admitted the claim.

Defendant No. 6 answered that land was never held as sub-inam by the plaintiff's family and was never in their possession; that he was the owner, and that he had made it over to Baburao Katre for a time as a remuneration for services rendered by him; that the tenancy and mortgage alleged by the plaintiff were false, and that the claim was time-barred.

The Subordinate Judge (Rao Saheb R. G. Bhadbhade) held that the claim was not time-barred; that the plaintiff was the owner of the land; that the mortgage to, and the tenancy of Dadambhat alleged by, the plaintiff were proved, and that nothing was due by the plaintiff to defendants Nos. 1, 2 and 3 under the mortgage. He, therefore, awarded possession to the plaintiff.

On appeal by the defendants the District Judge found that the land had been given in inam by the Kolhapur State to Katre from whom the plaintiff acquired it as sub-alienee; that the plaintiff had leased it to Dadambhat in or about the year 1859; that in the year 1860 there was a dispute between the inamdars and Government with respect to lands usurped by the inamdars, and that the land in question was wrongly surrendered by them to Government as lapsed old service inam and was made *khalsat*; that the plaintiff in the year 1863 protested against the action of the inamdars and Government, and was referred by the Collector to a civil suit against the inamdars; that he made no attempt to recover his inam rights or his occupancy of the land, which was burdened with a heavy assessment; that from the year 1863 the plaintiff had ceased to receive rent from Dadambhat, whose family had continued

1893
MARCH 22.
APPELLATE CIVIL.
18 B. 250.

to hold the land as occupancy tenants on payment of assessment under Government and not under plaintiff. The District Judge held that "under these [253] circumstances he (plaintiff) must be held to have acquiesced in the loss of the land and to have relinquished his rights" and found the last issue—which was, "is his (plaintiff's) claim to recover the land now in time?"—in the negative, for the reasons stated as follows in his judgment :—

"At the same time I do not think that the plaintiff is entitled to succeed. I think that by his conduct from and after 1863 he abandoned all his interest in, and connection with, the land as completely and effectually as if he had relinquished it by a formal document. In 1861, or thereabout, the village inamdars transferred the land to Government, and it was changed from inam into ordinary rayatawar land against his will. The *khata* was entered in the village inamdar's name. An assessment was imposed on it payable to Government in excess of the amount which he formerly received as rent. It is true that his former tenants remained in possession of the land; but they did so by virtue of their paying the assessment to Government and not by virtue of their continuing to be his tenants. He made no attempt to recover his inam rights, or to recover the occupancy burdened as it was then by a heavy assessment. He received no rent and no acknowledgment of his title from the occupancy tenants. All this can have no other meaning than that he designedly relinquished the land after his unsuccessful petition to the Collector in 1863. He did not sue within twelve years and thus he lost his rights. Dadambhat's family became the real survey occupants, though defendant No. 6 became the nominal khatedar. Such is the view which I feel constrained to take of the real facts."

The Judge, therefore, reversed the Subordinate Judge's decree and rejected the plaintiff's claim.

The plaintiff preferred a second appeal.

Vasudeo Gopal Bhandarkar (with *N. G. Chandavarkar*), for the appellant (plaintiff).—The Judge found that the representatives of Dadambhat—respondents Nos. 1 to 3—were the occupancy tenants under Government since 1863, and not under the plaintiff. But this was not their allegation. What they said was that they were the tenants of defendant No. 6, who is the inamdar of the [254] village. The Judge, therefore, made a case for the defendants which they themselves never set up.

[SARGENT, C.J.—But the Judge finds that the plaintiff's claim was barred, because he relinquished his right as landlord and ceased to recover rent from 1863.]

The point of relinquishment was never urged before the Court, nor was any issue framed on it. The question to be considered is, whether mere silence for twenty-six years amounts, in law, to a relinquishment, and we submit that it does not. Further, what was surrendered to Government was the inam and not the occupancy right. The surrender by the inamdar of his inam right cannot operate to the plaintiff's prejudice —*Gangabai* v. *Kalapa* (1). Defendants Nos. 1 to 3 instead of paying rent to us paid assessment to Government the amount of which is greater than that of the rent. The mere levy of full assessment by Government, or the

(1) 9 B. 419.

1893
MARCH 22.

APPELLATE CIVIL.

18 B. 250.

mutation of names in the revenue records, cannot alter the relation between us and the respondents.

Macpherson (with *Manekshah J. Taleyarkhan*), for respondents Nos. 1 to 3 (defendants Nos. 1 to 3).—The plaintiff's case was that the Government called upon the inamdars to give up the lands usurped by them, and that the inamdars surrendered to Government certain lands including the one in dispute. Defendant No. 6 is the registered occupant of the land, and we attorned to him in the year 1863. The fact that we have been in possession for more than twelve years as the tenants of either the Government or the registered occupant with the appellant's knowledge, is a sufficient answer to his claim.

Mahadeo Chimnaji Apte, for defendant No. 6 (the inamdar).—The lands were registered in our name in 1863 when our right as holder was recognised by Government. The plaintiff had knowledge of the recognition of our right by Government, and yet he took no steps to get his title established within the statutory period. Defendants Nos. 1 to 3 are permanent tenants under us. We repudiated the plaintiff's ownership in 1863, and since then our possession was adverse to him.

