manager (whether or no, there may be others equally entitled to share in the management), was entitled to resist the opponent's taking possession, and having been dispossessed had a claim to be restored to possession under s. 335. We must, therefore, reverse the order of the Court below and direct that applicant be put into possession. Applicant to have his costs of this application from the opponent.

Order reversed.

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[525] APPELLATE CIVIL.

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

GANGADHAR HARI KARKARE (*Original Defendant*), *Appellant v.* MORBHAT PUROHIT AND ANOTHER (*Original Plaintiffs*), *Respondents.**
[6th September, 1893.]

Inamdar—Inam village—Suit by an inamdar against a khot to recover balance of land revenue—Assessment—Survey made by the British Government—Collector's certificate—Change in rate of assessment—Pensions Act (XXIII of 1871), s. 4†—Jurisdiction of Civil Courts—Revenue Jurisdiction Act (Bom. Act X of 1876), s. 4, sub-cl. (b)‡—Land Revenue Code (Bom. Act V of 1879), s. 216, cls. (a), (b) and (c)§—Village partially alienated.

In a suit by an inamdar of a village against a khot to recover rent in kind (according to the market rate at the time of payment), the defendant (khot) contended (1) that he was only liable to pay cash assessment as fixed by the survey made by the British Government, which was at a lower rate than he had previously paid; (2) that the suit was barred for want of Collector's certificate under s. 4 of the Pensions Act (XXIII of 1871), and (3) that the Civil Court had [526] no jurisdiction to entertain the suit under the Revenue Jurisdiction Act (Bom. Act X of 1876), s. 4, sub-cl. (*b*), and the Land Revenue Code (Bom. Act V of 1879), s. 216, sub-cl. (*b*).

* Second Appeal No. 98 of 1892.

† Section 4 of the Pensions Act (XXIII of 1871):—

4. Except as hereinafter provided, no Civil Court shall entertain any suit relating to any pension or grant of money or land revenue conferred or made by the British or any former Government, whatever may have been the consideration for any such pension or grant, and whatever may have been the nature of the payment, claim, or right for which such pension or grant may have been substituted.

‡ Sub-cl. (*b*) of s. 4 of the Revenue Jurisdiction Act (Bom. Act X of 1876):—

4. Subject to the exceptions hereinafter appearing, no Civil Court shall exercise jurisdiction as to any of the following matters.

(*a*) * * * *

(*b*) objections—

to the amount or incidence of any assessment of land-revenue authorized by Government, or

to the mode of assessment, or to the principle on which such assessment is fixed, or

to the validity or effect of the notification of survey or settlement, or of any notification determining the period of settlement.

§ Section 216, cls. (*a*), (*b*) and (*c*) of the Land Revenue Code (Bom. Act V of 1879):—

Save as is provided in s. 111 and hereinafter in this section, the provisions of chap. VIII to X of this Act shall not be applied to any alienated village except for the purposes of fixing the boundaries of any such village, and of determining any disputes relating thereto. But the provisions of the said chapter shall be applicable to—

(*a*) all unalienated lands situated within the limits of an alienated village;

(*b*) villages of which a definite share is alienated, but of which the remaining share is unalienated;

(*c*) alienated villages the holders of which are entitled to a certain amount of the revenue, but of which the excess, if any, above such amount belongs to Government.

But it shall be lawful for the Governor in Council, on an application being made by the holder of any such village to that effect, to authorize the extension of all or any of the provisions of the said chapters to any such village.

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Held, that as there was no objection by either party to the amount or incidence of assessment of land revenue fixed by Government, and the question being whether the khot was liable to pay to the inamdar *maktas* or assessment, the suit was not taken away from the cognizance of Civil Courts by the Revenue Jurisdiction Act (Bom. Act X of 1876), s. 4, sub-cl. (*b*).

Held, further, that the Court was not precluded from entertaining the suit for want of Collector's certificate under the Pensions Act (XXIII of 1871), s. 4, because the original grant passed the lands, and because it is the original grant which determines whether the Pensions Act is applicable, and not the actual right which the grantee, as a matter of fact, may have enjoyed by it.

