

APPELLATE CIVIL.

Before Mr. Justice Shah and Mr. Justice Hayward.

1919.

July 28.

DHONDO VASUDEV KANITKAR (ORIGINAL PLAINTIFF), APPELLANT
v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL (ORIGINAL
DEFENDANT), RESPONDENT.*

Bombay Land Revenue Code (Bom. Act V of 1879), section 217 †—Alienated village—Sanad granted to Inamdar under Bombay Act II of 1863—Introduction of Survey Settlement under Bom. Act I of 1865—Right of Inamdar to enhance assessment at the end of the period of settlement.

In 1870, survey settlement was introduced into an Inam village under Bombay Act I of 1865, on the application of the Inamdar, who held the village under a Sanad granted under the Summary Settlement Act (Bom. Act II of 1863). The period of the settlement expired in 1888. From 1895 to 1910, the plaintiff recovered, with the concurrence of the Collector, higher assessment than that allowed under the survey settlement. The Commissioner having objected to the Inamdar doing so in 1910, the Inamdar sued to establish his right to charge higher assessment :—

Held, that the Inamdar had no right to enhance the assessment, because section 217 of the Bombay Land Revenue Code, 1879, applied when a survey settlement had been introduced into an alienated village with the consent of the alienee under Bombay Act I of 1865 and when the period of the settlement had expired after the Land Revenue Code of 1879 came into force.

APPEAL from the decision of S. J. Murphy, District Judge of Khandesh.

Suit for declaration and injunction.

The village of Bondan was granted in Inam to a predecessor of the plaintiff. The Inam was continued to

* First Appeal No. 160 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.

the plaintiff's family by a Sanad granted under the Summary Settlement Act (Bom. Act II of 1863).

In 1870, survey settlement was introduced into the village, at the instance of the Inamdar, when the total assessment was fixed at Rs. 375-2-0 a year for a period of eighteen years. At the expiry of the period in 1888, the assessment remained unaltered.

In 1895, the Inamdar, with the concurrence of the then Collector enhanced the assessment by Rs. 258-3-0 a year. The increased assessment was levied till 1910.

In 1910, the Revenue Commissioner issued an order directing the Inamdar that "the excess (over the old assessment) shall not be collected by you, not only this year, but every year."

The plaintiff thereupon sued the Secretary of State for India in Council for a declaration that he, as owner of the village, had the right to enhance assessment of his tenants, and for an injunction restraining the defendant from interfering with his right.

The defendant contended *inter alia* that the survey settlement was introduced into the village by Bombay Act I of 1865; and that on the enactment of the Bombay Land Revenue Code of 1879, section 217 thereof became applicable and gave plaintiff's inferior holders the right not to have their assessment enhanced except at a sanctioned Revision Survey.

The District Judge held that it was open to the plaintiff to enhance assessment with the sanction of Government, only at the Revision Survey, on the following grounds :—

The crucial point at issue is, whether on the expiry of the Revision Survey period, the plaintiff can enhance the assessment at his pleasure; or, whether, as contended by defendant, plaintiff can only do so at a Revision Survey duly sanctioned by Government. The "Sanad" gives an unqualified

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permission except for the rights of persons specified. These rights are not defined but would be those mentioned in section 83 of the Code. But at the date of the "Sand" a survey had been introduced in this village. This could be done under sections 111 and 216 of the Code. In this case it was introduced under section 216 and sanctioned by a notification at page 1174 of the *Government Gazette* for 1885. Section 217 provides that where a survey settlement has been so introduced the holders of lands shall have the same rights and be affected by the same responsibilities as holders of lands in unalienated villages. Section 218 contains a proviso that nothing in the Act which applies in terms to holders of unalienated land shall be deemed to affect alienated land. But Chapter VIII is general and does not apply in terms to the holders of unalienated land only. Section 95 directs how a survey shall be introduced; section 102, that assessments so fixed shall not be levied without the sanction of Government; section 112, that existing settlements are to be in force; and section 106, how a fresh or revised assessment shall be made. Plaintiff's revised assessment was not made in terms of these sections which I believe, after the introduction of the survey, by the terms of section 217, applied to his village. He claims a right to enhance without a Revision Survey and asks for a declaration to that effect. For the above reasons I think he is not entitled to such a declaration.

The suit was accordingly dismissed.

The plaintiff appealed to the High Court.

