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awarded and that this is to be arrived at by taking into consideration certain specified matters and excluding from consideration others. The Act seems to me to leave a great deal to the discretion of the Collector and the Court, and amongst other matters, to leave it to their discretion to ascertain the market value of the land either by the method advocated by Mr. Lowndes or by that which receives the support of the Honourable the Advocate General. I do not think this opinion conflicts with what was decided in *Bhimrao's* case[1]; for in that case it was not held that valuation by computing different interests separately was universally wrong, but that it was correct to follow the other method in that case. But Mr. Lowndes argues that even if the Land Acquisition Act leaves the question open yet section 49 cl. (2) of the Bombay Improvement Act, which Act incorporates certain portions of the Land Acquisition Act, absolutely requires that the compensation must be ascertained by valuing separately the separate interests. The argument does not convince me. I think the Bombay Improvement Act leaves the choice of method open, just as the Land Acquisition Act does. The latter part of clause 2 of section 49, no doubt does contemplate the valuation of a separate interest and when a case such as is contemplated there actually arises—it has not arisen before us—no doubt such valuation as is required will be made.

R. R.

(1) (1908) 10 Bom. L. R. 757.

APPELLATE CIVIL.

Before the Honourable Mr. Justice Chandavarkar, Acting Chief Justice, and Mr. Justice Heaton.

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JIVANJI JAMSHEDJI LAKDAVALA (ORIGINAL DEFENDANT), APPELLANT, *v.* BARJORJI NASSERVANJI AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Appointment of a Committee for management of property—Appointment acquiesced in by owner—Committee in management for a long time—Suit by Committee against a trespasser in ejectment—Title.

The Parsi Panchayat at Bombay appointed a committee to manage the property of the Parsi Anjuman at Surat. The committee managed the property

* Second Appeal No. 121 of 1908.

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for a very long time—sixty years—with the authority and acquiescence of the Parsi Anjuman. Subsequently the defendant having trespassed on the property, the committee sued him in ejectment. The defendant contended that the plaintiffs had no right to sue for the recovery of the property as they were neither the owners nor the nominees of the Anjuman.

Held, that the plaintiffs being in possession for a long time with the authority and acquiescence of the owners, namely, the Parsi Anjuman at Surat, were entitled to recover possession from a trespasser.

SECOND appeal from the decision of W. Baker, Acting District Judge of Surat, reversing the decree of G. M. Kharkar, Additional Subordinate Judge of Surat.

The land in suit known as the Lál Agiari and situate in the City of Surat was formerly occupied by an Agiari (a Parsi temple). The Agiari was burnt down in the great fire of 1837 and since then the land remained waste. The land formed part of the property of the Parsi Anjuman at Surat. In the year 1846 certain property of the Anjuman was entrusted to a committee for management and the committee managed the property in suit at least since 1871 and continued to do so till about the year 1904 when the defendant trespassed on the land. The plaintiffs who were the representatives of the committee of management, thereupon, brought the present suit to eject the defendant from the land.

The defendant contended *inter alia* that the land in dispute was not the property of the Parsi Anjuman, that the plaintiffs were not the managers of the property and had never been in possession, that the property was the ancestral property of the defendant and had been in his possession as such. He further contended that the suit was not maintainable inasmuch as the procedure laid down in section 30 of the Civil Procedure Code (Act XIV of 1882) was not followed.

The Subordinate Judge found that the plaintiffs were the managers of some of the properties of the Parsi Anjuman at Surat, their appointment as managers being made by the trustees at Bombay and not by the Parsi Anjuman at Surat and that the suit was not maintainable for non-compliance with the procedure laid down in section 30 of the Civil Procedure Code (Act XIV of 1882). He, therefore, dismissed the suit.

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On appeal by the plaintiffs the District Judge found *inter alia* that the suit was not barred by section 30 of the Civil Procedure Code (Act XIV of 1882), that the land in suit belonged to the Parsi Anjuman and was under the management of the plaintiffs and that the land did not belong to the defendant and he had encroached upon it. The District Judge, therefore, reversed the decree and allowed the claim. The following are extracts from his judgment:—

I may point out that they (managers) do not render accounts to the trustees, but the trustees render accounts to them, and that they have absolute discretion as to the manner in which the income is to be spent: provided of course it is spent on charitable objects. It might therefore be argued that their position is not that of ordinary agents. But apart from this there is evidence that though they have not been formally appointed managers by the Anjuman, which apparently never meets, there is evidence that they are in possession and management of a considerable portion of the Anjuman property, and that they are regarded as representatives of the community of Parsis at Surat. Further, it is to be noted that all their management is quite open and that their accounts are printed and published yearly, (there are about 50 volumes of accounts on the record of this case), and that the Parsi Community have acquiesced in this management. Now after 60 years the authority of the managers is challenged, and though the actual property in dispute is not very valuable or important, the decision of this case will have far reaching effect on the whole question of the manager's position, which is the reason why the present case is so hotly contested.

* * * * * * *

The fact that they are agents for the trustees in Bombay for the distribution of certain funds has nothing to do with this. I have already pointed out that these properties are not under the management of the Bombay trustees and that they could not appoint the managers their agents for the management of them. The plaintiffs are not suing as agents of the Bombay trustees but as persons who with the tacit acquiescence of the Anjuman have managed the bulk of the Anjuman property for 60 years. I am of opinion that section 30, Civil Procedure Code, does not apply to a case like the present, which is analogous to the case of the trustees of a Hindu temple and Mahomedan mosque suing to recover property belonging to the temple or mosque. It may be that the plaintiffs were never formally appointed by the Anjuman, but they and their predecessors (and the succession has been regularly kept up) have acted as managers of the Anjuman property for 60 years. It is now too late to question the validity of their acts.

