APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Jacob.

1903. *August* 5.

LAKSHMAN NARAYAN BHAGVAT (ORIGINAL PLAINTIFF), APPELLANT, *v.* GOVIND MAHADEV GHATE (ORIGINAL DEFENDANT), RESPONDENT.*

GOVIND MAHADEV GHATE (ORIGINAL DEFENDANT), APPELLANT, *v.* LAKSHMAN NARAYAN BHAGVAT (ORIGINAL PLAINTIFF), RESPONDENT.*

Bombay Revenue Jurisdiction Act (X of 1876), section 4 (b) (1)*—Inamdar—Occupancy tenant—Claim by the inamdar to recover assessment according to the survey rates—Tenant setting up fixed assessment—Objections under section 4 (b)—Civil Court—Jurisdiction.*

The plaintiff, an Inamdar, sued to recover from the defendant, an occupant, the assessment of the lands held by him in accordance with the survey rates. The defendant contended, among other things, that under certain *Mupli Istava Kouls* held by him, he had acquired the right to hold the lands permanently on payment of a fixed sum as rent. Plaintiff contended that by virtue of section 4, clause (*b*), of the Bombay Revenue Jurisdiction Act (X of 1876), the Civil Court was precluded from entertaining the defendant's contention.

Held, that clause (*b*) of section 4 of the Bombay Revenue Jurisdiction Act (X of 1876) presented no bar to the hearing by the Civil Court of the contention set up by the defendant.

An objection to come within 1st head of section 4, clause (*b*), of the Bombay Revenue Jurisdiction Act (X of 1876) must be "to the amount or incidence of any assessment of land revenue" itself and as such, in other words, apart from the question of any other and independant right, if an occupancy tenant complains that though he is bound to pay the assessment of land revenue, the amount or incidence of it as authorized by Government is too high, having regard to the nature of the soil and quality of his land and other like considerations, the

* Cross-appeals Nos. 80 and 90 of 1902.

(1) Section 4, clause (*b*), of the Bombay Revenue Jurisdiction Act (X of 1876), runs as follows:—

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

* * * * * * * *

(*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.

objection is one purely and simply to such amount or incidence. But if without questioning the legality or propriety of the amount or incidence *per se*, he asserts a right independent of and having no relation to it, such as a right to pay a certain fixed amount annually under a contract between him and the Inamdar he cannot be said to object to the amount or incidence of the assessment. Nor can such a tenant be said by his objection to object to the validity or effect of the notification of survey or settlement under the 3rd head of clause (*b*) of section 4 of the Bombay Revenue Jurisdiction Act (X of 1876).

"Objections" in section 4, clause (*b*) of the Act, can be raised by a suit or in defence to a suit.

CROSS-APPEALS from the decision of V. V. Phadke, First Class Subordinate Judge, A. P., at Thána, varying the decree passed by R. B. Chitale, Subordinate Judge of Pen.

The plaintiff, an Inamdar, sued to recover Rs. 133-6-2 from the defendant, an occupant, on account of assessment of the lands held by the latter in accordance with the survey rates.

The defendant contended (*inter alia*) that he was not liable to pay the increased assessment since he occupied his holding at fixed permanent assessments.

It was urged on behalf of the plaintiff that the contention raised by the defendant was in the nature of an objection to the "amount or incidence of any assessment of land revenue authorized by Government" within the meaning of clause (*b*) of section 4 of the Revenue Jurisdiction Act (X of 1876) and that the Civil Courts were precluded from exercising jurisdiction in the matter.

The Court of first instance was of opinion that under section 4, clause (*b*), of the Revenue Jurisdiction Act (X of 1876), the Civil Court could not inquire into the question whether the defendant was entitled to claim partial exemption as, in its opinion, it involved an objection "to the amount or incidence of an assessment of land revenue authorized by Government."

