APPELLATE CIVIL.

Before Mr. Justice Whitworth, on reference from Mr. Justice Ranade and Mr. Justice Crowe.

1901. *January* 21.

SADASHIV (ORIGINAL DEFENDANT No. 2), APPELLANT, *v.* RAMKRISHNA (ORIGINAL PLAINTIFF), RESPONDENT.*

Assessment—Land revenue—Suit for arrears of assessment—Limitation Act (XV of 1877), articles 110 and 120.

The term "rent" is used in the Land Revenue Code (Bombay Act V of 1879) only with reference to those superior and inferior holders between whom the relationship of landlord and tenant subsists.

Plaintiff was the *Inámdár* of a certain village. Defendant held certain lands in the said village, but he was not placed in possession thereof either by the plaintiff or his predecessor in title under any agreement. Plaintiff sued to recover from the defendant five years' arrears of assessment. Defendant contended that plaintiff was not entitled to claim arrears for more than three years.

Held, that the suit was governed by article 120 and not 110 of the Limitation Act (XV of 1877), the relationship between the parties being that of superior and nferior holder and not that of landlord and tenant.

SECOND appeal from the decision of J. J. Heaton, District Judge of Násik, confirming the decree of Ráo Sáheb G. R. Gokhale, Second Class Subordinate Judge of Pimpalgaon.

Plaintiff was an *Inámdár* of the village of Kothure in the Násik District.

In 1897 plaintiff sued to recover arrears of assessment of certain lands held by defendant No. 2, through defendant No. 1, for five years before suit. Defendant No. 1 did not contest the claim.

Defendant No. 2 contended *inter alia* that the plaintiff was not entitled to claim more than three years' arrears of assessment.

The Court of first instance awarded the whole of the plaintiff's claim, holding that the suit was governed either by article 120 or article 132 of the Limitation Act (XV of 1877).

* Second appeal, No. 414 of 1900.

In appeal this decision was upheld by the District Judge, who held that the suit was governed by article 120 of the Limitation Act.

Against this decision defendant No. 2 preferred a second appeal to the High Court.

D. A. Khare for appellant (defendant 2) :—The suit is governed by article 110 of the Limitation Act. The suit is really one for arrears of rent. The relation between the parties is that between a landlord and a tenant. The Inámdár is an alienee of the land revenue. He has succeeded to all the rights of the Government in the alienated village, and although we were not put in possession by the Inámdár himself, we came in under Government through whom the Inámdár claims. The claim for more than three years' arrears of rent is time-barred.

There was no appearance for respondent.

RANADE, J. :—The principal point in dispute in this appeal relates to the question of limitation. The suit was brought by the Inámdár-plaintiff to recover five years' assessment in respect of some lands said to have been held by defendant 2 through defendant No. 1. Defendant No. 1 did not appear.

Defendant 2 pleaded that plaintiff's claim for the first three years was time-barred, and that he was in possession only of three lands, the other two lands being held by defendant No. 1. On the point of limitation defendant 2 urged that the claim for the first three years was time-barred by articles 62, 110 or 115. The Court of first instance held article 132 or 120 applied, and it awarded the claim for all the five lands as they stood in defendant No. 2's kháta, and he was therefore, under section 136 of the Land Revenue Code, responsible as the superior holder of the two lands which he said belonged to defendant No. 1. A decree was accordingly passed against both the defendants for the full sum claimed.

In appeal the District Judge held that neither article 110 nor 115, nor again 132 applied, and that the case was governed by article 120, and that both defendants were liable to the whole claim.

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In second appeal the principal point raised by Mr. Khare was that the case was governed by article 110 and not by article 120. The contention about the application of the other articles—62, 115 or 132—need not be considered, as they were not pressed by Mr. Khare.

Article 110 prescribes the period of limitation for suits in respect of arrears of rent. The Courts below have held that the claim of the plaintiff in this case was not of the nature of rent but of land revenue. Rent is defined in section 105 of Act IV of 1882, and, in brief, is money payable by a tenant to a landlord under a contract between them. In section 83 of the Land Revenue Code, 1879, the tenant is described as one who is placed in possession of land by another, or in that capacity holds, takes or retains possession of the land permissively from or by sufferance of another. The payment of money or services made by such a person is called rent, and its amount is determined by contract or custom. In the present case the defendants cannot be regarded as plaintiff's tenants. It is admitted that they were not placed in possession by the plaintiff or his predecessor in title under any agreement. As the village is Inám, they are not registered occupants or *khátedárs* as they would be if the village belonged to Government. They can, therefore, only be inferior holders under the plaintiff, who is the superior holder. In section 3, clauses 13 and 14, the words "superior" and "inferior" holders are defined, and these definitions include those inferior holders who have either to pay rent or land revenue to their superior holders.

