

As, however, the accounts have not been investigated by the local commissioner, as directed by the Judge, we must now direct the accounts to be taken, and as the pleaders for the parties are agreed that in this case the services of a karkún at Rs. 12 per mensem were necessary owing to the nature of the estate, we will direct the commissioner in taking the accounts to allow that item.

We accordingly refer it to Mr. Bhicáji Gopál Robade to take the accounts of the defendant's receivership, charging him with all sums actually received by him, or which, but for his wilful default, he ought to have received, on the best basis which under the circumstances he can adopt. In taking such accounts, let him allow the defendant Rs. 12 per month for the services of a karkún. The terms of this order of reference will supersede the directions given by the Subordinate Judge. The report to be made within six weeks. Costs to be dealt with on receipt of the report as well as the question whether the defendant is to be charged with any and what interest.

1894.

BA'LÁJI
NÁRÁYAN
PAVARDHAN
v.
RÁMCHANDRA
GOVIND
KANADE.

APPELLATE CIVIL.

Before Mr. Justice Farran and Mr. Justice Candy.

VENKA'JI BA'BA'JI NA'IK (ORIGINAL PLAINTIFF), APPELLANT, v. SHID-
RA'MA'PA BA'LA'PA DESA'I AND ANOTHER (ORIGINAL DEFENDANTS),
RESPONDENTS.*

1894.

August 22.

Limitation—Limitation Act (XV of 1877), Sec. 20—Interest—Payment of interest as such—Mortgage—Payment of rents to mortgagee in lieu of interest on debt—Mortgage-deed not registered—Deed not admissible to prove rents paid as interest—Evidence—Practice—Registration Act (III of 1877), Secs. 3 and 17.

By a bond dated 15th July, 1872, A assigned to B the "vahivat of assessment" of certain lands belonging to him as security for a loan of Rs. 10,000. The bond provided that B should receive the assessment, and after making certain payments should retain the balance in lieu of interest until the principal debt should be repaid. The bond was not registered. The assessment was duly received by B until April, 1887. In February, 1890, B filed this suit to recover the principal sum from A personally, relinquishing his claim against the land, as the bond was not

*Appeal, No. 117 of 1892.

1894.

VENKA'JI
BA'BA'JI
NA'IK

v.
SHIDRÁMÁPA
BA'LA'PA
DESA'I.

registered. A pleaded limitation: B contended that the receipt of the assessment in lieu of interest was a payment of "interest as such" within the meaning of section 20 of the Limitation Act (XV of 1877) and that the last of such payments having been made within three years before suit his claim was not barred.

Held, that the suit was barred by limitation. The assignment of the "*vahivat* of assessment" contained in the bond was an assignment of a benefit arising out of immoveable property within the meaning of sections 17 and 3 of the Registration Act (III of 1877) or else a mortgage; and in either case the bond could not be admitted in evidence, as it was not registered. But it was only by reading the terms of the bond that the Court could gather that the assessment was to be received in lieu of interest. This would be to admit indirectly the provisions of the bond in evidence. Apart from the bond there was no evidence that the plaintiff (B) had been paid "interest as such" within three years of the filing of the suit by the duly authorised agents of the defendants, and the claim was, therefore, barred.

FIRST appeal from the decision of Ráo Bahádur G. V. Bhánap, First Class Subordinate Judge of Belgaum. Plaintiff sued to recover Rs. 7,000 alleged to be due on a mortgage-bond dated 15th July, 1872.

The bond had been executed by the defendant's father, who died in 1882, to the plaintiff's father for a sum of Rs. 10,000. Under it the mortgagee was to receive the annual income of the mortgaged land amounting to Rs. 536-12-0, out of which he was to pay Rs. 206-9-0 to Government as *náiki judi* assessment and to retain the balance in lieu of interest until the principal sum was repaid. The following is a translation of the bond:—

"To Rájeshri Bába Náik Válvekar, residing at Gokák.

