

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Hayward.

DHARMA BAL PATIL AND ANOTHER (ORIGINAL DEFENDANTS), APPELLANTS,
v. BALAMIYA VALAD HAJIMIYA AND ANOTHER (ORIGINAL PLAINTIFFS),
RESPONDENTS.*

1911,
August 1

Bombay Land Revenue Code (Bombay Act V of 1879), sections 56, 214, Rules 32, 62, 68†—Occupancy—Non-payment of assessment—Forfeiture of occupancy—Re-grant to fresh occupants—Restoration of holding to original occupant—Collector, powers of.

Owing to non-payment of assessment to Government, an occupancy was forfeited under section 56 of the Bombay Land Revenue Code (Bombay Act V of 1879) and

* S. A. No. 522 of 1909.

†56. Arrears of land revenue due on account of land by any landholder shall be a paramount charge on the holding and every part thereof, failure in payment of which shall make the Land revenue a paramount charge on land. occupancy or alienated holding, together with all rights of the occupant or holder over all trees, crops, buildings and things attached to the land, or permanently fastened to anything attached to the land, liable to forfeiture, whereupon the Collector may levy all sums in arrear by sale of the occupancy or alienated holding, or may otherwise dispose of such occupancy or alienated holding under rules or orders made in this behalf under section 214, and such occupancy or alienated holding when disposed of, whether by sale as aforesaid, or by restoration to the defaulter, or by transfer to another person or otherwise howsoever, shall, unless the Collector otherwise directs, be deemed to be freed from all tenures, rights, incumbrances and equities theretofore created in favour of any person other than Government in respect of such occupancy or holding.

Rule 32.—In every case in which a lease is not executed under the last preceding rule, an agreement, in the form of Appendix D, shall be taken from the person who is to become the registered occupant, and every such agreement shall be endorsed by two respectable witnesses and by the patel and village-accountant of the village in which the land to which it relates is situate, to the effect prescribed below the said form; and the Mamlatdar or Mahalkari who takes the said agreement will be held responsible for exercising due care in ascertaining the identity of the persons signing the same, and their fitness to be accepted as occupants responsible for the payment of land revenue, notwithstanding that the agreements have been duly endorsed as hereinbefore required:

Provided always that no such agreement shall be necessary when an agreement, in the form of Appendix C, is taken under Rule 27.

Rule 62.—If, for any reason, a forfeited occupancy is not sold, the Collector shall either cause the land comprised therein to be entered in the records as

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was thereafter disposed of by the Collector, under Rules 32 and 62 framed under section 214 of the Code, to the defendants who signed *kabulayats*. Some years after this, the Collector ordered the same occupancy to be taken from the defendants and given to the plaintiffs who had been occupants before the forfeiture. The defendants having declined to deliver up possession were sued by the plaintiffs :

Held, that the Collector was not empowered by the rules framed under section 214 of the Code to pass the order he did ; and that the plaintiffs were, therefore, not entitled to succeed.

Rule 68 of the rules framed under section 214 of the Bombay Land Revenue Code, 1879, empowers a Collector to restore a forfeited occupancy to the original occupant. But when a forfeited occupancy has been disposed of by grant to a new occupant, it ceases to be a forfeited occupancy and the rule has no longer any application.

SECOND appeal from the decision of S. S. Wagle, First Class Subordinate Judge, with Appellate Powers, at Thana, reversing the decree passed by G. B. Laghate, Subordinate Judge of Bhiwandi.

Suit to recover possession of land.

The land in question was purchased by the predecessor of plaintiffs from Ibrahim and Mohidin in 1892. The vendors attorned to the vendees and remained in possession of the land. In 1901 the vendors made default in payment of Government assessment. The land was consequently forfeited to Government in 1901, under section 56 of the Bombay Land Revenue Code (Bombay Act V of 1879). In 1903, the land was granted by Government to the defendants, under Rules 32 and 62 of the rules framed under section 214 of the Bombay Land Revenue Code, 1879, who thereupon became its registered occupants. In 1904, the Collector ordered the land to be delivered to the plaintiffs, the original occupants of the land. The

unoccupied, and direct that it be dealt with under the rules and orders in force relating to land of that description, or take steps for having it at once lawfully assigned for any such purpose as is described in section 38 of the Land Revenue Code.

