APPELLATE CIVIL.

Before Sir Stanley Batchelor, Kt., Acting Chief Justice and Mr. Justice Marten.

DADOO BIN BHATOO AND OTHERS (ORIGINAL DEFENDANTS NOS. 2, 4 AND 5), APPELLANTS *v.* DINKAR VISHNU APHALE AND OTHERS (ORIGINAL PLAINTIFF AND DEFENDANTS NOS. 1 AND 6 TO 8), RESPONDENTS.*

1918. *April* 5.

Land Revenue Code (Bom. Act V of 1879), section 3, Clause (20) and section 217†—'Alienated' interpretation of the term—Inamdar—Grant of soil—Survey settlement—Effect of introduction of Survey Settlement in Inam lands.

The plaintiff was an Inamdar of a village. In 1880, the survey settlement was introduced into the village and in the settlement register the defendants-appellants were entered as Khatedars. Since 1880, they had been cultivating the lands in their occupation, paying only a sum equivalent to annual assessment to the Inamdar. In 1910, the plaintiff sued to eject the defendants, alleging that they were annual tenants. The defendants contended that by virtue of the provisions of section 217 of the Land Revenue Code, 1879, the effect of the introduction of the survey settlement in 1880 was that thereafter the defendants had the same rights in respect of the lands in their occupation as holders of land in unalienated villages have under the provisions of the Land Revenue Code, 1879. For the plaintiff, it was urged, that section 217 of the Land Revenue Code, 1879, was not applicable, because the village in question was not an 'alienated' village within the meaning of that term as

* Second Appeal No. 1905 of 1915.

† Land Revenue Code (Bom. Act V of 1879), section 3, Clause (20) and section 217 run as follows:—

Section 3, Clause (20). 'Alienated' means 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.

Section 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 holders of land in unalienated villages have, or are affected by, under the provisions of this Act, and all the provisions of this Act relating to holders of land in unalienated villages shall be applicable, so far as may be, to them.

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it was defined in Clause (20) of section 3 of the Land Revenue Code, 1879, by reason of the entire property in the soil and not merely the rights to receive the land revenue being transferred to the Inamdar.

Held, that the village was an 'alienated' village within the meaning of the Land Revenue Code, 1879, notwithstanding that the whole property in the soil was granted by Government to the Inamdar. Section 217 of the Land Revenue Code, 1879, was, therefore, applicable to the case.

Pandu v. *Ramchandra Ganesh* [1], discussed.

The words "transferred in so far as the rights of Government to payment of the rent or land revenue are concerned" in Clause (20) of section 3 of the Land Revenue Code, 1879, prescribe a certain minimum requirement, and where that minimum requirement is satisfied, the definition also is satisfied, notwithstanding that the transfer may cover certain other interests over and above those contained in the minimum requirement.

SECOND appeal against the decision of G. V. Patwardhan, First Class Subordinate Judge, A. P., at Satara, reversing the decree passed by D. T. Chaubal, Second Class Subordinate Judge at Karad.

Suit to recover possession.

The plaintiff was an Inamdar of a village called Konegaon in Satara District where the lands in suit were situated. Under the terms of his Sanad, the plaintiff was a grantee of the soil.

In 1880, the survey settlement was introduced into Konegaon village and in the settlement register the defendants Nos. 2 to 5 were entered as Khatedars. Since 1880, they had been cultivating the lands paying only a sum equivalent to the annual assessment to the Inamdar.

In 1910, the plaintiff sued to eject the defendants alleging that the lands were held by the defendants under an oral lease as annual tenants.

The defendants contended that the lands were held by them on miras rights; that the plaintiff was entitled

[1] (1917) 42 Bom. 112.

to assessment only; and that the suit was barred by limitation.

The Subordinate Judge held that the defendants were the Mirasdars and not annual tenants. In his opinion the suit was barred by defendants' adverse possession resulting from the entry of their names in the Khata coupled with the acceptance of rent by the plaintiff at the rate assessed by the survey settlement.

On appeal, the First Class Subordinate Judge, A. P., reversed the decree holding that the defendants could get no rights as registered occupants under section 217 of the Land Revenue Code, 1879, unless they could show that the right to hold the land was rested in them when the survey was introduced: see *Wasudev Lakshman* v. *Govind Mahadev*[1].

The defendants Nos. 2, 4 and 5 appealed to the High Court.