The lower Appellate Court, on appeal, held that the Civil Court has jurisdiction to entertain suits or defences based on claims for exemption after a survey settlement has been introduced in respect of the assessment on lands covered by such survey. The following were the reasons :—

"It has been urged by the defendant that the term 'land revenue' means only revenue claimable by or on behalf of Government, and that the revenue claimed by an Inamdar is therefore not land revenue within the meaning of the

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term; and hence the Act is not applicable to cases wherein such revenue is in question. If that were so, the provisions of the Act would not be applicable to disputes between superior and inferior holders, consequently section 4 would not bar jurisdiction in such questions, and the provision in section 5, clause c, for exempting such suits from the operation of section 4 would be meaningless. The lower Court has given an extensive account of the change that has taken place in the law on the subject of the jurisdiction of Civil Courts in matters of land revenue. The conclusion arrived at by that Court, that the jurisdiction of Civil Courts has been much curtailed by the Revenue Jurisdiction Act, is true. The question is whether the Court is debarred from entertaining questions like the one involved in this suit, *i.e.*, a claim to partial exemption from land revenue. It is said that such claims are objections to the amount or incidence of an assessment authorized by Government. Now I would interpret the phrase 'objection to the amount or incidence of any assessment' as meaning objection to the measurement or classification of land. I shall give an illustration. A particular occupant thinks that the survey authorities have committed an error in classifying his land, and that the land which has been assessed at annas 8 per acre has been assessed at Re. 1. If he raises an objection like this, it will be an objection to the incidence of the assessment, and no Court would be authorized to entertain it again, the occupant may say that the classification is fair, but that a mistake has been committed in the measurement, and consequently the amount fixed is excessive. That would be an objection to the amount and would be equally barred. This view is, I think, supported by the decision of the High Court in *Gangadhar* v. *Morbhat* (I. L. R. 18 Bom. 525). Let us consider the point more minutely. If claims for partial exemption come under clause (*b*) of section 4, then that clause would have operated to bar such claims, and there would have been no necessity for providing in clause (*f*) that Civil Courts should not take cognizance of claims against Government to hold land wholly or partially free from payment of land revenue. Such an express provision, therefore, shows that such claims are not covered by clause (*b*). Moreover, by Act XVI of 1877, section 5 was amended by the addition of a proviso that in certain specified districts, Courts shall not be prevented by anything contained in section 4, from entertaining such suits against Government for claims to hold land wholly or partially exempt. If, therefore, the interpretation which Mr. Chaubal puts on section 4 be true, the result would be that, in the said scheduled districts, occupants of land would have liberty to put forth *against Government* claims for total or partial exemption from payment of land revenue, but they would be debarred from putting forth the same claims *against private persons*. That would be a very unreasonable state of things; and hence the contention cannot be allowed. I therefore hold that the Court is not precluded from entertaining the claim urged by defendant for partial exemption."

Against this decision the parties preferred cross-appeals to the High Court.

APPEAL No. 80 OF 1902.

M. B. Chaubal, for the appellant.

V. N. Manohar, for the respondent.

APPEAL No. 90 of 1902.

G. S. Rao, for the appellant.

M. B. Chaubal, for the respondent.

APPEAL No. 80 of 1902.

CHANDAVARKAR, J.:—These second appeals have been heard together and the point which is common to all has been argued in Second Appeal No. 80. That point arises in this way. The suits have been brought by the plaintiff to recover from the defendant the assessment of the lands held by him, in accordance with the survey rates. The defendant resists the claim on several grounds, one of which is that under certain *Maphi Istava Kowls* held by him, he has acquired the right to hold the lands permanently on payment of a fixed sum as rent and that therefore, as he is not liable to pay more than that sum, this claim to recover the assessment according to survey rates cannot lie. For the plaintiff it is contended that Civil Courts have no jurisdiction to hear this objection and section 4, clause (*b*), of Act X of 1876 (The Bombay Revenue Jurisdiction Act) is relied upon. Clause (*b*) of section 4 provides that no Civil Court shall exercise jurisdiction as to any objections (1) to the amount or incidence of any assessment of land revenue authorized by Government; (2) to the mode of assessment, or to the principle on which such assessment is fixed; and (3) to the validity or effect of the notification of survey or settlement, or of any notification determining the period of settlement. It is an admitted fact that the assessment of land revenue on which the plaintiff has based his claim has been authorized by Government in respect of the lands in dispute which lie in the plaintiff's inam villages and that that assessment is in accordance with the notification of a survey settlement duly made under the Land Revenue Code. The question was raised for the defendant whether what the plaintiff claimed could fall within the definition of "land revenue" in the Bombay Revenue Jurisdiction Act. We do not think that it is necessary

