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of which he might have executed against his judgment-debtor. That being so, the mortgagor cannot now be allowed to say that he is only liable to pay half the amount of principal. I, therefore, agree that the appeal should be allowed with costs and the case remanded for amendment of the decree.

Decree reversed.

J. G. R.

APPELLATE CIVIL,

Before Mr. Justice Beaman and Mr. Justice Heaton.

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February 15.

TULLA SOBHARAM PANDYA (ORIGINAL PLAINTIFF), APPELLANT v. THE COLLECTOR OF KAIRA (ORIGINAL DEFENDANT), RESPONDENT.*

Land Revenue Code (Bombay Act V of 1879), sections 144, 160† (as amended by the Gujarat Talukdars' Act, Bombay Act, VI of 1888, section 33)—Talukdar—Payment of Jama to Government in lump sum for the whole village—Grant of lands rent free by the Talukdar—Attachment of village by Government consequent upon non-payment of Jama by Talukdar—Right of Government to recover proportionate assessment from the grantee of rent-free lands.

* First Appeal No. 237 of 1915.

† The sections run as follows:—

144. If owing to disputes amongst the sharers, or for other cause, the Collector shall deem that there is reason to apprehend that the land-revenue payable in respect of any holding consisting of an entire village or of a share of a village will not be paid as it falls due, he may cause the village or share of a village to be attached and taken under the management of himself or any agent whom he appoints for that purpose.

The provisions of section 160 shall apply to any village or share of a village so attached, and all surplus profits of the land attached, beyond the cost of such attachment and management, including the payment of the land-revenue and the cost of the introduction of a revenue-survey, if the same be introduced under the provisions of section 111, shall be kept in deposit for the eventual benefit of the person or persons entitled to the same, or paid to the said person or persons from time to time as the Collector.....may direct.

The Talukdar of a village, who paid to Government assessment for the whole village in a fixed sum, granted certain lands to the plaintiff free of rent. The assessment not having been paid by the Talukdar, the Government attached the village under the provisions of section 144 of the Bombay Land Revenue Code, 1879, and proceeded to levy proportional assessment from the plaintiff in respect of the lands held by him. The plaintiff sued to restrain the Government from levying the assessment from him :—

Held, dismissing the suit, that the fact that the plaintiff held rent free lands from the Talukdar, did not affect the right of Government to levy proportionate assessment from the plaintiff, under the provisions of section 160 of the Bombay Land Revenue Code, 1879.

FIRST appeal from the decision of B. C. Kennedy, District Judge of Ahmedabad.

Suit for injunction.

The plaintiff was a Brahmin who held rent free lands in Badalpur, a Mehvasi village in the Kaira District. The grant was from a predecessor-in-title of the Talukdar of the village. The assessment of the village was paid by the Talukdar to the Government in a fixed lump sum (*udhad jama*). There having been a failure in the payment of the assessment, the Government attached the village under the provisions of section 144 of the Bombay Land Revenue Code, 1879; and the Collector proceeded under section 160 of the Code to levy proportionate assessment from the plaintiff in respect of the rent free lands held by him.

The plaintiff filed the present suit to restrain the Collector from levying the assessment from him.

160. The lands of any village or share of a village so attached shall be unaffected by the acts of the superior holder or of any of the sharers, or by any charges or liabilities subsisting against such lands, or against such superior holder or sharers as are interested therein; so far as the public revenue is concerned, but without prejudice in other respects to the rights of individuals.

And the Collector or the agent so appointed shall be entitled to manage the lands attached, and to receive all rents and profits accruing therefrom to the exclusion of the superior holder or any of the sharers thereof, until the Collector restores the said superior holder to the management thereof.

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The trial Court dismissed the suit holding the arrangement between the plaintiff and the Talukdar as to non-payment of rent did not preclude the Government from recovering proportionate assessment from the plaintiff under the provisions of section 160 of the Bombay Land Revenue Code, 1879.

The plaintiff appealed to the High Court.