Coyajee, with *S. S. Patkar*, for the appellants:—We submit that by reason of the introduction of the survey settlement in this village, we have acquired permanent rights in the land, conditional on payment of assessment fixed at the settlement. Under the Land Revenue Code, 1879, Government has the power to introduce what is called survey settlement in all villages belonging to it. The effect of the introduction of the survey settlement is that the person in whose name any parcel of land is entered has a permanent right to hold the land, conditional on his agreeing to pay all assessments that may be imposed. He cannot be evicted as long as he pays assessment.

As for Inam villages, i.e., alienated villages, Government have no right to introduce a survey settlement, but if the grantee of the village applies to Government

(1) (1911) 36 Bom. 315.

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for it, then it may be introduced. And when so introduced the effect is that the holders of all lands to which such settlement extends shall have the same rights as occupants in unalienated villages have: see section 217 of the Bombay Land Revenue Code, 1879. The right of the occupants in unalienated villages is to use the land conditionally on payment of the amounts due on account of land revenue: see section 68 of the Bombay Land Revenue Code.

We have been paying the assessment fixed at the survey settlement in 1880. We have been entered as Khatedars for more than thirty years and the Inamdar has never claimed to rectify the matter all these years. In spite of these findings the lower Court was wrong in holding that the onus lay on us to show that the right to hold land had accrued to us in 1880.

The case of *Wasudev Lakshman* v. *Govind Mahadev*[1] relied on by the lower Court is distinguishable. There the Inamdar made the protest at once and succeeded in obtaining rectification, while in the present case the Inamdar did nothing.

We, therefore, submit that the right to hold the land was ours since 1880. The plaintiff cannot evict us. He is entitled to what he has been receiving since 1881, namely, assessment.

G. S. Rao, for respondent No. 1:—If section 217 of the Bombay Land Revenue Code, 1879, applies there is room for the contention advanced. I submit, however, that section 217 does not apply. The village in question is not an 'alienated' village within the definition of the term under section 3, Clause (20) of the Code. 'Alienated' means transferred in so far as the rights of Government to payment of the rent or

[1] (1911) 36 Bom. 315.

land revenue are concerned, wholly or partially, to the ownership of any person. The words 'so far' should be read 'so far only' meaning thereby that the alienation is to be of the rights of Government to land revenue is concerned and no further. If, as in the present case, the right to soil is also transferred to the Inamdar the village cannot be said to be an 'alienated' village within the meaning of the term. Section 217 can have, therefore, no application to the present case.

The Bombay Land Revenue Code is intended mainly to restrict the rights of the Government to recover the land revenue and in the case of Inamdars who are grantees of the revenue only, their rights will be governed to a certain extent by the provisions of the Code. In the case of such grantees, if the survey settlement is introduced, section 217 will be made applicable. But the introduction of survey will not have the effect of curtailing the rights of Inamdars who are grantees of the soil itself: see *Pandu* v. *Ramchandra Ganesh*[1].

Coyajee, in reply:—The definition of the term 'alienated' is in my favour. It means alienation of rights of Government not only to land revenue but to 'rent or land revenue'. The use of the term 'rent' is appropriate in those cases where Government possesses two-fold rights to the soil and land revenue; otherwise Legislature would not have used the additional expression 'rent'. The distinction between 'rent' and 'land revenue' is noticed in *Sadashiv* v. *Ramkrishna*[2]; *Rajya* v. *Balkrishna Gangadhar*[3].

The Bombay Land Revenue Code is not restricted in its operation to the collection of land revenue only

(1) (1917) 42 Bom. 112. (2) (1901) 25 Bom. 556 at pp. 558, 562.
(3) (1905) 29 Bom. 415.

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but is applicable to the question relating to land administration: see Chapter VII, sections 86, 88 (*a*). Under these sections interference of Government is sought by superior holders against inferior holders and the Government does interfere even in cases where the grant is a grant of the soil.

BATCHELOR, Acting C. J.:—The suit out of which this appeal arises was filed by an Inamdar to eject the defendants. One of his pleas was that the defendants Nos. 1 to 3 were his yearly tenants. The plaintiff's position as an Inamdar was conceded, but his claim to own the Mirasi or occupancy rights in these lands was denied by the defendants, and the only question which we have to decide is whether the plaintiff's claim to these Mirasi rights should be allowed.