Held, further, that the payment which the khot had been making to the inamdar before the time of the British survey was in the nature of assessment or rating by Government, but *held* also that the plaintiffs were entitled to the old assessment as claimed by them. It was plain that in cases falling within sub-cls. (*a*) and (*c*) of s. 216 of the Land Revenue Code, Bombay Act V of 1879, the inamdar's interest in the assessment would not be affected by the application of chaps. VIII to X of that Act. He would still get the old assessment in the alienated lands in the village in the former case and the same amount of assessment in the latter, and the same must have been the intention in cases contemplated by sub-cl. (*b*).

The "holder of the village" in the concluding para. of s. 216 must be read as meaning the "holder of the assessment or any part thereof of an alienated village."

[R., 29 B. 480 (490)=7 Bom. L.R. 497.]

SECOND appeal from the decision of Rao Bahadur Kashinath B. Marathe, First Class Subordinate Judge of Ratnagiri, with appellate powers.

Suit by the inamdar of a village to recover rent from the khot.

[527] This action was brought by plaintiffs Morbhat bin Narayanbhat and Moro Bapuji Ketkar to recover from the defendant a balance of rent for the inam village of Ranzankond for the years 1885-1886 to 1887-1888, with interest. It was alleged that the first plaintiff was inamdar Purohit (priest), and the second plaintiff was mortgagee in possession of the *inam*; that they as inamdars were entitled to recover rents in specie and kind from the defendant to the extent specified in the plaint; that the defendant paid these amounts until 1884-85, but subsequently would only pay cash rent at rates specified by the survey officers. The plaintiffs stated that they never consented to a survey being made, and they claimed to be entitled to the rent that had always been paid. They further stated that they had been assisted by the Revenue Court in collecting what they could, and that they brought the present suit for the balance which remained due.

The defendant Gangadhar Hari Karkare pleaded (*inter alia*) that the first plaintiff having formerly received such revenues as were fixed by the Peshwa, he was now bound to accept such revenue as was fixed by the Survey Department of the British Government which had succeeded the Peshwa's Government; that a suit would not lie without a certificate of the Collector under the Pensions Act, and that the plaintiff ought to have deducted from the amount of his claim the quit-rent which was paid to Government by the defendant.

The Subordinate Judge found that the defendant was liable to pay the rent according to the *paimash* (survey) (*i.e.*, the new rate) and not according to the *mamul* (old) rates; that Rs. 176-11-3 only were recoverable by plaintiffs from defendant, of which Rs. 160-10-8 had already been recovered by the former. He, therefore, allowed the claim to the extent of Rs. 16-0-7 with costs in proportion.

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On appeal by the plaintiffs the Judge held that the inamdar plaintiff was entitled to recover rent according to *mamul* (old) and not the survey rate. He, therefore, varied the decree of the Subordinate Judge and awarded the whole of the claim, namely, Rs. 260-0-0, with costs in both Courts.

[528] The following is an extract from the Judge's judgment, which gives the history of the case and the pleadings of the parties:—

"The plaintiff was inamdar of five *konds* (tracts of land) under two *sanads* (Exs. 48 and 49) granted by the Chhatrapati of Satara. Of these, 4½ *konds* were resumed, only a half of one being left to the grantee's descendants, the other half being commuted by the Government into a grant of a fixed quantity of paddy (5 maunds). The khot defendant is held liable, and admits his liability to pay rent for the former half *kond* on account of his having established by long arduous litigation (*vide* Ex. 37) his right to manage the *inam* lands. The defendant paid up to 1884-85 a fixed amount of rent in kind, valued according to the market rate at the time of payment under a ruling of the High Court, I.L.R., 8 Bom. 234. This rent in kind was fixed by Parasharampant's survey in 1787-88 A.D. The British Government effected a fresh survey of the *inam* lands in the year 1886-87 (*vide* Ex. 30) under the Revenue Code (Bom. Act V of 1879), s. 216, and decided that the *inam* lands were liable to a cash assessment of Rs. 58-14-5 per year (Ex. 30). The defendant contends on the strength of this survey that he is no longer liable to pay the money value of rent in kind fixed by Parasharampant's survey. The question now is, whether the defendant is bound to pay rent according to the old or new survey. The plaintiff urges he received till late the rent according to the old survey and not according to the new survey to which he never consented, inasmuch as it reduced the amount of rent. The plaintiff urges that as a gift of lands was made to his ancestor, and as his right to rent arises from the gift of lands, the Government having parted with their interest in certain lands under *sanads* they have no right to interfere with the amount of rent that he has received from long time. The plaintiff quotes I.L.R. 1 Bom. 523, in support of his contention. The defendant replies that the *sanads* in the present case have been declared inoperative as regards the enjoyment of lands mentioned in them, and the inamdar is declared entitled to a fixed assessment (*vide* Ex. 37.)."