The appeal was heard by Scott C. J. and Heaton J. on the 14th December 1916, when their Lordships sent down certain issues to the trial Court, remarking as follows:—

SCOTT, C. J.:—The questions raised in this and the cognate suits are of considerable importance, and they have been disposed of by the learned Judge without any evidence being recorded although the pleadings indicate that the parties are at issue on various questions of fact. We are of opinion that it is essential to the right decision of the suit upon the merits that certain issues of fact should be gone into after evidence has been recorded. We therefore frame with the assistance of the pleaders of the parties the following issues and refer the same for trial to the lower Court, directing that such additional evidence as may be required be taken, and that the Court should try the issues and return the evidence to this Court with its findings and reasons before the commencement of the summer vacation:—

(1) By whom was the attachment levied, and under what section or sections of the Land Revenue Code?

(2) Is the Talukdari Settlement Officer a duly appointed agent of the Collector within the meaning of sections 144, 159 and 160 of the Land Revenue Code?

(3) Whether the attachment was levied on the whole of the village, including the lands in suit, or on a share of it? If the latter, on what share?

(4) Whether the Udhad Jama was fixed on the whole of the village, including the lands in suit, or on a share of it? If the latter, on what share?

(5) Whether the plaintiffs or their predecessors were not merely grantees of the lands in suit from the present Talukdar of Badalpur or his predecessors?

(6) If the plaintiffs or their predecessors were grantees from the Talukdar, whether the grants to them were prior or subsequent to the fixing of the lump assessment?

(7) If the plaintiffs were proved to be such grantees, whether the defendants were entitled to levy a rate on the lands held by them sufficient to make up the deficit in Government revenue as claimed?

(8) Whether the plaintiffs were entitled to any, and if so, what relief?

The stay order to continue.

The findings recorded on the issues were : (1) that the attachment was levied under section 144 of the Bombay Land Revenue Code by the order of the Collector of Kaira, dated 17th January 1903 ; (2) that the Talukdari Settlement Officer was a duly appointed agent of the Collector ; (3) that the attachment extended to the whole village of Badalpur ; (4) that the Mehwasī villages were at the original settlement treated as sort of semi-independent fiefs and that the officers who settled with the then holders merely took the old tribute which had been exacted from the holders by the various preceding Native Governments on the villages held by the Mehwasīs ; (5) that the lands were granted to the ancestors of the Brahmins by some person who was the owner of the village ; (6) that the grants were made previously to the fixing of the Udhad ; (7) that the claim of the plaintiff was not valid against the

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claims of Government to make up the total revenue from the village ; and (8) that the plaintiff was entitled to no relief.

The appeal was heard again.

G. N. Thakor, for the appellant.

N. K. Mehta, for the respondents.

HEATON, J. :—The plaintiffs are land-holders in the village of Badalpur in the Kaira District and they sued for an injunction to restrain the Collector from acting as he proposes to do by way of levying assessment from them. The Talukdari Settlement Officer gave them notice to this effect dated the 20th May 1913. Their case is that they hold their lands rent-free. The defendant, who originally was the Talukdari Settlement Officer and who has now been replaced by the Collector, maintained that the village of Badalpur had been attached under the powers conferred by section 144 of the Bombay Land Revenue Code and that in virtue of section 160 of that Code he had power to levy assessment on the lands of the plaintiffs. The District Court decided the case in favour of the defendant and the plaintiffs appealed to this Court. The evidence at that stage was so extremely scanty that eventually this Court found itself unable to decide the appeal and remanded eight issues to be determined by the District Judge. Those issues have been found on in a sense adverse to the plaintiffs, who again appear as appellants in this Court.

The first thing we have to determine is the nature of the agreement or settlement for this village of Badalpur. It must have been made in the early part of last century but there is no document relating to it, and there are no Kabulayats signed by the Talukdars of the village. We have not even an extract from the register of Talukdars. There is mention made of the Mehwasī villages, of which Badalpur is one, in Government

official correspondence, from which extracts are filed of the years 1821 (Exhibits 37-38); 1822 (Exhibit 39); and 1823 (Exhibit 40). Then we have an extract from a Jamabandi statement of 1821-22 (Exhibit 41) and a Kalambandhi of 1828 (Exhibit 18). We have also general historical knowledge to go by. We know that the settlements or agreements for Mehwasī villages were made with the Mehwasī Chiefs or Heads of the villages and were usually made for the village as a whole in each case and were not made for any particular lands. The payment due for each village was annual, was a fixed lump sum or substantially fixed in amount (there may be small variations from year to year) and was regarded as Jama or land revenue, though based on the amount of tribute which the Chief formerly paid and not on an estimate of assessable lands.