The first Court held against the plaintiff upon this point, but that decree was reversed on appeal, and the present appeal is brought by the defendants Nos. 2 to 5. It seems clear that prior to 1880, the plaintiff's position as Inamdar was accepted, and gave rise to no disputes. But in 1880 the Survey Settlement was introduced into this village, and in the Settlement Register the present appellants were entered as the Khatedars. Since 1880 admittedly they have been cultivating the lands, paying only a sum equivalent to the annual assessment.

The contention for the defendants is that, by virtue of the provision of section 217 of the Land Revenue Code, the effect of the introduction of the Survey Settlement in 1880 was that thereafter the defendants had the same rights in respect of these lands in their occupation, as holders of land in unalienated villages had, and have, under the provisions of the Land-Revenue Code.

It is not denied by Mr. Rao on behalf of the respondents that, if section 217 is to be applied to the facts of this case, then the defendants' contention must prevail.

But Mr. Rao urges that section 217 is not applicable to the present facts, because the village in question is not an alienated village within the meaning of that expression as it is defined in Clause (20) of section 3 of the Land-Revenue Code.

The sole question, therefore, for our determination in this appeal is whether the village is or is not an alienated village within the definition. The definition runs in these words: "Alienated" means "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." Now the fact which we have found for us here is that, by the grant of this village to the plaintiff's predecessor-in-title, there were transferred to him not merely the Government's rights to receive the land-revenue, but the entire property in the soil. That being so, the learned pleader for the respondents contends that the transfer was not such a transfer as is referred to in the definition, but was a transfer in excess of the definition.

The actual point before us was considered by my learned brother Beaman in *Pandu* v. *Ramchandra Ganesh*[1]. The decision there being the decision of a single Judge is of course not binding upon us, but equally of course it is entitled to careful consideration at our hands. In that judgment my learned brother referred to the argument that in the definition of "alienated," the greater must include the less, and I must confess that I have never been able to escape from the weight of this argument. It appears to me that the words "transferred in so far as the rights of Government to payment of the rent or land-revenue are concerned," prescribe a certain minimum requirement, and where that minimum requirement is satisfied, the definition also is satisfied,

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notwithstanding that the transfer may cover certain other interests over and above those contained in the minimum requirement.

Adapting the words of the definition to the facts of our present case, it seems to me strictly true to say that in the case of this village there were transferred to the plaintiff's predecessor the rights of Government to payment of the rent or land-revenue. And I am myself unable to see how that statement becomes less true because over and above those rights other interests were also conveyed. I cannot but think that if the object of the draftsman had been to exclude all those cases where the transfer involved other interests than those which I have described as the minimum requirement, he would have altered the phraseology of the clause, as, for instance, by the insertion of the word "only" after the words "in so far," or, better, by the addition of clear words expressly excluding the case where other and larger interests were transferred. It appears to me, therefore, on the best consideration that I can give to the actual words of the clause, that those words are in favour of the defendants' argument.

It may also be observed that the Land-Revenue Code appears to recognise only two classes of property of this description, namely "alienated" and "unalienated". Unquestionably the village in this case is not an unalienated village. I think, therefore, that within the meaning of the Land-Revenue Code it must be regarded as an alienated village. That that was the view of the Government itself seems to be beyond all doubt, for, in 1880, as I have said, the Survey Settlement was introduced into this village under the provisions of section 216 of the Land Revenue Code as into an alienated village. It has not been suggested to us in argument that Government would have had any title or pretext for introducing the Survey Settlement into this village,

except on the footing that the village was an alienated village within the definition in the Land Revenue Code. And though I feel the force of my brother Beaman's argument as to the scope and character of the Land Revenue Code, it may, I think, be fairly stated that the Code, whatever may have been its original intention, is not now confined to a scheme for regulating the rights of Government as against the agricultural payers of assessment. There are many sections of the Code which indicate a somewhat larger object, and among them I may notice sections 83, 86 and 88.

On these grounds, it appears to me that the weight of the argument is in favour of the view that this is an alienated village, notwithstanding that the whole property in the soil was granted by Government to the plaintiff's predecessor. If that is so, then admittedly section 217 applies to the case, and the decree under appeal must be reversed. I would, therefore, reverse that decree and restore the decree of the trial Judge with costs throughout.

MARTEN, J.:—I agree. The question in this case is whether the suit lands are in an alienated village within the meaning of the Land Revenue Code. That in its turn depends on the definition of "alienated" in section 3, sub-section (20) of the Code which runs as follows: "'Alienated' means 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."

