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be unfair and unjust but inequitable to allow them to do so now. I, therefore, hold that even if in law the plaintiff is not entitled to exercise the option the defendants are now estopped from disputing it. The result is that the plaintiff is entitled in the circumstances of this case to exercise the option to purchase and as the defendants have failed in this most important defence to this suit they must pay plaintiff's costs of this suit.

Solicitors for the plaintiff: *Messrs. Jehangir & Seervai.*

Solicitors for the defendants: *Messrs. Wadia, Gandhy & Co.*

Order accordingly.

G. G. N.

APPELLATE CIVIL.

Before Mr. Justice Beaman.

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September 10

PANDU *bin* BALA JAGATAP (ORIGINAL DEFENDANT), APPELLANT *v.* RAMCHANDRA GANESH DESHPANDE (ORIGINAL PLAINTIFF) RESPONDENT.*

Kadim Inamdar—Grantee of soil—Introduction of summary settlement into the alienated village—Mirasdar holding lands in the village long before the alienation—Inamdar's right to enhance the rent—Bombay Land Revenue Code (Bombay Act V of 1879), section 217.†

* Second Appeal No. 272 of 1916.

† The section runs as follows :—

217. When a survey settlement has been introduced, under the provisions of the last section or of any law for the time being in force, into an alienated village, the holders of all lands to which such settlement extends shall have the same rights and be affected by the same responsibilities in respect of the lands in their occupation as occupants in unalienated villages have or are affected by, under the provisions of this Act, and all the provisions of this Act relating to occupants and registered occupants shall be applicable, so far as may be, to them.

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A Kadim Inamdar who is a grantee not merely of the Government share of rent and land revenue but a grantee out and out of soil in a village where a survey settlement has been introduced, is entitled to enhance the rent of the Mirasdar whose tenancy dates from a time prior to the grant.

SECOND Appeal from the decision of W. Baker, District Judge of Satara, varying the decree passed by R.V. Bodas, Subordinate Judge of Wai.

Suit to recover rent.

The plaintiff was a Kadim Inamdar of the village of Kenjal, which was a Dumala village of several Inamdars. He was as such grantee not merely of the Government share of revenue but a grantee of the soil itself. Survey settlement was introduced into the village.

The defendant was a Mirasdar in the village; his permanent tenancy dated from a point of time anterior to the grant to the plaintiff. He was paying Rs. 5-13-3 as rent to the plaintiff.

In 1912, the plaintiff sought to enhance the rent to Rs. 21. On defendant's failure to pay it, the plaintiff filed the present suit to recover the same. The defendant contended *inter alia* that as survey settlement had been introduced into the village the plaintiff was not entitled to recover anything more than the assessment on the land held by him.

The Subordinate Judge held that the plaintiff was entitled to enhance the rent and passed a decree ordering defendant to pay Rs. 9-9-7 as rent to the plaintiff every year.

On appeal, the District Judge also affirmed the plaintiff's right to enhance the rent, but varied the decree by ordering the defendant to pay Rs. 11-3-2 to the plaintiff as rent, on the following grounds:—

It is argued that as Kenjal is a Dumala village and a survey settlement has been introduced the plaintiff cannot recover more than the assessment, section 217 of the Land Revenue Code applies.

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It has, however, been held by the lower Court that the plaintiff is the grantee of the soil and not only of the Royal share of the revenue. What he recovers from the defendants is, therefore, rent and not assessment, so section 217 of the Land Revenue Code, which refers to assessment and not to rent, does not apply.

An Inamdar who is only a grantee of the Royal share of the revenue is only entitled to the assessment; cf. *Nanabhai* v. *Collector of Kaira* (1910) 12 Bom. L. R. 707.

But that does not apply to the grantee of the soil. I hold that the plaintiff as the grantee of the soil has the right to raise the rent of permanent tenants, if there is a usage to that effect.

The defendant appealed to the High Court.

K. N. Koyajee, for the appellant.—The village being an 'alienated village,' section 217 of the Land Revenue Code of 1879 applies, and "all the provisions of the Act relating to occupants and registered occupants are applicable, so far as may be." Therefore, under section 68, the defendant as 'occupant' is entitled to the use and occupation of the land so long as he pays the dues on account of land revenue. The defendant-appellant is admittedly the '*mirasdar*' of the plaint lands: see *Nanabhai* v. *Collector of Kaira*[1].