[255] *Vasudeo Gopal Bhandarkar* in reply.—The utmost that can be said against the plaintiff is that he remained quiescent and did nothing to establish his right from the year 1863 until the institution of the present suit. But by merely doing nothing, one does not surrender anything.

JUDGMENT.

SARGENT, C.J.—The District Judge has found that the land in question had been originally obtained by Katre in inam from the Kolhapur State, and that plaintiff had acquired it as a sub-alienee from Katre and leased it to Dadambhat in 1859; that in 1860 the land was wrongly surrendered by the inamdars of the village to the Government as lapsed old service inam and made *khalsat*; that in 1863 the plaintiff protested against this being done; an order was made by the Collector referring him to a civil suit against the village inamdars; that the plaintiff ceased from 1863 to receive his rent from Dadambhat, whose family has ever since paid the assessment, which was more than the rent to Government. The District Judge has held that under these circumstances the plaintiff must be held to have "acquiesced in the loss of the land and relinquished his rights;" that by his conduct from and after 1863 he must be taken to have designedly abandoned all his interest in it "as effectually as if he had relinquished it by a formal document."

We are unable to agree in this view of the case, which, indeed, would appear to have been adopted by the District Judge with reluctance. There are no circumstances in the case which point to acquiescence by the plaintiff in the surrender by defendant No. 6 in 1860, to the Government, as he distinctly protested against it in 1863, and as to his conduct since 1863 nothing has taken place to deprive him of such legal rights as he possessed against Dadambhat in 1863, if they are not barred by the statute.

As the Judge of the lower appeal Court has clearly decided the third issue, which raises this question, under the influence of the view taken by him of the plaintiff's conduct, we must send back the case for a fresh finding on that issue, and we think it right to observe, for the guidance of the Court, that the mere circumstance of Dadambhat and his family having, after the land was treated as *khalsat*, paid the assessment to

Government, [256] and not having paid any rent to the plaintiff, cannot affect the relationship of landlord and tenant which admittedly existed between them in 1863.

The finding to be transmitted to this Court within two months. The parties to be allowed to give fresh evidence.

Case sent back.

1893 MARCH 22. APPELLATE CIVIL. 18 B. 250.

18 B. 256.

APPELLATE CIVIL.

Before Mr. Justice Telang and Mr. Justice Fulton.

KRISHNAJI RAMCHANDRA (*Original Defendant No.* 1), *Appellant v.* ANTAJI PANDURANG (*Original Plaintiff*), *Respondent.**

[24th March, 1893.]

Landlord and tenant—Possession—Adverse possession—Lease—Expiry of lease—Continued possession after expiration of lease—Permissive possession—Tenant's heirs continuing in possession after the expiry of tenancy—Limitation.

In 1840 the land in dispute was leased to R. for life. R. died in or about 1871, and after R.'s death, his heirs (the defendants) continued in possession without obtaining a fresh lease or paying any rent to the landlord. In 1888 the landlord sued to eject the defendants. The defence was that the suit was barred by limitation.

Held, that the suit was not barred. After R.'s death the defendants, though not in possession as tenants, were not trespassers. Their possession was permissive, and not adverse until they expressly set up a title of ownership in the property.

[Overruled, 22 B. 893; **F.**, 24 B. 504 (507); **R.**, 20 B. 759 (763); U.B.R. (1892—1896), Civil, 363 (364); **D.**, 31 M. 163 (167)=18 M.L.J. 26=3 M.L.T. 256.]

SECOND appeal from the decision of J. FitzMaurice, Acting District Judge of Ratnagiri, in appeal No. 298 of 1889.

The plaintiff sued to eject the defendants from the land in dispute.

It appeared that in 1840 one Jankibai, who was then in management of the plaintiff's ancestral property, leased the land to Ramchandra, the adoptive father of defendant No. 1, for life at a yearly rent of Rs. 5. Ramchandra held the property till his death, which occurred in 1871 or thereabouts. On Ramchandra's death, his widow Ramabai and her adopted son defendant No. 1 continued in possession. But they did not obtain a fresh lease, nor pay any rent after Ramchandra's death.

In 1888 the present action of ejectment was brought.

[257] The defendant No. 1 pleaded (*inter alia*) that since Ramchandra's death his possession had been adverse to the plaintiff, and that the suit was, therefore, time-barred. The other defendants did not contest the suit.

The Subordinate Judge was of opinion that defendant's father having come in as a tenant, the tenancy must be presumed to have continued even after his death, and that the mere non-payment of rent did not destroy the tenancy. He, therefore, held that the suit was not barred by limitation, and decreed the plaintiff's claim.

On appeal, the District Judge held that the possession of defendant No. 1 must, on the authority of *Tatia* v. *Sadashiv* (1) and *Rango Lall* v. *Abdool Guffoor* (2), be deemed to have been that of a tenant and not

* Second Appeal No. 483 of 1891.

(1) 7 B. 40. (2) 4 C. 314.