Now in fact in the present case the rights of Government to payment of land-revenue have been transferred to the ownership of a person. Therefore, the definition has been satisfied in the present case, if one regards it as imposing a minimum requirement for "alienation" within the meaning of the Code.

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But the rights of Government to the rent or to the soil itself have also been transferred. It is, accordingly, said by the respondents that the above is not the correct view of the definition, and that the intention of the Legislature is to impose not a minimum, but an absolute, requirement. The alienation must be of the land-revenue neither more nor less. Consequently the definition must be read just as if the word "only" had been introduced into it so that it would run "in so far *only* as the rights of Government to payment &c., are concerned." In my opinion, this view of the respondents as to the meaning of the definition is not correct. I think the definition in its ordinary language merely imposes a minimum requirement, and as that minimum requirement has been satisfied in the present case, it is immaterial that further rights in addition to the mere land-revenue rights were also granted.

It is, however, said that this is contrary to what the Government or the Legislature must be presumed to have intended. I think the best way of gathering those intentions is to pay close attention to the exact language which is used. But supposing one goes outside the language of the Code, and sees what view Government has taken in practice, one finds that so far from Government thinking that it had no further interest in lands where it had granted the land-revenue rights as well as the rights to the soil and that consequently the Code was not to apply to such lands, Government introduced in 1881 at the request of the Inamdar the Settlement Survey under the Code into this very village. Therefore, so far as the intention of Government (if not of the Legislature) can be ascertained, one sees in their acts that they applied, and thought they were entitled to apply, this Code to this particular village, and I think it is an obvious inference that they thought that

this particular village was an alienated village within the meaning of the Code.

I think there is also some substance in what Mr. Coyajee has urged before us as to the use of the word "rent" or "land-revenue". But I do not base my judgment on that. I rely, so far as the words of the Code are concerned, on the Code itself.

I think it is also noticeable that the plaintiff himself has acted as if the Code applied to this land, for he has put in force certain powers under the Code, or has applied to the Collector to put in force certain powers under the Code, which, as I understand the facts, could not be done unless the village was an alienated village within the meaning of the Code.

One may also observe that, as my Lord the Chief Justice has pointed out, one cannot say that the Code is merely confined to Government lands. At any rate, as a result of later amendments, we have the Record of Rights which applies to all lands. Possibly that point does not apply here, because the material date here is, I suppose, 1881. But as pointed out by Mr. Coyajee, there are certain other sections in the Act which would still apply to land in which the Government would not necessarily retain any rights.

As regards the case of *Pandu* v. *Ramchandra Ganesh*[a], I have given it my best consideration, but I think the learned Judge really took the same view, at any rate in the first instance, as we take of the words of the Act. As I read his judgment, he was only perhaps over-persuaded by the possible results that might follow from adopting what is I think the literal interpretation of the Act. Personally I think it is safer to adopt a literal interpretation of the Act. And if we are really

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erring in thus ascertaining the intention of the Legislature, then it will be for the Legislature to make an appropriate amendment. If any such amendment is made, or even, if no such amendment is made, I hope the authorities may at some comparatively early date see their way to have a re-enacting Code which collects in one single Act of the Legislature all those various amendments which have been made since 1879. It is now extremely embarrassing for the ordinary practitioner to try and find his way through these various Acts and amending Acts that have taken place over all these years. And one is almost bound to rely on some text-book which has done this work, which, in my opinion, is more properly done by a consolidating and amending Act. This is, I think, none the less necessary, because the Act seems to me to be a particularly difficult one to construe, at any rate, as regards some of its provisions.

I agree that this appeal must be allowed, and that the order of the trial Judge must be restored with costs throughout.

Decree reversed.

J. G. R.

PRIVY COUNCIL.*

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KAIKUSHRU BEZONJI NANABHOY CAPADIA (PLAINTIFF) *v.* SHIRINBAI BEZONJI CAPADIA AND OTHERS (DEFENDANTS).

[On appeal from the High Court of Judicature in Bombay.]

Will—Construction of will of Parsi testator—Gift after prior interests to person 'if then living'—Rule for construction of such gifts—Word 'then' refers to last antecedent—Vested or contingent interests.

A wealthy Parsi resident of Bombay died on 3rd April 1906 leaving his wife S (the first respondent), two sons J and K (the present appellant-plaintiffs)

* *Present*:—Lord Shaw, Lord Phillimore and Sir John Edge.