Rule 68.—It shall be in the discretion of the Collector to restore any forfeited occupancy at any time on payment of the arrear in respect of which the forfeiture was incurred, together with all costs and charges lawfully due by the defaulter, or, on security being given to his satisfaction for the payment of the said arrears, costs and charges within a reasonable period.

defendants declined to carry out the order. The plaintiffs thereupon sued to recover possession of the land from them.

The defendants contended *inter alia* that they had become registered occupants of the land and that as such they were entitled to remain in its possession.

The Subordinate Judge upheld the defendants' contentions. He held that the Collector's order passed in 1901 deprived the plaintiffs of their right of ownership over the land, that the defendants obtained an absolute title to the land by the re-grant in 1903; and that the Collector's order passed in 1904 did not put an end to the interest acquired by the defendants in the land.

On appeal, the First Class Subordinate Judge with Appellate Powers came to a different conclusion. He held that the plaintiffs were entitled, by virtue of the Collector's order of restoration, to recover the land from the defendants.

The defendants appealed to the High Court.

N. M. Patvardhan for the appellants.

W. B. Pradhan for the respondents.

The following cases were referred to in argument: *Narayan v. Parshotam*⁽¹⁾, *Ganparshibai v. Timmaya*⁽²⁾, *Amolak v. Dhondi*⁽³⁾.

CHANDAVARKAR, J. :—The facts are that an occupancy was first declared forfeited under section 56 of the Bombay Land Revenue Code, and thereafter it was disposed of by the Collector as provided for by Nos. 32 and 62 of the rules made under section 214 of that Code. It was disposed of by giving it into the occupation of the defendants, who signed a *kaulayat*, in Form B appended to the rules. Some years after that, the Collector ordered the same occupancy to be taken from the defendants and given to the plaintiffs, who had been the occupants before the forfeiture. The only question before us is whether the Collector had power to do this. His proceedings are supported in argument by reliance on Rule 68. Therefore, the question is whether that rule empowers a Collector

(1) (1896) 22 Bom. 389.

(2) (1899) 24 Bom. 34.

(3) (1906) 30 Bom. 466.

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to do such a thing. Agreeing with the first Court and differing from the appeal Court we hold that it does not. Rule 68 empowers a Collector to restore a forfeited occupancy to the original occupant. But when a forfeited occupancy has been disposed of by grant to a new occupant, it ceases to be a forfeited occupancy and Rule 68 no longer has any application. That rule states the law or a part of the law applicable to lands which are forfeited occupancies; not the law applicable to those lands, which, having once been forfeited occupancies, have, by disposal, according to the rules, become something different.

We allow this appeal, reverse the decree of the lower appellate Court, and restore that of the Court of first instance, with costs both of this appeal and of the appeal to the lower appellate Court on the respondent.

Decree reversed.

R. R.

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GHELABHAI GAVRISHANKAR (ORIGINAL PLAINTIFF), APPELLANT, v. HARGOWAN RAMJI AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Hindu law—Office of hereditary priest—Yajman vritti—Nibandha—Caste can appoint a priest—Grant from King not necessary—Removal of priest not allowed except on valid ground—Caste—Caste question—Bombay Regulation II of 1827—Civil Court—Jurisdiction.

Under Hindu law, the office of hereditary priest (*yajman vritti*) is a *nibandha* and is ranked among the hereditary rights of immoveable property.

The office of hereditary priest, where it is held in relation to a family, owes its origin, continuance, and binding character to custom and not to a grant from the King or agreement between the parties.

Where the office is one of hereditary family priest, the mere fact that in any individual case it has been created originally by the caste for the purposes of families belonging to it cannot affect it, because the office carries with it a hereditary right in the nature of property, and the incumbent cannot be deprived of it by anyone, unless he has become a *patita* (cutcaste) or has declined to officiate. The caste in such a case makes the selection for the families of its members; and when any family accepts the officiator as its hereditary family priest, custom

* Second Appeal No. 130 of 1910.