P. V. Kane, for the appellant:—The Inam village in suit was surveyed on the application of the Inamdar in 1870 under Bombay Act I of 1865. The rights and liabilities of the Inamdar and the inferior holders were then governed by section 49 of that Act which corresponds to section 216 of the Land Revenue Code (Bom. Act V of 1879). In Bombay Act I of 1865, there was no section corresponding to section 217 of the Land Revenue Code. Therefore, when the settlement introduced under Bombay Act I of 1865 came to an end in 1888, the parties reverted to the *status quo ante*. Before the introduction of the survey settlement in 1870, the Inamdar was authorised to enhance the assessment of the holders according to custom up to a reasonable amount. So on the expiry of the settlement in 1888, he could enhance the assessment

and did so in 1895 with the consent of the Collector. It cannot be argued that section 217 of the Land Revenue Code applies to this case. The words in 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" cannot retrospectively apply to a settlement introduced long before the Land Revenue Code was passed. They must be construed as applying to a settlement introduced after 1879. Besides in this case the enhanced assessment was recovered with the Collector's consent for fifteen years. This clearly supports the appellant's contention that section 217 was not intended to apply retrospectively. Clause 3 of the Sanad under the Summary Settlements Act entitles the Inamdar to revise the assessment, but does not expressly say that he can do so only by means of Revision Survey.

S. S. Patkar, Government Pleader, for the respondent:—Section 217 must be construed in its plain, grammatical sense. So construed, it applies to the facts of this case. If the appellant's contention be right, the words "has been introduced" will have to be interpreted as meaning "will hereafter be introduced." Moreover, under section 112 of the Land Revenue Code, all existing settlements made under any law whatever came to be regulated by the provisions of the Land Revenue Code. So section 217 would apply to a settlement introduced under Bombay Act I of 1865.

In 1870, the survey was introduced in the village, the period of settlement was up to 1887-1888. The survey having been introduced, the tenants became occupancy tenants (*Dadoo bin Bhatoo v. Dinkar Vishnu*⁽¹⁾ and *Nanabhai Bajibhai v. The Collector of Kaira*⁽²⁾), and the tenants would get the right under section 68 to

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(1) (1918) 43 Bom. 77.

(2) (1910) 34 Bom. 686.

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definite survey assessment being levied and clause (3) of the Sanad would save the rights of tenants.

As a matter of fact the plaintiffs have applied for a revision of the survey and the Commissioner has sanctioned the extension of Chapters VIII to X to this Inam village after the institution of the suit.

Kane, in reply.

SHAH, J. :—The main point argued in this appeal is whether section 217 of the Land Revenue Code applies when a survey settlement is introduced into an alienated village with the consent of the alienee under Bombay Act I of 1865 and when the period of the settlement has expired after the Land Revenue Code of 1879 came into force. It is conceded, that if this point is decided against the appellant, the other points decided against him by the lower Court need not be gone into. We have therefore heard the pleaders on this point only: and as we have come to the conclusion that section 217 would apply to such a village, it has not been necessary to hear the appellant's pleader on the other points.

The facts relating to this point are few and undisputed. The survey settlement was extended to the village in question on the application of the Inamdar in the year 1870 under Bombay Act I of 1865 which was then in force. The period of this settlement expired in the year 1888. In 1879, the Land Revenue Code came into force. The Inamdar holds the village under a Sanad granted under the Summary Settlement Act (Bom. Act II of 1863). The plaintiff recovered from 1895 to 1910 higher assessment than that allowed under the survey settlement which expired in 1888. The Commissioner objected to his doing so in 1910, and hence the suit to establish his right to charge higher assessment.

It has been argued on behalf of the appellant that section 217 of the Land Revenue Code is not applicable as the survey settlement was introduced prior to the Land Revenue Code of 1879 and not under section 216 of the Land Revenue Code, or under any other law after the passing of the Land Revenue Code. In effect the contention is that the words "when a Survey Settlement has been introduced" in the beginning of the section really mean "when a survey settlement shall be introduced" and that section 217 has no application to the survey settlement introduced into alienated villages prior to the enactment of section 217. Taking however, the words of the section in their plain and natural sense, I am satisfied that section 217 applies not only when a settlement is introduced into an alienated village after the Land Revenue Code of 1879 came into force either under section 216 or of any law for the time being in force, but also when a survey settlement is introduced prior to it under the provisions of any law for the time being in force, like the settlement in the present case under Act I of 1865. No authority is cited on either side touching this point; and in the absence of any authority to the contrary I think that the section must be held to apply, as the words indicate, to a survey settlement which was introduced prior to 1879 and which expired long after the Land Revenue Code came into force as it would apply to a survey settlement introduced under section 216 after the Land Revenue Code came into force. It is clear, therefore, that in 1895, when the Inamdar levied higher rates than those allowed under the settlement with the permission of the Collector, he acted in derogation of the lawful rights of the holders of lands in his *inam* village.

It is not contested, and it seems to me clear, that in virtue of the provisions of section 217, the holders of

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lands in an alienated village into which a survey settlement has been introduced are liable to pay like the occupants in an unalienated village only the assessments fixed at the first survey settlement even after the expiry of the period of the settlement so long as a revised survey settlement is not introduced.

The terms of the Sanad do not make any difference in the position of the Inamdar. If section 217 applies, I do not think that under clause 3 of the Sanad the Inamdar can levy rates higher than those which are lawfully leviable from the holders of the lands subject to the provisions of section 217. All the lawful rights of the holders of lands are expressly saved by the clause. The plaintiff's contention therefore on this point must be disallowed.