S. R. Bakhale, for the respondent.—It has been decided in a series of cases that an Inamdar who is an alienee of Government revenue can raise the rents of permanent tenants under certain restrictions: see *Prataprav Gujar* v. *Bayaji Namaji*[2]; *Vishvanath Bhikaji* v. *Dhondappa*[3] and *Rajya* v. *Balkrishna Gangadhar*[4]. In the present case the plaintiff-respondent is a *Kadim* Inamdar of the soil, and hence section 217 of the Land Revenue Code will not apply, as that section applies to alienees of revenue only.

Koyajee, in reply.—*Prataprav Gujar* v. *Bayaji Namaji*[2] and *Vishvanath Bhikaji* v. *Dhondappa*[3] have no application as section 217 was not concerned and was

[1] (1910) 12 Bom. L. R. 707. [2] (1878) 3 Bom. 141.
[3] (1892) 17 Bom. 475.

not considered. *Rajya* v. *Balkrishna Gangadhar*[1] is a distinct authority in my favour as it is there laid down that if a holding is prior to the grant of the *inam*, the Inamdar can only claim land revenue or assessment. Section 217 does apply to the present case as it applies to all 'alienated villages' and a village of which the soil as well as the revenue is alienated is as much an 'alienated village' as a village of which the revenue only is alienated. See the definition of 'alienated,' in cl. (19) of section 3 of the Act.

BEAMAN, J. :—The plaintiff in this suit is admittedly a Kadim Inamdar of the village of Kenjal. He was not a mere grantee of the Government share of rent and land revenue, but a grantee out and out of all the land comprised in his Inam. Subsequently, the remaining rights of the Government to land revenue have been given in Inam to the family of the Rastes. The defendant claims to be a Mirasdar by a tenure antecedent to the grant to the plaintiff. His contention is that he falls within the protection of section 217 of the Land Revenue Code as it stood before its amendment in 1913. It is admitted that a survey settlement has been introduced into the village of Kenjal. The defendant, therefore, claims that being a holder, he is entitled to all the rights of an occupant in an unalienated village, and the Kadim Inamdar cannot, therefore, enhance his rent.

Presented in this form the matter in issue between the parties is *res integra* as far as I can discover and has never yet been precisely determined. It may be safely affirmed that prior to the Land Revenue Code this High Court had held that the alienee of no more than the pecuniary interests of the Government as distinct from their sovereign rights, to use the language of West J. in the case of *Prataprav Gujar* v. *Bayaji*

[1] (1905) 29 Bom. 415.

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Namaji[1], was entitled to raise the rents of permanent tenants whose tenure was anterior to the Inam grant, provided that in doing so he was to be controlled by the general custom of the country and considerations of equity and justice. Such in effect was the finding of Melvill and Kemball JJ. in the case of *Lakshman* v. *Ganpatrav Ballal*[2], to which reference was made by West J. in the judgment I have just mentioned. There can, however, be little doubt but that the decision of Melvill and Kemball JJ. would have been materially affected by the provisions of the Land Revenue Code. I derive no assistance at all from such cases as those of *Vishvanath Bhikaji* v. *Dhondappa*[3], decided by Bayley, Acting C. J., and Candy J., and of *Rajya* v. *Balkrishna Gangadhar*[4], decided by Jenkins C. J. and Aston J. The difficulty with which I am confronted was certainly not clearly present to the minds of any of the learned Judges who gave those decisions. In the last case the Court was virtually confined to distinguishing between the rights of alienees of the Government share of the land revenue and rent, in dealing with those in occupation prior to the grant and with those who in respect of the lands which were unoccupied at the time of the grant or had since fallen in and been let out subsequently by the Inamdar as landlord to tenants of his own to enhance the assessment or rent paid by such occupants or tenants. That is not the point of difficulty here. In the case of *Nanabhai* v. *Collector of Kaira*[5], Chandavarkar and Heaton JJ. came somewhat nearer to the point upon which all the argument here has turned. But while I entirely agree with the judgments delivered by those learned Judges in that case, they are of little value to me for my pre-