The defendant preferred a second appeal.

Mahadeo Chimnaji Apte, for the appellant (defendant).—The defendant is the khot of the village in question. The plaintiff as inamdar seeks to recover a certain sum from the defendant as the amount of land revenue. The Civil Court had no jurisdiction to entertain the suit under s. 4, cl. (*b*) of the Revenue Jurisdiction Act (Bom. Act X of 1876). Further, the suit must fail, because the plaintiff has not obtained a certificate from the Collector, which is necessary for the maintenance of such a suit under the Pensions Act (XXIII of 1871)—*Janardhan Bhaskar* v. *The Secretary of State* (1); *Vyankaji Balkrishna* v. *Sarjerav Apajirav* (2); *Jijaji* v. *Balkrishna* (3).

[529] As to the rate, we contend that the Peshwa's Government having formerly fixed the amount of assessment, the British Government, which has succeeded that Government, is now entitled to fix it.

The plaintiffs' ancestors originally acquired five hamlets in five different villages from the Satara Government. No doubt, the original grant

(1) 14 B. 573. (2) L. J. (1891) p. 276. (3) 17 B. 169.

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purported to be a grant of lands, but the grantees really got only the land revenue and not the lands. The lands were occupied by tenants with occupancy rights. It is impossible that when the *sanads* were granted to the plaintiffs' ancestor the lands were unoccupied. Therefore, what the plaintiffs' ancestors really acquired by the *sanads* was the land revenue. The plaintiffs are now merely the alienees of the Government revenue, and Dr. Pollen also having come to that conclusion on a former occasion in connection with a dispute between the parties (in Appeal No. 361 of 1873), the question is now *res judicata*.

The plaintiff can recover from the khot only that which the khot can recover from the tenants under the existing law. The inamdar plaintiff wishes to levy the *mamul* rates because those rates were higher than they are now under the British survey. But the tenants do not pay the dues according to the old rates. They pay at the new rate fixed by the British survey. Therefore, if the plaintiff be allowed to recover the *mamul* rent from us, we shall have to pay the difference ourselves.

Out of the five hamlets originally granted to the plaintiffs' ancestors, only half a hamlet has remained alienated and the four and a half have now become unalienated lands. These, therefore, fall under the operation of s. 216 (*b*) of the Land Revenue Code (Bom. Act V of 1879), and that being so, chaps. VIII to X of that Code apply. If, therefore, half of the hamlet which became unalienated came under the operation of the Land Revenue Code, the other half, which remained alienated, must needs be subject to it. The Judge, therefore, has no authority to come to the conclusion that the plaintiff is not bound by the survey rates because he had not consented to the survey, or that there was [530] any contractual relationship between the ancestors of the parties. We are the khot of village in our own right.

Vasudeo Gopal Bhandarkar with *Vasudeo J. Kirtikar* (Government Pleader), for the respondent (plaintiff No. 1) :—It was not necessary for the plaintiff to produce the Collector's certificate under the Pensions Act for the maintenance of the suit. According to the *sanads*, the grant to our ancestors was not a grant of land revenue, but of the land itself. A certificate under the Pensions Act is necessary when the grant is a grant of land revenue. The *sanads* do not show that there was any person on the land when the grant was made, nor is there evidence in the case that it was already in the occupation of any one prior to the grant. It is true that we have been getting only the revenue; but, in order to determine whether a certificate is necessary under the Pensions Act, the nature of the original grant must be taken into consideration; any subsequent change in it will not make any difference—*Babaji Hari* v. *Rajaram Ballal* (1); *Ravji Narayan* v. *Dadaji Bapuji* (2).

Further, our claim is recognized by the Government, inasmuch as we hold a *sanad* under the Summary Settlement Act (Bombay Act VII of 1863) and that being so, we are entitled to bring the suit under s. 9 of the Pensions Act even without the Collector's certificate. The *sanad* admits our title to the land.

The point with regard to the certificate under the Pensions Act is taken for the first time in second appeal; and if the Court comes to the conclusion that a certificate is necessary, an opportunity should be given us to produce it.

(1) 1 B. 75. (2) 1 B. 523.