In holding that section 217 applies to this alienated village I have not overlooked the view taken by Mr. Justice Beaman in *Pandu v. Ramchandra Ganesh*⁽¹⁾ that the section does not apply to an alienated village where the grant is of the soil and not merely of the royal share of the revenue. That view, however, has not been accepted in the case of *Dadoo bin Bhatoo v. Dinkar Vishnu*⁽²⁾, in which it has been held that an alienated village, whether the grant be of the soil or merely of the royal share of the revenue, would be within the scope of section 217. We are bound by this decision, and I agree with the view taken in that decision that the application of section 217 to an alienated village is not dependent upon the grant being merely of the royal share of the revenue.

The result is that the decree of the lower Court is affirmed and the appeal dismissed with costs.

(1) (1917) 42 Bom. 112; at p.116.

(2) (1918) 43 Bom. 77.

HAYWARD, J. :—The appellant is the Inamdar of the village of Bondan. The survey settlement was introduced into his village under section 49 of Survey Settlement Act I of 1865 in the year 1870. The period for which the settlement was guaranteed was eighteen years. This expired in the year 1887-88. There was a clause in his Sanad which was issued to him under the Summary Settlement Act in 1879 which guaranteed all the rights and privileges of the minor Inamdars, cultivators or sub-tenants, after the expiration of the survey settlement. The Inamdars nevertheless raised their assessments in the year 1895 and continued to levy the increased assessments up to the year 1909-10. This had been allowed with the approval of the Collector, but was then decided to be illegal and was prohibited by the Commissioner whose order was confirmed in 1911 by the Governor-in-Council. The appellant has contended that he was free to raise the assessments after the expiration of the period of the survey settlement and that would no doubt be the case if all the rights and privileges of the minor Inamdars, cultivators or sub-tenants, ceased with the expiration of that period. It has been necessary, therefore, to consider what those rights and privileges were at the expiration of the period of the survey settlement under the law relating to land revenue. It has not been disputed that the result would be the same whether the Inamdar was the alienee of the soil or merely alienee of the land revenue as decided in the case of *Dadoo bin Bhatoo v. Dinkar Vishnu*⁽¹⁾.

The rights and privileges of holders of land in unalienated villages would seem to be the same to all practical intents and purposes under the Survey Settlement Act I of 1865 as under the later Act, the

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Bombay Land Revenue Code of 1879. Those rights and privileges have been discussed at length in the case of *Secretary of State for India v. Sadashiv Abaji*^(a), and the sum and substance of the discussion was this that they were entitled to continue in possession of their lands at the assessment already settled pending sanction to a revision settlement being granted by the Governor-in-Council. If the holders of lands were bound by the same rules in the alienated village of Bondan, then they also would be entitled to hold their lands on the assessment under the old settlement pending sanction being granted to revised rates by the Governor-in-Council. No such sanction was obtained. On the contrary it was expressly repudiated in 1911 by the Governor-in-Council. The question whether the holders of lands in this alienated village of Bondan have the rights and privileges of holders in unalienated villages would depend upon the correct interpretation of section 49 of the Survey Settlement Act I of 1865 and the substituted section 217 of the Bombay Land Revenue Code of 1879. It seems to me that they were entitled to rights and privileges similar to those of holders in unalienated villages both under the proviso to section 49 of Bombay Act I of 1865, and under the provision of section 112 read with the wide expressions used in section 217 of Bombay Act V of 1879. The words used in the opening clause were: "when a survey settlement has been introduced...under the provisions of any law for the time being in force into an alienated village." Those words would in their ordinary meaning include a survey settlement introduced previously under a previous law in force as well as a survey settlement introduced subsequently under a subsequent law for the time being in force. The words used in the following clause were: "The holders of

(a) (1911) 36 Bom. 290 at pp. 300 to 303.

all lands to which such settlement extends shall have the same rights in respect of the lands in their occupation as holders of lands in unalienated villages have under the provisions of this Act." The plain meaning of those words would be that they would from the time of the introduction of the Act have the same rights and privileges as holders in unalienated villages under the Act. That would include the right to hold their lands upon the assessments previously settled under the previous Act which would be deemed to be in force by reason of the provisions of section 112 of the new Act pending sanction to revised rates of settlement being granted by the Governor-in-Council under the new Act. If that view be correct, then the levy of the increased assessments without such sanction was illegal and was rightly forbidden by the Commissioner and his order rightly confirmed by the Governor-in-Council. It should also be mentioned that were the other view held, it would only have effect up to the year 1914, because in that year a revision survey was formally sanctioned on the application of the Inamdar to Government under section 216 which would in any case be governed by the provisions of section 217 of the Bombay Land Revenue Code of 1879.

It seems to me therefore that the appeal ought to be dismissed with costs.

Decree confirmed.

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