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for the purposes of these appeals to decide that question, because, assuming that the plaintiff's right as assignee of the Government who can recover land revenue, is substantially that of one claiming such revenue on behalf of Government, the question still remains whether the objections of the defendant based on his *kowls* are objections which fall under any of the three heads of clause (*b*) of section 4 of the Bombay Revenue Jurisdiction Act. It is conceded for the plaintiff that the objections in question do not come under the second head of clause (*b*), so that we have to see whether they fall under either of the other two heads. To fall under the first the objection must be "to the amount or incidence of any assessment of land revenue." In one sense no doubt whenever an Inamdar sues an occupancy tenant to recover land revenue according to the survey rates and the tenant resists the claim on the ground that he has acquired a right as against the Inamdar to pay rent or revenue at a permanently fixed rate, he may be said to object to the amount or incidence of land revenue authorized by Government. But it is an objection which does not hit the amount or incidence directly; that is its indirect effect, which is not what the first head of clause (*b*), having regard to its language, was intended to strike at. The objection must be "to the amount or incidence of any assessment of land revenue" itself and as such. In other words, apart from the question of any other and independent right, if an occupancy tenant complains that though he is bound to pay the assessment of land revenue, the amount or incidence of it as authorized by Government is too high, having regard to the nature of the soil and quality of his land or other like considerations, the objection is one purely and simply to such amount or incidence. But if, without questioning the legality or propriety of the amount or incidence *per se*, he asserts a right independent of and having no relation to it, such as a right to pay a certain fixed amount annually under a contract between him and the Inamdar, he cannot be said to object to the amount or incidence of the assessment. In such a case what in effect he says is: "The amount or incidence of the assessment is all right. I have nothing to say to that; but you, the Inamdar, have entered into a contract with me and all I claim is that you are bound by it." Nor can

such a tenant be said by his objection to object to the validity or effect of the notification of survey or settlement under the 3rd head of clause (*b*). So far as the notification goes by itself, he does not question either its validity or effect. What in effect he says is: "I am not concerned with either of them. I set up an independent right which has no connection with the question of the validity or effect of the notification of survey settlement." We are of opinion, then, that an objection to come within either of the two heads of clause (*b*) of section 4 must be an objection which reaches them directly, *i.e.*, an objection to them *per se* which admits the liability to pay land revenue on the part of the objector but quarrels with its amount or incidence or the validity and effect of the notification of survey settlement as *by themselves* objectionable, not because some other right affects them or makes them inapplicable to his particular case. That this is the plain meaning of the Legislature appears clearly from a consideration of the proviso to section 4 and from section 5 of the Act. According to the proviso to section 4, a Civil Court has jurisdiction to entertain any suit where any person claims to hold land, wholly or partially exempt from payment of land revenue under any enactment, or under a sanad or instrument granted by or by order of the Governor in Council under Bombay Act No. 2 of 1863, etc., or any other written grant by the British Government expressly creating or confirming such exemption or a judgment by a Court of law, etc. The effect of this proviso is that where an occupancy tenant holding under Government is called upon to pay land revenue according to the survey rates, it is open to him to resist the claim of Government in a Civil Court on the ground that he holds under a written grant or an enactment, etc., which prevents Government from claiming more than can be recovered under the grant or enactment, etc. And as to Inamdars and occupancy tenants holding under them, section 5 provides that "nothing in section 4 shall be held to prevent the Civil Courts from entertaining" suits between private parties for the purpose of establishing any private right, although it may be affected by any entry in any record of a revenue survey or settlement, or in any village papers. In the present case the defendant virtually sets up his private rights as agains

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the Inamdars and the suits are between private parties. Moreover, section 5, clause (*c*), provides that nothing in section 4 shall be held to prevent Civil Courts from entertaining suits "between superior holders or occupants and inferior holders or tenants regarding the dues claimed or recovered from the latter." It was held by this Court in *The Secretary of State for India* v. *Balvant Ramchandra Natu* (1) that an *Inamdar* is "a superior holder" within the definitions of Regulations XVII of 1827 and Bombay Acts I of 1865 and V of 1879. But it was said that, even assuming clauses (*b*) and (*c*) of section 5 applied to the objections of the defendant, all that that section allowed was a suit; here the defendant was not suing but was resisting suits brought against him by the Inamdar. We do not think that the Legislature intended to allow such objections as the defendant has raised only where they were raised by a suit and not in defence. "Objections" in section 4, clause (*b*), may be raised by a suit or in defence to a suit, but in whichever way they are raised they must be of the particular nature described in clause (*b*). Where they fall outside that class, they can be raised in defence to as well as by a suit.

