

ordinary course of business, and is protected by what it has done from any direct liability to the plaintiff, no considerations of the hardship which the plaintiff has suffered and may yet suffer, or how he might have been bettered had the Bank chosen to meet his wishes, need enter into the judgment. In my opinion the defendant Bank is under no liability to repay the plaintiff.

*Answers accordingly.*

J. G. R.

1917.

SOLOMON  
JACOB  
OF  
THE  
NATIONAL  
BANK OF  
INDIA, LTD.,  
ADEN.

## APPELLATE CIVIL.

*Before Mr. Justice Shah.*

VISHWANATH GANESH PARANJPE (ORIGINAL PLAINTIFF), APPELLANT  
v. KONDAJI VALAD SAKHRAM AND ANOTHER (ORIGINAL DEFENDANTS),  
RESPONDENTS.\*

1917

July 27.

*Bombay Land Revenue Code (Bombay Act V of 1879), section 85†—  
Jurisdiction—Civil Court—Suit by superior holders against inferior holders  
to recover arrears of assessment.*

\* Second Appeal No. 177 of 1916.

† The section runs as follows :—

85. It shall be incumbent on every superior holder of an alienated village, and on every superior holder of an alienated share of a village in which there exists an hereditary Patel and village-accountant, to receive his dues on account of rent or land-revenue from the inferior holders through the said village-officers.

Any such superior holder demanding or receiving payment from any inferior holder of any rent or land-revenue otherwise than through the said village-officers shall, on conviction in a summary inquiry before the Collector, forfeit to Government three times the amount of the sum so demanded or received.

Every such hereditary Patel or accountant shall be bound to receive and account to the said superior holder for all sums paid to or recovered by him, on account of the said superior holder, and, on his or their failure to do the same, the superior holder shall, with the previous consent of the Collector, be entitled to recover his dues direct from the inferior holders.

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The jurisdiction of civil Courts to try suits by superior holders to recover their dues from inferior holders is not barred by section 85 of the Bombay Land Revenue Code (Bombay Act V of 1879).

SECOND appeal from the decision of F. K. Boyd, District Judge of Nasik, in appeal from the decree passed by D. M. Mehta, Joint Subordinate Judge at Nasik.

The plaintiff was a part owner of the Jahagir village of Gangawarthe. The defendant No. 1 who was an inferior holder of certain lands in the village failed to pay assessment for the years 1908 to 1910. The plaintiff, therefore, sued to recover the arrears of assessment from defendant No. 1. It was contended by the defendant No. 1 that he had sold the lands to the plaintiff in satisfaction of the arrears.

The Subordinate Judge found that the satisfaction of the debt was not proved ; and that the plaintiff was entitled to the amount claimed. He, however, dismissed the suit on the ground that it was barred by the provisions of section 85 of the Bombay Land Revenue Code (Bombay Act V of 1879).

The plaintiff appealed, but the District Judge summarily dismissed the appeal on the following grounds :—

The terms of section 85, sub-section (2), of the Land Revenue Code are perfectly clear. On failure of the patel and accountant to recover, the superior holder "shall, with the previous consent of the Collector, be entitled to recover his dues direct." This, of course, connotes that he is not entitled to recover without that consent.

Mr. Paranjpe argues that this does not refer to suits. But a suit is merely a particular *method* of recovery. No method is either specified or saved : the words must, therefore, be taken to cover all possible methods. This suit is, exactly speaking, by plaintiff, superior holder, to recover his dues from defendant, inferior holder. This is an attempt to recover direct and therefore requires previous consent the Collector. On Mr. Paranjpe's argument

it might equally be contended that a superior holder could sue an inferior holder for his dues without taking any notice whatever of the hereditary patel and village accountant : see section 85, sub-section (1).