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The other point urged was that of jurisdiction under the Revenue Jurisdiction Act (Bombay Act X of 1876), s. 4, cl. (*b*). That clause does not apply, because there is no dispute now as to the amount or the incidence of assessment. We claim in the present suit only the balance of *inam* dues. Even supposing that the above section is applicable, still our claim would be saved under s. 5 of the Act.

The main question is, whether we can recover the same *inam* dues as we did before the survey, or whether we are entitled [531] only to the survey rates which are less. The Land Revenue Code (Bombay Act V of 1879) does not impose any condition upon us. Section 216, cl. (*b*), was relied on. Government may survey lands in a village of which a definite share is alienated, as in the present case, to an inamdar. For the purposes of account and other matters it may be necessary for the Government to survey the unalienated portion. But there is no obligation on the inamdar to accept the survey rates in connection with the portion which is alienated to him. Even after the survey the inamdar has to pay to Government the same dues which he had to pay before. Section 217 applies to villages which are alienated in their entirety. Under s. 218, which applies to the present case, the inamdar is entitled to retain all his former rights. The only section that refers to alienated villages in chap. VIII is s. 111; therefore the other sections were not intended to apply to alienated villages, but to unalienated villages. There are also other indications in that chapter which show that the chapter is intended to apply to unalienated villages.

Government has to survey the whole village including the alienated portion, because they have to fix the *judi* (quit-rent) for that portion; but the survey rates are levied on the unalienated portion only. It is only when the entire village is alienated that suryey is introduced with the inamdar's consent. But when a portion of a village is alienated, the survey is made without the inamdar's consent, because the unalienated portion remains with Government.

JUDGMENT.

SARGENT, C.J.—The question in this case is whether the defendant is bound to pay the amount of rent in kind according (to the market-rate at the time of payment) as fixed by the Parasharampant's survey in 1787-88 A.D., or the cash assessment of Rs. 58-14-5, per year, as fixed by the survey made by the British Government in 1886-87. The defendant contends that he is liable only for the latter.

It has been contended before us that the Court has no jurisdiction to try the suit, as it relates to the amount or incidence of assessment or land revenue authorised by Government, which [532] is taken away from the cognizance of the Civil Courts by Act X of 1876, s. 4, sub-cl. (*b*). But here there is no objection by either party to the amount or incidence of the assessment fixed by Government for the entire *khond*. The vital question between the inamdars and the khot is, whether the latter is liable to pay the former *maktas* or assessment.

It was said, however, that the suit related to a grant of money or land revenue, and the Civil Court was, therefore, precluded from entertaining it without a certificate of the Collector by s. 4 of the Pensions Act, XXIII of 1871. In *Ravji Narayan* v. *Dadaji Bapuji* (1), it was held by Sir M. Westropp, C.J., and Larpent, J., that it is the original grant

(1) 1 B. 523.

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which determines whether the Pensions Act is applicable and not the actual rights which the grantee, as a matter of fact, may have enjoyed in it. It was argued, however, that in this case, although the original grant passed the lands in the several *khonds*, that grant had been commuted, in Angria's time, into a grant of the assessment only as regards the one-half of the *khond* which the inamdars were allowed to retain in *inam*. But we do not think that the proceedings in Angria's time can be regarded as effecting a substitution of any sort. It was an act of State by which Angria resumed the one-half of the village of Tural which was in Ratnagiri then, under Angria, which left the inamdar, with his *inam* rights, whatever they were, over the other half of the *khond*. In the Peshwa's time the question was only as to plaintiff's right to the five maunds of rice allowed to the Purohits out of the half of the *khond* seized by Angria, and the Peshwa ordered his revenue officers to continue it. We are of opinion, therefore, that having regard to the ruling in *Ravji Narayan* v. *Dadaji Bapuji* (1) which, we think, is correct, that the present case does not fall under the Pensions Act.