(1) (1878) 3 Bom. 141.
(2) Sp. Ap. No. 344 of 1876 ; 3 Bom. 141 at p. 142 *f.n.*
(3) (1892) 17 Bom. 475.
(4) (1905) 29 Bom. 415.
(5) (1910) 12 Bom. L. R. 707.

sent purpose, because it is clear that the whole of the reasoning proceeded from the admitted status of the Inamdar as alienee only of the Government share of the rent or land revenue. Where that is so, at any rate until the amendment of section 217 of the Land Revenue Code in the year 1913, I think there could be very little doubt but that the Inamdar's rights were restricted by the provisions of section 217 and that he could not have raised the rent of any holder of alienated lands after the introduction of the survey settlement beyond the assessment so fixed.

Here, the only real question is whether the alienee of a village or part of a village to whom Government has granted all its rights in the soil, as well as its other pecuniary interests, is not in a different and freer position than the alienee of the share of royal revenue only. "Alienated" is defined in section 3 of the Land Revenue Code and is said to mean, "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." When I first considered this question under this definition and the terms of section 217, it certainly seemed to me that it was a fair argument to say that the greater included the less. If a village in which Government had transferred no more than its rights to payment of land revenue or assessment was an alienated village, then *a fortiori* a village in which Government had transferred not only those rights but other rights also must be deemed to be an alienated village. On further consideration I am doubtful whether that process of inference, however sound it might generally be, would be sound in this special connection. There appeared to me to have been reasons why Government for all the purposes of the Land Revenue Code intentionally meant to limit the connotation of "alienated." I think it not at all un-

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likely that where all the sovereign rights of Government were granted away, the Government never meant any of the provisions of the Land Revenue Code, which is a code primarily regulating its own rights with the mass of the agricultural assessment paying population, to be applicable at all. I can see no reason why they should be. After the grant out and out of a village or any part of a village to an Inamdar, the natural legal result would be that what was granted to him was entirely at his own disposal to deal with according to his pleasure and on his own terms. Where, however, the Government merely granted its own share of the revenue to an individual, reserving its other sovereign rights there are obvious reasons why it should have desired to retain some sort of check upon the alienee's powers to enhance the assessment of all prior occupancy tenants. It is true that having regard to section 216 if such an intention really underlay the definition of "alienated," a very large and practical qualification is put upon it by leaving it entirely at the option of the alienee of the royal share of the revenue of an entire village to have a revenue survey introduced or not. Still, I believe that considerations of this kind really account for the very peculiar definition of "alienated" and that the out and out alienee was intended to be excluded from the operation of such a section as 217. If that be so, then the question would be narrowed down to the general right of an alienee of the soil to raise the rents of permanent tenants even where such permanent tenancies had commenced before the alienation. And the answer to that question is to be found in the earlier cases in which the eminent Judges, who decided them, were not controlled by any of the provisions of the Land Revenue Code.

This is in effect what the learned Judge of first appeal below has found, and I have come to the conclusion,

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after giving the case my best attention, that his judgment is right. I am confirmed in this view by the fact that a very similar question arising between another Kadim Inamdar and a Mirasdar in the same village, the land being adjacent to the land in dispute, was similarly decided in favour of the Kadim Inamdar by the learned Chief Justice and Batchelor J. in 1914.

I am, therefore, of opinion that since no complaint is made as to the amount of the enhancement and the appeal is confined to the general principle I have discussed, the decree of the lower appellate Court ought now to be confirmed with all costs upon the appellant.

Decree confirmed.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Beaman and Mr. Justice Heaton.

D. B. COOPER AND ANOTHER—APPLICANTS.*

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September 12.

Civil Procedure Code (Act V of 1908), section 115—Nazir's embezzlement—District Judge ordering recovery by attachment under Bom. Act XII of 1850, section 4—Jurisdiction of the High Court to revise the order.

Under section 115 of the Civil Procedure Code 1908 the High Court has no jurisdiction to revise an order made by a District Judge acting under section 4 of the Bom. Act XII of 1850 as it is an order made by him as a person at the head of an office and not an order made by a Court in any way subordinate to the High Court.

CIVIL Application under extraordinary jurisdiction against the order passed by W. Baker, District Judge of Satara.

* Civil Application No. 11 of 1916 under extraordinary jurisdiction.