The question therefore is, whether the defendants are inferior holders who have to pay rent to the plaintiff, or only land revenue. Mr. Khare contended that the Inámdár has succeeded to all the rights of the Government, and defendants must therefore be regarded as placed in possession by those under whom plaintiff claims. The defendants must therefore be held to be inferior holders kept in possession by the plaintiff, and the money payable by them is rent.

A perusal of several sections—from 83 to 86 and 58—of the Code satisfies me that whenever the Code refers to alienated villages it always describes the payment made by inferior holders as being either rent or land revenue, while in the case of

Government villages it always speaks of the payment as land revenue only. This alternative form of expression is obviously used, because the superior holder in an alienated village may have both tenants and inferior holders under him. In the present case the defendants are not tenants, and therefore the District Judge was right in holding that the payment made was land revenue and not rent. The article applicable is, therefore, article 120, as there is no other special provision which can apply to claim for land revenue. As regards defendant's other objection, section 217 provides that when a survey settlement has been introduced into an alienated village, the holders of all lands shall have the same rights and be affected by the same responsibilities in respect of the land in their occupation as occupants in unalienated villages have or are affected by under the provisions of the Code. The village of Kothure has been surveyed and settled. This is an additional reason why the claim must be regarded as one not of rent but of land revenue, and article 110 therefore cannot apply. The Courts below were right in holding that defendant No. 2, who is khátedár of all the lands, is responsible for the arrears claimed. Though section 136 does not apply to the defendant No. 2, section 217 clothes him with all the responsibilities of an occupant.

I would therefore reject the appeal and confirm the decree.

CROWE, J.:—In this suit plaintiff, who is one of the sharers of the Inám village of Kothure, sued to recover from the defendants the assessment of certain lands for five years from 1891-92 to 1895-96. The first defendant did not appear, and the principal contention of defendant 2 was that the claim for arrears beyond the last three years was time-barred, and that he was not liable for the assessment of survey Nos. 195 and 196, which were in the possession of defendant No. 1. The Court of first instance held that as all the lands in suit stood in the kháta of defendant 2 in the village records, he, as superior holder, was primarily responsible to plaintiff as owner for the assessment. On the question of limitation it held that article 132 applied to the case, and, if not, then it was governed by article 120, and awarded the claim with costs. The lower Appellate Court confirmed the decree, and held that article 120 applied, as there was no other

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article which could apply, the claim being for land revenue, which was something quite different from rent. It has been strenuously contended by Mr. Khare for the appellant that neither article 132 nor 120 is applicable, and that the case must be governed by article 110, which applies to arrears of rent only.

The learned District Judge held that rent and land revenue were clearly distinguished in the Land Revenue Code, and he cited section 83, which he observed deals with and impliedly defines rent. It is sufficient to remark that section 83 does not profess to define rent, and no definition of the term is found in the Land Revenue Code.

Rent is defined in section 105 of the Transfer of Property Act (IV of 1882), which runs as follows:—"A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. The transferor is called the 'lessor,' the transferee is called the 'lessee,' the price is called the 'premium,' and the money, share, service or other thing to be rendered is called the 'rent.'" Though the expression "rent" occurs in section 83 of the Land Revenue Code, the object of that section is clearly to define a tenant's rights. By section 45 of the Act, all land is declared liable to the payment of land revenue to Government. A tenant signifies a person who holds by a right derived from a superior holder called his landlord, or from his landlord's predecessor in title. In the present case the superior holder is the Inámdár, the land having been alienated, by which is meant, according to section 3, clause (19), "transferred in so far as the rights of Government to payment of the rent or land revenue are concerned, wholly or partially to the ownership of any person." In this definition the expressions "rent" and "land revenue" are used indiscriminately to denote the amount payable by the occupant to Government, and it seems impossible to hold that the law contemplated anything different in the connotation of the two expressions. It is true that the tenant in the present case does not hold direct from the superior holder, permissively or on

sufferance, but he holds from the superior holder's predecessor in title, namely, from the Government. It is true that the amount of the rent which the Inámdár is authorized to levy is limited in some cases to the amount of land revenue or assessment actually settled by Government with the particular tenant, but it none the less falls, as far as the superior holder is concerned, under the denomination of rent or money to be rendered in consideration for the transfer of the right to enjoy certain immoveable property for a certain time or in perpetuity. I am of opinion that this case is governed by article 110, and that the plaintiff's claim is limited to arrears for three years preceding the date of the suit. It is admitted that the survey settlement has been introduced in the village of Kothure, and therefore defendant 2 being the registered occupants of the lands, survey Nos. 195 and 196, is, under the provisions of section 237, affected by the same responsibilities as a registered occupant in an unalienated village, and all the provisions of the Land Revenue Code relating to registered occupants are applicable to him. He is therefore primarily responsible for the land revenue of the lands standing in his name. I would amend the decree of the lower Court to the extent indicated above and confirm the rest of the decree.