Proceeding then to the consideration of this second appeal, the first question is as to the nature of the payment which the defendant had been making to the plaintiffs before the new survey was introduced by Government. It has been treated by the Subordinate Judge as in the nature of assessment originally [533] fixed in kind by the Parashrampant's survey in 1787. On the other hand, it is regarded by the lower appeal Court as a fixed payment arising from a contractual relation between the ancestors of the parties. We think that the question must be regarded as already decided by the findings of Dr. Pollen in appeal No. 361 of 1873, which, as West, J., points out in his judgment in *Morbhat Purohit* v. *Gangadhar Karkare* (2), only left to be determined whether "the khot was liable to pay the fixed quantities of grain as a propietor subject to assessment or rating by the Government and paying the inamdar as assignee of the Government or as an officer or agent of the Government, carrying out its command in favour of the inamdar." In either of these characters it could be only as assessment that it would be payable by the khot. We think, therefore, that the payment by the defendant must be deemed to have been settled by Dr. Pollen's judgment as being of the nature of assessment or rating by Government.

The question, therefore, which remains for determination is, whether the introduction of the new survey has affected the amount of that payment. The defendant relies on s. 216, cl. (*b*), of the Land Revenue Act, V of 1879, which, he says, applies to a case like the present. The village of Tural comes under the description referred to in that sub-clause, but, we think, that the operations of the several sub-clauses to s. 216 must be confined to enabling Government, of its own will, to introduce the new survey, so far as it might affect any interest it still had in the assessment of the village, as in the case of cl. (*a*) where there are unalienated lands in the alienated village, or as in cl. (*b*) where a certain definite share of the village still remains unalienated, or lastly as in cl. (*c*) where the excess of the revenue (if any) after deducting a certain amount belongs to Government. In the cases contemplated by sub-cls. (*a*) and (*c*) it is plain that the inamdar would not be affected as regards his interest in the assessment by the application of chaps. VIII to X. He would still get the old assessment on the alienated lands in the village in the one case, and the same "amount" of assessment in the latter, and we think that the

(1) 1 B. 523. (2) 8 B. 234 (237).

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[534] same must have been the intention in the case contemplated by sub-cl. (*b*). The holder of the village in the concluding para. of s. 216 must, we think, be read as meaning the holder of the assessment or any part thereof of an alienated village.

We agree, therefore, with the conclusion arrived at by the lower appeal Court that the plaintiff is entitled to the sum claimed, but subject to the quit-rent and *judi* which, the Joint Subordinate Judge held, should be deducted, and against which no cross-objections were taken by the defendant before the lower appeal Court. The decree of the lower Court must, therefore, be confirmed subject to the above amendment. Appellant must pay respondents their costs of this appeal.

Decree confirmed subject to amendment.

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18 B. 534.

APPELLATE CIVIL.

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

VENKAJI SHRIDHAR, DECEASED, BY HIS SONS BALVANT AND OTHERS (*Original Defendants*), *Appellants v.* VISHNU BABAJI BERI AND ANOTHER (*Original Plaintiffs*), *Respondents.**

[7th September, 1893.]

Hindu law—Widow—Right of widow to sell property inherited from her husband—Reversioner—Suit by reversioner to set aside sale by widow—Burden of proof—Evidence.

B. having during his life-time mortgaged certain property the income of which was sufficient only to pay interest on a portion of the mortgage-debt, his widow after his death sold it before the mortgage-debt fell due. The reversioners sued to set aside the sale.

Held, that although there might have been no absolute necessity for the widow to sell the property to provide herself with maintenance, still as there was no other family property, the property in question must necessarily have been sold at the expiration of the time fixed by the mortgage, and the sale by the widow ought to be supported.

A widow like a manager of the family must be allowed a reasonable latitude in the exercise of her powers, provided she acts fairly to her expectant heirs.

[R., 36 B. 88=13 Bom. L.R. 860=12 Ind. Cas. 271; 8 C.L.J. 458 (464)=13 C.W.N. 201=4 Ind. Cas. 513.]

THIS was a second appeal from the decision of S. Tagore, District Judge of Sholapur-Bijapur.

Suit by reversioners to set aside the sale of a house by a widow.

[535] The house in question had been the property of one Baba Balaji, who died childless, and his widow Lakshmibai took possession. The property had been mortgaged by Baba before his death, and in 1859, while the mortgage term had still two years to run, Lakshmibai sold the property to the defendant.

The plaintiffs sued as reversioners to set aside the sale, contending that it was without necessity, and, therefore, illegal. The defendant pleaded that the sale was valid, Lakshmibai having sold the house in order to pay her husband's debts.

The Subordinate Judge dismissed the suit, holding that it lay on the plaintiffs to show that the sale was improper and illegal, and that they had failed to do so.

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* Second Appeal No. 247 of 1892.