

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ránade.

VA'IDKHA'N ROSHANKHA'N SARGURO AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS, v. SAKHYA BIN DA'JI GOGAWALA (ORIGINAL DEFENDANT), RESPONDENT.*

1895.

July 8.

Khoti Act (Bombay Act I of 1880), Sess. 16, 17(1)—Entry in the survey settlement officer's record—Finality of—Land Revenue Code (Bombay Act V of 1879), Sec. 103—Khot—Thal—Makta.

The settlement officer's record fixing the amount of rent payable to a khot in respect of lands in the khoti village, though prepared in the form of the statement published at page 534 of the "General Rules of the Revenue Department," edition of 1893, and labelled "*Bot-k'lat*," cannot be treated either as a survey register under section 103 of the Land Revenue Code (Bombay Act V of 1879) or a settlement register as it is called in section 16 of Bombay Act I of 1880; it is one of the "other records" prepared under section 17 of the latter Act.

SECOND appeal from the decision of Ráo Bahádur K. B. Maráthe, First Class Subordinate Judge, A. P., of Ratnágiri, in Appeal No. 647 of 1889.

The plaintiffs as managing khots of the village of Dhámmi sued to recover *thal* (rent in kind) of certain khoti lands in the village standing in the defendant's name.

Defendant (*inter alia*) contended that the special survey settlement officer having decided that the lands in dispute were chargeable with *makta* (fixed rent in cash), plaintiff was not entitled to recover *thal*.

The Subordinate Judge held, on the authority of *Gopál v. Sakhojiráv*⁽²⁾, that the decision of the survey officer was conclusive under section 17 of the Khoti Act (Bombay Act I of 1880). He, therefore, passed a decree awarding *makta* to the plaintiff.

On appeal the District Judge confirmed the decree of the Subordinate Judge.

Plaintiffs thereupon preferred a second appeal to the High Court.

* Second Appeal, No. 601 of 1893.

(1) Section 17 of Bombay Act I. of 1880 provides as follows:—"The other records prepared under the said section (13) shall specify the nature and amount of rent payable to the khot by each privileged occupant according to the provisions of section 33, and any entry in any record duly made this section shall be conclusive and final evidence of the liability thereby established."

(2) I. L. R., 18 Bom., 113.

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Ganesh Krishna Deshmukh for the appellant:—The present case is not governed by the ruling in *Gopál v. Sakhojiráv*⁽¹⁾. In this case the record in which the entry relating to the rent is made is called *bot-khat*. It is not one of the "other records" referred to in section 17 of the Khoti Act (Bombay Act I of 1880). It is a survey register mentioned in section 16. It is the same as the settlement register referred to in section 108 of the Land Revenue Code (Bombay Act V of 1879). Consequently it is open to revision under section 21 of the Khoti Act, and has not the finality contemplated by section 17. No doubt the entries referred to in the case of *Gopál v. Sakhojiráv*⁽¹⁾ were the same as the entry in the survey register in this case, and were treated as if they had been made under section 17 of the Khoti Act. But the entry is not duly made under section 17, whereas it ought to have been made in another record, so as to come under that section. Unless the entry is made as required by section 33, it is not final and conclusive under section 17.

Rámdatt V. Desái, for *G. M. Tripathi*, for the respondent:—Section 108 of the Land Revenue Code (Bombay Act V of 1879) contemplates the preparation, by the survey officer, (1) of a register called "the settlement register," and (2) of other records. The section lays down in clear language what the "settlement register" is to contain. It must set forth (a) the area and assessment of each survey number, and (b) the name of the registered occupant of such survey number. The nature and amount of rent are not among the items directed to be entered in the "settlement register." Turning to the Khoti Act (Bombay Act I of 1880), it will be found that section 16 deals with the first portion of the work directed by section 108 of the Land Revenue Code, *viz.*, the preparation of the "settlement register," whilst section 17 deals with the second portion. An entry in such "records" is conclusive and final. The entry in the present case is an entry of this kind, and is, therefore, conclusive—*Gopál v. Sakhojiráv*⁽¹⁾.

JARDINE, J.:—The record Exhibit 7 in this case is what is called "statement" at page 584 of the "General Rules of the Revenue Department," a form of 17 columns (Ed. of 1893.) Because it

(1) I. L. R., 18 Bom., 133.

is labelled "*Bot-khat*," Mr. Deshmukh contends that it must be treated as the "survey register" of section 108 of the Land Revenue Code, Bombay Act V of 1879, or the "settlement register" as it is called in section 16 of Bombay Act I of 1880. On examining the contents of Exhibit 7, we find it contains more than the items of record specified in the above two sections; and that the additional items recorded are such as section 17 of Bombay Act I of 1880 makes provision for. It appears, therefore, to come within the words "other records prepared under the said section;" and to be a record to which the decision of this Court in *Gopál v. Sakhojiráv*⁽¹⁾ applies. The items are precisely similar to those in the Exhibit 18 referred to in that report. The report does not show what the designation of that record was.

It is further argued, as a point not considered in that case, that the words "other records" must mean separate documents; and that the decision would not apply where the survey officer happened to record the additional items of information in the sheet called "survey" or "settlement register." It appears to us that it would be begging the question to hold that the statement of 17 columns is a part of the register. The information it gives is special under section 17; the document thus appears to be one of the "other records." It cannot reasonably be said that the survey officer who puts on record the special matter has failed in his duty under section 108 of Bombay Act V of 1879, or section 17 of Bombay Act I of 1880, if the "other records" he compiles are compiled as additional columns of the register or as a separate statement or schedule appended thereto. We are, therefore, unable in any way to distinguish the present from the reported case. We, therefore, confirm the decree with costs.

Decree confirmed.

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