*Govindrao v. Balu*<sup>(1)</sup> is not in point. One sentence therein would, at first sight, appear to apply : " If the Inamdar...had made a demand...as required by section 85 and they had refused, he would have become *at once* entitled to his ordinary civil remedy" (pp. 588-89). But the point in issue was whether it was " compulsory on the Inamdar to ask for the *assistance* of the Collector" i.e., to proceed under sections 86 and 87. The point as to the consent of the Collector specified in section 85 did not arise and was not decided. Their Lordships decided that it was *not* essential to proceed under sections 86 and 87—a decision which leaves the point now under consideration untouched.

The plaintiffs appealed to the High Court.

*B. G. Modak*, for the appellant:—There is nothing in section 85 of the Bombay Land Revenue Code (Bombay Act V of 1879), which bars a suit by a superior holder to recover his dues from the inferior holder. Jurisdiction of civil Courts to take cognizance of suits can be withdrawn by express provisions of the Legislature. When the hereditary patel or accountant has failed to recover the dues, there is nothing either in section 85 or the other sections of the Bombay Land Revenue Code that deal with the recovery of a superior holder's dues, to prevent an Inamdar having recourse to civil suit. The case of *Govindrav Krishna Raibagkar v. Balu bin Monapa*<sup>(1)</sup> is quite in point.

Respondent No. 1, the inferior holder, did not appear.

*W. J. Nimbkar*, for respondent No. 2, the other Inamdar.

C. A. V.

SHAH, J.:—The question of law that arises in this second appeal is whether the jurisdiction of the civil Courts to try suits by superior holders to recover their dues from inferior holders is barred by section 85 of the Land Revenue Code.

<sup>(1)</sup> (1891) 16 Bom. 586.

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Both the lower Courts hold that the section bars the jurisdiction of the civil Courts: in my opinion it does not. The Chapter in which the section occurs relates to superior and inferior holders, and the group of sections including section 85 relates to tenants' rights. The main purpose of the section is to protect the tenants. It renders it incumbent upon the superior holders to receive payments from the inferior holders through the hereditary patel and village-accountant, and it entitles the superior holders to recover dues directly from the inferior holders with the previous consent of the Collector in case the hereditary patel or village-accountant, whose duty it is to recover the dues and to account for the same to the superior holders, fails to do so. The section does not provide, and in my opinion it is not the purpose of the section to provide, as to how the dues are to be recovered when the inferior holders fail to pay. The section restricts the liberty of the superior holders to receive payments directly from the inferior holders, even though the latter may be willing to pay, in alienated village, in which there exists an hereditary patel and village-accountant. But when an inferior holder fails to pay the dues the remedy for the recovery thereof as provided by the Land Revenue Code is to be found in sections 86 and 87. These sections are included in the group of sections relating to the recovery of superior holders' dues. These sections show that it is a special remedy, and the proviso to section 86 shows that the remedy is of a limited character. There is nothing to show that it is an exclusive remedy and that it prevents parties from having recourse to civil Courts. It is also clear to my mind that a superior holder, who seeks to recover his dues through a civil Court does not recover them directly from the tenant or the inferior holder within the meaning of section 85. The

right and remedy of the superior holders to recover their dues from the inferior holders, who have failed to pay the same, are not affected by section 85 of the Land Revenue Code.

This view is supported by *Govindrav Krishna Raibagkar v. Balu bin Monapa*<sup>(1)</sup>. Sargent C. J. observes in his judgment that "if the Inamdar, or his assignee, had made a demand on the tenants for the enhanced rent through the hereditary patel, or village accountant, as required by section 85, and they had refused, he would have become at once entitled to his ordinary civil remedy." In my opinion it is no answer to this decision to say that the point as to the consent of the Collector specified in section 85 did not arise and was not decided.

I, therefore, reverse the decree of the lower appellate Court and remand the appeal for disposal according to law. Costs to be costs in the appeal.

*Decree reversed.*

R. R.

<sup>(1)</sup> (1891) 16 Bom. 586.

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