"This bond is executed in Suru San 1281 Fasli by Shidrá mápa Bálápa Desái Nádgavda of pargana Gokák to the following effect:—

"The sum of Rs. 13,000 is fixed to-day as the sum which we have borrowed from you, including the amount of the decree in Original Suit No. 560 of 1867, namely, Rs. 2,958. Out of this sum, deducting the amount of Rs. 3,000 of the bond executed in favour of Sheshgir Náik Válvekar, I owe you Rs. 10,000. For the interest due thereon I have given you the *vahivat* (management) of assessment of my *kamat chavrat* (private lands) to the extent of Rs. 536-12-0, out of which Rs. 192-12-0 on account of *náiki judi* and Rs. 13-13-0 on account of assessment for waste lands are to be paid by you to Government, and the balance, namely Rs. 330-3-0, should be enjoyed by you in lieu of interest annually till the principal debt of Rs. 10,000 is paid by me. When the principal is paid off by me I shall take back the (*vahivat* of) collections. I have taken back all the old documents as well as the decree which is satisfied. No dispute exists. There will be no intermediate disturbance. Dated 15th July 1872."

The plaintiff alleged that the income of the land had been duly received in lieu of interest until April, 1887, but that he had been prevented from recovering it since 1888. He now sued to recover the sum of Rs. 7,000, relinquishing Rs. 3,000 of the principal and the interest for 1888 and 1889. He sued to recover the amount from the defendants personally, as the bond was not registered. The suit was filed on the 10th February, 1890.

The defendants denied the bond, and pleaded (*inter alia*) that the plaintiff's claim was barred by limitation.

The Subordinate Judge rejected the claim, holding that execution of the bond was not proved, and that the claim was barred by limitation.

The plaintiff appealed.

Setlur, with *Mahádeo V. Bhat*, appeared for the appellant (plaintiff):—The evidence proves the existence of the bond. The claim is not time-barred. It is shown that the tenants paid the rents to us till April, 1887, and we recovered them for 1888 with the assistance of the Mámlatdár. The present suit was filed on the 10th February, 1890, and is within time. The Judge refused to regard the payment of rent to us as equivalent to the payment of interest within the meaning of section 20 of the Limitation Act (XV. of 1887), because that was provided for by the bond, which he could not look at as it was not registered. We contend that for this purpose the bond does not need registration. We have abandoned our claim to the land. The bond then merely gives us the right to recover certain money annually from the tenants. What is given is "the *vahivat* of assessment" and not the *vahivat* of land. Arrears of money due by a permanent tenant to an inámdár are not immoveable property—*Morbhat v. Gangádhara*⁽¹⁾; *Bájíráv Wáman v. Krishnaráv Rámráv*⁽²⁾.

[FARRAN, J.:—Does not the bond assign rents and are not rents benefit arising out of land?]

The bond does not give us any remedy against the lands of the tenants in case they refuse to pay rents. The assignment

(1) I. L. B., 8 Bom., 238.

(2) P. J., 1885, p. 130.

1894.

VENKA'JI
BA'BA'JI
NA'IK

v.
SHIDRA'MA PA
BA'LA'PA
DESA'I.

1894:

VENKA'JI
BA'BA'JI
NA'IK
v.
SHIDRÁMA'PA
BA'LA'PA
DESA'I.

was not an assignment of rents as representing the product of land, but simply of moneys, becoming periodically due.

Even admitting that rents are transferred to us under the bond, we submit that rents do not come within the definition of immoveable property under the Registration Act. The term 'benefit' must be considered to mean benefit *ejusdem generis*. The right to take juice from date trees is not a benefit arising out of land—*Jalu Námdár v. Baicha Námdár*⁽¹⁾. The fact that it is not registered does not prevent the Court from recognizing the existence of the bond, and looking at it for the purpose of connecting the payment of rents with the payment of interest.

Branson, with *Vásudeo G. Bhandárkar*, appeared for the respondents (defendants):—The execution of the bond is not proved. If, however, it is held to be proved, then we say it should be registered. It assigns rents, and it has been held that rents fall within the definition of immoveable property—*Mádhavráo Keshav v. Jagannáth Mahádeo*⁽²⁾; Sections 3 and 17 of the Registration Act.

The suit is time-barred, because there is no evidence of payment of interest either by us or by our duly authorized agent within three years before the date of the suit.

FARRAN, J.:—We are not inclined to agree with the Subordinate Judge in his finding that execution of the bond sued upon is not proved. It is, in our opinion, clearly established that the plaintiff and his father did pay the *judi* on account of the Desái's *chavrat* lands in Melvanki and did receive the assessment from the tenants. These facts, being in accordance with the provisions of the bond, which, though unregistered, may be read as a whole in order to determine the question of its genuineness as a money-bond, tend strongly to outweigh the considerations which arise owing to the non-registration of the document and the other circumstances to which the Subordinate Judge has called attention.