The evidence in the case indicates, so far as it goes, that the settlement or agreement for Badalpur was of the normal kind: that it was for the whole village and for a fixed annual payment for which the Mehwasī Chief of the village was responsible. Were it otherwise there would be definite evidence of it forthcoming as is to be expected where there is a variation from the normal.

The learned pleader for the plaintiff-appellant challenged this conclusion, but the only evidence or circumstance in the case on which he could base any argument of value is the Kalambandhi, Exhibit 18. This is a statistical statement prepared by the village authorities in reply to a set of questions sent them by some Government officer: the kind of thing that is usual in a newly acquired territory, where the Government desires to inform itself of the condition and resources of the country. It shows amongst other things that only about one-sixth part of the land in the village paid either *vaje* or *vero* to the Chief or Talukdar: the

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other five-sixths paid nothing. This information, though it may be of great value to the plaintiffs in resisting any demand the Talukdars might make on them, has no bearing on the nature of the settlement or agreement between the Government and the Talukdars. The Government recognised the existing or traditional position of the Mehwasī Chiefs provided they paid the annual Jama; it was no part of the understanding or of the policy of the Government to concern themselves with the internal arrangements or economy of the Mehwasī villages. This Kalambandhi, therefore, is found on examination to be of no value to the plaintiffs, for it does not give any indication of a state of affairs in any way incompatible with the ordinary type of settlement or agreement.

The plaintiffs have also argued that they were the original owners of the village and certain witnesses depose that there is a tradition in the village to that effect. It may be that there is such a tradition but that it is well-founded there is no reason to suppose and that it has any bearing on the case is not apparent.

Again, the plaintiff argues that he holds and always has held his lands rent-free. That again may be conceded and so long as the management of the village remained with the Talukdar, the plaintiff could not be called on to pay anything. But unfortunately the payment of the Jama by the Talukdar became irregular and the village was attached by order of the Collector made under section 144 of the Bombay Land Revenue Code (Exhibit 49). Thereafter, section 160 of that Code became applicable. This appears to be beyond question. Now, section 160, when applied to a Talukdari village (see section 33 of Bombay Act VI of 1888), runs as follows: "The lands of any village or share of a village so attached shall be unaffected by the acts of the superior holder or of any of the sharers, or by any charges or liabilities subsisting

against such lands, or against such superior holder or sharers as are interested therein, so far as the public revenue is concerned, but, without prejudice in other respects to the rights of individuals; and the Collector or the agent so appointed shall be entitled to manage the lands attached, and to receive all rents and profits accruing therefrom to the exclusion of the superior holder or any of the sharers thereof, until the Collector restores the said superior holder to the management thereof." This leaves it open to Government to levy the Jama from all the lands of the village. Their powers are ample, for section 45 of the Code expressly recognises the right of Government to levy assessment on all lands which are not excepted under the provisions of any special contract with Government or any law for the time being in force. There is neither a special contract nor a law which prohibits Government in the circumstances of this case from levying an assessment on the plaintiff's lands. This supplies the answer to a further argument urged on behalf of the plaintiffs, which is that they held their lands absolutely rent-free, and no one, not even the Government, can lawfully demand assessment from them. They do not so hold them from the Government: that is clear, for if they did, there would be some Sanad or some record of the matter. If they hold them rent-free from the Talukdar, that does not affect the right of Government to assess the lands; for the Talukdar has no power to free any lands from liability to pay assessment to the Government: only the Government can do that.

The same conclusion, that it is lawful for Government to demand assessment from the plaintiffs, can be reached by a consideration of section 24 of Bombay Act VI of 1888.