The defendant preferred a second appeal.

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L. A. Shah for the appellant (defendant).

Robertson and *H. C. Coyaji* with *N. K. Koyaji* for the respondents (plaintiffs).

CHANDAVARKAR, Ag. C. J.—The respondents brought this suit to recover possession of the lands in dispute from the appellant alleging that from time to time a Committee of Managers had been appointed at Surat for the purpose of managing the properties of the Parsi Anjuman of that place; that the respondents were the present Committee, the first respondent being Chairman thereof; that the lands in dispute belonged to the Parsi Anjuman and had been in the management and possession of the respondents. They sought to recover possession in the capacity of managers. They also alleged that the appellant was a mere trespasser and was therefore liable to be ejected.

The first issue in the Court of first instance was:—"Whether the plaintiffs are the managers of the property of the Parsi Anjuman of Surat." The appellant applied to the Subordinate Judge that that issue might be modified by adding to it the words "appointed by the Parsi Anjuman." The Subordinate Judge thought it was unnecessary to allow the amendment, because, in his opinion, the words proposed to be added were mere surplusage.

It is common ground that the appointment of the respondents as a Committee was not by the Parsi Anjuman. The finding of the District Judge is also to that effect. He finds that they and before them their predecessors forming the Committee, of which the respondents are members, were appointed by the Parsi Panchayat in Bombay to administer certain trusts and the appointments had nothing to do with the Parsi Anjuman of Surat. Basing his argument on this finding of fact, Mr. Shah for the appellant contends that the respondents have no right to sue for recovery of the lands in dispute since these admittedly belong to the Anjuman and the respondents are not the Anjuman's nominees. But the District Judge has also found on the evidence that with the acquiescence of the Parsi Anjuman of Surat the respondents have been managing certain properties including the property in dispute, having received them in the year 1846 from one

Bhikhaijee who till then had held them under and with the authority of the Parsi Anjuman.

Now upon those facts found by the learned District Judge it is quite clear that the respondents are entitled to succeed. Though they are not the owners of the property and though they were not appointed Board of Managers for the purpose of holding this property by the Parsi Anjuman, yet, for sixty years they have managed the property with the authority and acquiescence of the Parsi Anjuman. Therefore the case falls within the principle enunciated by the late Chief Justice of this Court in *Navroji Manekji Wadia* v. *Dastur Kharsedji Mancherji* (1).

In that case a similar objection to the title of plaintiff there was raised, but it was disallowed on the following ground: "Even if there be difficulty or doubt as to its ownership, it is obvious that there must be some one entitled to protect from improper invasion that, which for brevity, we will call the temple property, and it appears to us that those who can predicate of themselves that they have exercised the management, authority and supervision alleged in the plaint are so entitled." In the present case the management, authority and supervision of the property have been vested in the respondents since 1846 and that with the knowledge, consent and acquiescence of those who are admitted to be the owners of this property, namely, the Parsi Anjuman.

For these reasons the District Judge was right in the conclusions at which he arrived and his decree must be confirmed with costs.

HEATON, J.:—I also have no doubt that the District Judge who has written a very careful judgment is right in his conclusions.

The plaintiffs seek to recover possession from a trespasser. The trespasser seeks to retain possession on the ground that the plaintiffs are not entitled to sue for possession, because, they were not the owners. But it is established in the case that the plaintiffs have actually been in possession for a long period of

(1) (1903) 28 Bom. 20 at p. 50.

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years, I think, more than 30 years, with the tacit acquiescence of the true owners. If that is not a sufficient title on which to sue a trespasser for possession, it is very difficult to say what is; at least in the case of any claim to possession by any person not an absolute owner.

Decree confirmed.

G. B. R.

APPELLATE CIVIL.

Before Mr. Justice Batchelor and Mr. Justice Heaton.

1909.
June 21.

MAHADEV NARAYAN LOKHANDE (ORIGINAL PLAINTIFF), APPELLANT, *v.* VINAYAK GANGADHAR PURANDHARE AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Dekkhan Agriculturists' Relief Act (XVII of 1879), section 2—Agriculturist—A person who is an agriculturist in 1871 but is not one when the suit is brought in 1905 cannot claim the benefit of the Act.

In 1871, the defendant executed a mortgage in plaintiff's favour. It was provided that the mortgage was not to be redeemed before 1886. The defendant was an agriculturist at the date of the mortgage: but he was not one when the suit was brought. In 1879, the term 'agriculturist' first received a legal definition in the Dekkhan Agriculturists' Relief Act. In the suit by the plaintiff upon the mortgage the defendant claimed the benefits of the Act, on the ground that his liability under the mortgage was not incurred till 1886: it was admitted that the defendant was not an agriculturist at the date of the suit:—

Held, that the liability incurred by the defendant was to pay back the money borrowed by him; and that liability was incurred when the money was borrowed in 1871.

Held, further, that in 1871, the defendant, whatever may have been his occupation in fact, could not have been an agriculturist within the meaning of the Dekkhan Agriculturists' Relief Act, which was enacted in 1879.

Held, also, that the defendant was not entitled to the benefit of the Act.

SECOND appeal from the decision of Ruttonji Muncherji, First Class Subordinate Judge, A. P., at Poona, confirming the decree passed by T. N. Sanjana, Subordinate Judge of Haveli.

* Second Appeal No. 891 of 1907.