But whether due execution of the bond is proved or not, we think that the claim to recover the principal is barred by limitation. The suit was filed on the 10th February, 1890. The

(1) 3 Beig. L. R. A. C., 394.

(2) P. J., 1889, p. 75.

plaintiff received the assessment from the tenants, without the assistance of the Mámlatdár, for Fasli 1296, the last instalment of which would be payable in April. We, therefore, assume that the plaintiff received assessment from the tenants in April, 1887, as he and his father had done for many years previously.

Now the bond confers upon the obligee the *vahivat* of assessment Rs. 536-12-0 and (subject to the payment of *judi*) the right to retain such assessment in lieu of interest each year until the Desái pays the principal. That is, in our opinion, an assignment of a benefit to arise out of immoveable property within the meaning of sections 17 and 3 of the Registration Act, or else it is a mortgage. It is not the assignment of the rent to be paid by any particular tenant, or tenants, which might possibly bring the case within the rulings in *Morbhat v. Gangádhár*⁽¹⁾ and *Báji-ráv v. Krishnaráv*⁽²⁾, as to which we express no opinion. It is an assignment of the assessment of the land and of its *vahivat* generally, and so (if it is not a mortgage) falls within the ruling in *Mádhavráo v. Jagannáth*⁽³⁾ and, in our opinion, within the wording and spirit of the definition of immoveable property contained in section 3 of the Registration Acts. The bond being unregistered must, therefore, be treated as a mere money bond, as though the assignment of the rents of the land in lieu of interest had not been contained in it. This assignment under section 49 of the Registration Act does not affect the assessment, nor can it be received in evidence of the transaction relating to the assessment. In other words, it cannot for that purpose be read at all. As we cannot read this part of the bond, there is no evidence before us to show why the plaintiff received the rent of the Desái's *chavrat* lands.

It is, however, contended that we ought to infer that the tenants paid these rents to Bába Náik and the plaintiff as interest on the bond with the authority of the Desái. There is some evidence that Bába Náik began to collect the rents contemporaneously with the execution of the bond; he had paid the *judi* even before then, and it is proved that he and the plaintiff have

(1) I. L. R., 8 Bom., p. 234.

(2) P. J., 1885, p. 130.

(3) P. J., 1889, p. 75.

1894.

VENKA'JI
BA'BA'JI
NA'IK
v.
SHIDRANA'PA
BA'LA'PA
DESA'I.

1894.

VENKA'JI
BA'BA'JI
NA'IK
v.
SHIDRAMA'PA
BA'LA'PA
DESA'JI.

been collecting these rents for very many years without objection on the part of the Desái and his representatives. These, and the existence of the bond, are the facts before us. We think that if from them we were to draw the inference which we are asked to draw, we could only do so because we have read the terms of the bond. This would be indirectly admitting the provisions as to assessment in the bond in evidence. The inference, leaving the terms of the bond out of consideration, is not the necessary or only inference to be drawn from the established facts. The difficulty of drawing it is also enhanced by the death of the Desái in 1882 leaving minor sons. We must, therefore, hold that the plaintiff has not established that he has been paid "interest as such" on his bond within three years of the filing of his suit by the duly authorized agents of the defendants, and that his suit is, therefore, time-barred.

The result would be the same if the bond were treated as a mortgage of the *chavrat* lands—*Pichandi v. Kandasami*⁽¹⁾. This is probably its true character. The *vahivat* of the assessment is assigned, and the plaintiff always treated himself as being in possession as a mortgagee.

The case is one of hardship, but the hardship has arisen from the neglect of Bába Náik to comply with the provision of a salutary law which we should be straining and not giving effect to if we allowed this appeal. It must, therefore, be dismissed, with costs.

Appeal dismissed.

(1) I. L. R., 7 Mad., 539.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ránade.

1894.
August 23.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL (ORIGINAL DEFENDANT), APPELLANT, v. VAKHATSANGJI MEGHRA'JJI (ORIGINAL PLAINTIFF), RESPONDENT.*

Treasure Trove Act (VI of 1878)—Right of a Talukdár in Gujardt to treasure trove—Rights of Government.

A bag containing Rs. 248-2-0 and a gold ring was found buried in a field under circumstances which created suspicion of the commission of an offence. The District

* Appeal, No. 5 of 1892.