In reality there is no great hardship involved to the plaintiffs. The Government will only gather in the

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agreed Jama which must apparently be light if it is distributed over the village as a whole.

It is unnecessary after this to state in detail the findings on the issues which were sent down. That which is the most important is No. 4: "Whether the Udhad Jama was fixed on the whole of the village, including the lands in suit, or on a share of it? If the latter, on what share?" I find that the Udhad Jama was fixed on the whole of the village, and as I have said it follows from the operation of sections 144 and 160 of the Bombay Land Revenue Code that the Government have the right to levy assessment on the lands of the plaintiffs in this village. Therefore I think that the decree of the District Judge dismissing the plaintiffs' suit should be maintained and that this appeal should be dismissed.

BEAMAN, J.:—I have asked my learned brother to deliver the judgment of the Court in this case because he was a party to the remand order and fully acquainted with the litigation in all its earlier stages. I have only to add in agreement with what has just been said that in my opinion there can be no doubt but that the settlement made in the earlier part of the nineteenth century was made with a Rathor Rajput whom I will call the Talukdar on behalf of the whole village. Such was the nature generally of all these settlements. Their object was to maintain to some extent at any rate the seignorial rights and privileges of the petty Chieftains and to recognise them as proprietors of their respective villages subject only to the payment of the Udhad Jama. In such circumstances the Government had no concern with the internal economy of the village. Provided that the Talukdar duly paid the stipulated Udhad Jama, he might, as far as Government was concerned, gratify his pride or generosity by granting as much of the village land as he chose rent-free, or upon any other

terms that pleased him, to inferior holders ; but such grants could never be taken as superseding the paramount obligation of the village as a whole to pay through the recognised Chieftain the Jama due to the Government. That is a primary charge, and, in my opinion, it cannot, upon any known theory, be found to have been settled with the Talukdar upon this or that piece of land in the village ; but it is settled with the Talukdar upon the village as a whole ; the price, that is to say, at which he is to be recognised by the Government as a Chieftain and proprietor of the village. It is possible that at the time that such settlements were made the recognised Talukdar or his predecessor may already have given away much of the village land rent-free to privileged classes, such as Brahmins, Bhats and Charans. That, however, in my opinion, does not affect the principle upon which this case has to be decided. That principle is that, apart from all other considerations and private arrangements within the village itself, the village must contribute the agreed Jama to Government. Otherwise we might have the extreme case put by the learned Judge below of the Government consenting to recognise a Chieftain as proprietor of a village upon payment of an annual Jama and the Chieftain then giving away every inch of land in the village rent-free and declining to pay Government one rupee of the agreed Jama. In such a case it is not to be supposed that Government ought to or would recognise such alienations. The Government would then in my opinion be entitled to say that since the Talukdar had repudiated his obligations, the village as a whole, failing anyone coming forward to represent it, must certainly be made to pay the Government Jama. And that is in effect what has occurred in the present case. The Jama has not been paid, and according to the Kalambandi a very large proportion

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of the village lands have already been given away and were not in the Talukdar's own estimate liable to contribute to the Jama. That, however, was a matter with which Government, as far as I can see, had nothing to do. As soon as the Talukdar declared himself unable to keep his treaty obligations, the Government in my opinion had a perfect right to put in force the provisions of sections 144 and 160 of the Bombay Land Revenue Code for the single purpose of obtaining from the village the amount of Jama which was due from it. Such a mode of contribution would not press nearly as heavily upon these inferior holders of rent-free lands as would the resumption of the village and the levy of assessment after making revenue survey, and it is quite clear that one or the other of these modes would have to be adopted. It cannot be seriously, I think, argued that Government intended to make free presents of these villages to anyone to whom the Talukdar in a fit of generosity might grant the whole of their lands rent-free. It is upon this principle, I think, that this and all cognate cases must be decided.

I am in entire concurrence with the judgment of my learned brother and the decree he proposes to make.

We treat this and the other six appeals, viz., First Appeals Nos. 233, 234, 235, 236, 238 and 239 of 1915, as consolidated for the purpose of costs, and dismiss them with costs, one set of costs payable by all the appellants.

Decree confirmed.

R. R.