Owing to the above difference of opinion this case was laid before Mr. Justice Whitworth, who delivered the following judgment on 21st January 1901:

WHITWORTH, J.:—The point of difference in the judgments above is whether article 110 or article 120 of the Limitation Act applies to the claim in question, or, in other words, whether the dues claimed are 'rent' so as to come under article 110, or are 'land revenue' other than rent, so as not to come under that article, which is concerned with rent alone.

The question whether the dues claimed are rent is, I think, identical with the question whether the relation of landlord and tenant existed between the parties. The "rent" is not defined in the Land Revenue Code, but the relation of landlord and tenant is. And rent is defined in the Transfer of Property Act. But under both enactments an agreement between the parties is the basis of the relation, whether it be called a relation of landlord nd tenant, or a relation entitling to the receipt of rent. 'A

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right derived from a superior holder' is the expression used in the one law; and a 'transfer of a right to enjoy' is the expression used in the other: and they equally imply a contract between the parties.

Now in the present case there is no such agreement between the parties. The defendant has not been placed in possession by the plaintiff, and what the plaintiff seeks to recover is not a payment agreed upon between him and the defendant, but is assessment, which has been fixed by the Survey Department of Government.

It has been argued by Mr. Khare (who has argued the case before me *ex parte*) that the plaintiff has the right of enhancing the rate of payment, and that therefore it is rent and not assessment. The record does not show that he has such a right, but even if he has, it must be a limited and conditional right, for it cannot be contended that his rights as Inámdár are wider than those of the Government which granted the inám, and the latter are limited now by section 107 of the Land Revenue Code and formerly by section 30 of Bombay Act I of 1865, while it is matter of history that no unlimited right of assessment has ever been put forward. Indeed the definition of the term "alienated" itself implies the recognition of other rights than those of Government and of the alienee. "Alienated" means transferred in so far as the rights of Government to payment of the rent or land revenue are concerned, wholly or partially, to the ownership of any person. This at once places the relationship on a different footing to that of a landlord and tenant, who, independently of any authority, come to terms as to what the one is to receive from the other. Only to that ordinary relationship, I think, is article 110 of the Limitation Act intended to apply.

But Mr. Justice Crowe has expressed the opinion that the terms "rent" and "land revenue" are used indiscriminately in defining the term "alienated" in section 3, clause (19), of the Land Revenue Code, and that it is impossible to hold that the law contemplated anything different in the connotation of the two expressions. But to make such a use of the terms a basis for applying article 110 to the present case, it would be necessary to show that the terms are used as equivalents, not in one place only,

but throughout the Code, or indeed throughout Indian legislation generally. That is obviously impossible. The term "rent" is used, as for instance in section 87 of the Code, where the term "land revenue" would be inapplicable. In fact it seems to me perfectly correct to say that the term "rent" is used in the Code only with reference to those superior and inferior holders between whom the relationship of landlord and tenant subsists, and not with reference to those superior and inferior holders between whom the relationship does not exist.

Further, I do not think that the term "rent" and "land revenue" are used indiscriminately even in the one instance cited. No doubt a vast majority of alienations are alienations of land revenue, but there is nothing to prevent Government from being a landlord, or from alienating land of which it is the landlord. That appears to be sufficient reason for inserting the term "rent" as well as the term "land revenue" in the definition of "alienated."

I concur in the judgment of the late Mr. Justice Ranade.*

Decree confirmed.

* *Note.*—Ranade, J., died on the 16th January, 1901, five days before this judgment was delivered.

PRIVY COUNCIL.

KARIM NENSEY (PLAINTIFF), *v.* G. K. HEINRICHS AND ANOTHER (DEFENDANTS).

P. C. 1901. *April* 30. *June* 13.

[ON APPEAL FROM THE HIGH COURT OF JUDICATURE AT BOMBAY.]

Contract—Construction of contract—Contract indefinite as regards duration—Agreement to pay a certain sum as maintenance—Effect on agreement of defeasance being rendered impossible.

Gifts or contracts expressed to be for maintenance, and indefinite as regards duration, may be shown by the acts of the parties or other circumstances to be intended to operate in perpetuity; but, *primâ facie*, they are limited to the life either of the grantor or grantee.

* Present: Lord Hobhouse, Lord Macnaghten, Lord Robertson, Sir Richard Couch, and Sir Ford North.