It was, however, urged before us that sections 52 and 217 of the Bombay Land Revenue Code debarred the defendant from raising the objections in question, founded on the *Maphi Istava Kowls* on which they rely. But section 52 does not affect the right of a party who holds lands under Government or an Inamdar by virtue of a special grant; nor does section 217. The effect of the first is to give the Collector the discretion to fix the assessment; the effect of the second is to render the occupants in alienated villages subject to a settlement like the occupants in unalienated villages. But neither section takes away any legal right which an occupancy tenant may have acquired independently of his bare status as an occupancy tenant liable to pay the land revenue according to survey rates. We, therefore, dismiss the appeal without costs.

APPEAL No. 90 of 1902.

We have already intimated in the course of argument that we must accept the finding of fact by the lower Appellate Court

(1) (1892) 17 Bom. 422.

that the grant under Exhibit 17 was unauthorized and not binding on the present plaintiff.

The Subordinate Judge, A. P., has decided in favour of the plaintiff the question of limitation raised in this case on the ground that there has been for twelve years before suit no demand on the part of the Inamdar and no refusal on the part of the tenants in respect of rents at a higher rate than that fixed in the *kowl*, Exhibit 17. But the question does not depend on mere demand and refusal. If it appears on the evidence that the tenants disputed in 1879 the Inamdar's right to recover otherwise than under Exhibit 17 and that, thereafter, for twelve years they went on paying the reduced assessment under that document, the Inamdar's right must be held to be barred. Now, the case of the tenants is that in 1879 when the Inamdar debited them in the receipt books with sums over and above those they had paid in accordance with Exhibit 17, they gave him a notice (Exhibit 13) protesting against the debit entries. But the lower Appellate Court has held that Exhibit 13 is not proved to have been served on the Inamdar. On this finding Mr. Chaubal has invited us to hold that there was no claim based on Exhibit 17, set up by the tenants in 1879, to the knowledge of the Inamdar, and indeed we must come to that conclusion having regard to the facts found by the lower Court. The receipt books for 1879 on which the tenants rely have reference to payments for several years, one of which is the year previous to that of the *kowl*, Exhibit 17. It is found that when the Inamdar called upon some of the tenants to produce their *kowls*, this *kowl*, Exhibit 17, was not produced or brought to his knowledge; it is not shown as to other tenants that they produced their *kowls* and the notice, Exhibit 13, is held not to have been served on him. These facts found by the lower Court show that the tenants did not set up their right based on Exhibit 17 to the Inamdar's knowledge in 1879. Then there remains the fact, also found by the lower Court, that the tenants paid for fifteen years after 1879 the reduced assessment according to Exhibit 17. But we cannot presume adverse possession in favour of the tenants from that single circumstance when the Court of facts has declined to do that, especially because these payments may in the absence of special circumstances be referred to the lawful title of the Inamdar to recover from

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the tenants assessment to the extent allowed as reasonable by the custom of the village. The special circumstances alleged in the present case have been urged by Mr. Rao as justifying the inference of an adverse right in favour of his clients, but the inference is an inference of fact which the lower Appellate Court has declined to draw, and we see no error of law in that Court's conclusion. As to the *savaisat* which is not allowed by that Court, it is clear that the contract as to it was conditional upon the continued existence of the measurements accepted by the parties at the time of the *kowls* as the basis of their mutual claims for the future These measurements ceasing to exist, the basis on which the right to *savaisat* rested fails. There is no error in the award of interest. We must, for these reasons, dismiss the appeal without costs.

JACOB, J. :—I entirely concur.

I would merely add to the judgment in Second Appeal No. 80 of 1902 that the introduction of the first branch of clause (*f*) of section 4 of Act X of 1870 affords another almost conclusive argument against the plaintiff's contention, since if that contention were sound the object expressly aimed at by the first branch of clause (*f*) is already fully covered by the provisions of clause (*b*).

Appeals dismissed.

APPELLATE CIVIL.

Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Jacob.

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RUDRAPA AND ANOTHER, SONS AND HEIRS OF VIRBHADRAPPA BIN IRAPPA (ORIGINAL DEFENDANT 2), APPELLANT, *v.* IRAVA AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Hindu Law—Dhárwár district—Succession—Sister—Brother's widow.

In the district of Dhárwár a sister is preferred as an heir to a brother's widow.

SECOND appeal from the decision of R. Knight, District Judge of Dhárwár, confirming the decree of R. Reuben, Subordinate Judge of Háveri.

* Second Appeal No. 4 of 1903.