APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Heaton.

1919. November 19.

VYASACHARYA MADHAVACHARYA GHALSASI (ORIGINAL PLAINTIFF), APPELLANT *v.* VISHNU VITHAL KULKARNI (ORIGINAL DEFENDANT), RESPONDENT*.

Land Revenue Code (Bom. Act V of 1879), sections 83, 216 (b) and 217—Unalienated village—Inam grant of a portion of the village—Permanent tenancy—Rent—Enhancement—Inamdar entitled to enhance according to usage—Grant of "a definite share of a village", meaning of.

The plaintiff who was the holder of an Inam grant of a portion in a surveyed unalienated village, claimed to recover increased rent from the defendants who were his tenants. The defendants contended that they were Mirasi tenants at a fixed rent. The lower appellate Court found that the defendants were permanent tenants and held that under the provisions of section 216 (*b*) read with section 106 of the Land Revenue Code, 1879, the plaintiff had no right to claim enhancement in excess of the rates fixed by the Revision Survey, though he was of opinion that the maximum enhancement should be three times the assessment. The plaintiff having appealed to the High Court,

Held, that the defendants being permanent tenants, and not occupancy tenants, they were subject to the saving clause in section 83 of the Land Revenue Code, 1879, and therefore the plaintiff had a right to enhance the rent to a reasonable extent according to the usage of the locality.

Per MACLEOD, C. J. :—"The phrase 'a definite share of the revenue of a village' or 'the definite share of a village' is perfectly well known in these Courts, and it cannot be said that a grant of 20 bighas or 10 bighas out of the cultivated area of a village can be construed as a grant of a definite share of a village."

SECOND appeal against the decision of G. K. Kale, Assistant Judge at Satara, amending the decree passed by V. R. Guttikar, Second Class Subordinate Judge at Patan.

Suit to recover possession.

The lands in dispute formed part of a Revision Survey No. 47 situate in the unalienated village Kumbhargaon, Satara District. These lands together

* Second Appeal No. 115 of 1918.

with other lands consisting of twenty bighas were in 1727 A. D. granted in Inam by King Shahu Chhatrapati to one Narsinhacharya *bin* Narishabhat. In 1730, the said Narsinhacharya made a gift of ten out of the twenty bighas in favour of the plaintiff's ancestor Narayanacharya *bin* Madhavacharya. Sometime after, at the request of the donee Narayanacharya, an order, Exhibit 63, was issued by which the gift to Narayanacharya was recognised and it was ordered that the ten bighas should be continued in Inam to the said Narayanacharya and his heirs In Exhibit 63 it was mentioned that the ten bighas with land and water, trees and grass, wood, stones, &c., were granted in Inam.

In 1913, the plaintiff sued to recover possession of the plaint lands alleging that the lands were of his ancestral *inami* and *mirasi* rights; that they were let to the defendant on annual oral tenancy; that the defendant did not pay rent regularly and that the defendant was called upon to pay enhanced rent but he refused. The plaintiff further prayed that in case actual possession could not be given to him then in the alternative he should be awarded enhanced rent at Rs. 30 per year.

The defendant contended that the lands were not of the *inami* and *mirasi* ownership of plaintiff; that he was not plaintiff's annual tenant; that he was a Mirasdar of the plaint lands; and that the plaintiff was entitled only to receive fixed assessment on the lands.

The Subordinate Judge found that the plaintiff Inamdar was a grantee of the soil and that the defendant was his *mirasi* tenant not liable to eviction. He held that the plaintiff was entitled to enhance rent at Rs. 20 per year.

On appeal by the defendant, the Assistant Judge found that there was no evidence about the origin

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of the tenancy of the defendant on account of the antiquity of the tenancy and that, therefore, the defendant was a Mirasdar under section 83 of the Land Revenue Code. He upheld the defendant's contention that the plaintiff was not entitled to claim enhanced rent in excess of the assessment fixed by the Revision Survey in force, though on a consideration of the evidence and circumstances of the case, he was of opinion that the maximum enhancement would be three times the assessment, i.e., it would be Rs. 111 instead of Rs. 37 which was the assessment of the entire Revision Survey No. 47. His reasons for upholding the contention were as follows :—

"In support of that contention, reliance is placed on sections 216 (*b*) and 106 of the Bombay Land Revenue Code, and the decision of our own High Court in appeal No. 618 of 1911 from appellate decree of the Satara District Court in appeal No. 174 of 1910. The line of reasoning in that decision is as follows :—'The motive of the Legislature is pretty obvious. It would create much jealousy if an Inamdar were entitled to enhance the rent of his tenants in the centre of an unalienated Government village when all the other tenants of the village are entitled under the provisions of section 106 to an unalterable assessment until the next Revision.'

Following that line of reasoning, I find that, under the provisions of section 216 (*b*) read with section 106 of the Bombay Land Revenue Code, plaintiff has no right to claim enhancement in excess of the rates fixed by the Revision Survey, until the next Revision."

The plaintiff appealed to the High Court.

A. G. Desai, for the appellant :—The appellant is a grantee of the soil. The respondent has been found to be a tenant in occupation. The origin of his tenancy could not be ascertained and that there was no satisfactory evidence of the commencement of his tenancy. Therefore, the presumption under section 83 of the Land Revenue Code, 1879, arises and the defendant must be taken to be a permanent tenant, but that does not make him Mirasdar properly so called and the

saving clause of section 83 does not take away the right of the landlord to enhance his rent.

The construction put on sections 216 (*b*) and 217 of the Land Revenue Code by the lower Court is wrong. The grant of thirteen acres out of the cultivated area in a surveyed unalienated village cannot be said to be a definite share of the village. Therefore, the only section that applies is section 83 and the landlord has a right to enhance the rents of permanent tenants who have not the rights of occupancy in the land.

M. V. Bhat, for the respondent :—This Court has in several cases construed the words "a definite share of the village" in section 216 (*b*) of the Land Revenue Code to apply to a grant of a certain number of Bighas out of the cultivated area of a village, to be a definite share in the sense that it bears some proportion to the whole area of the village. The Inamdar, therefore, has no right to enhance the rent in excess of the rates fixed by the survey settlement. The lower appellate Court has based its conclusion on the decision of *Damodar Moreshwar Keskar* v. *Raghunath Ramchandra Keskar*[1]. This is followed in several other cases. The object of Government in enacting section 216 (*b*) apparently was that an Inamdar of such a holding in unalienated Government village should not have the right to enhance the rents of his tenants when the tenants in Government lands were entitled to hold at an unalterable assessment until the next Revision.

MACLEOD, C. J. :—The plaintiff sued to recover possession of the plaint lands together with Rs. 2-0-6 for past damages and costs, alleging that the plaint properties were of his ancestral Inami and Mirasi rights ; that the lands were let to defendant on an annual oral tenancy ; that the defendant did not pay rent regularly ; and that

[1] S. A. 618 of 1911 (Unrep.) decided on 19th November 1912.

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defendant was called upon to pay enhanced rent, but he refused. The plaintiff prayed that in case actual possession could not be allowed to be given, then in the alternative enhanced rent at Rs. 30 per year should be given.

The trial Court allowed the claim. In appeal the decree was reversed and enhancement was awarded at the rate of the assessment fixed by the Revision Survey. The learned Judge expressed the opinion that if he was wrong on the question of enhancement, the maximum enhancement should be three times the assessment.

Now the title of the plaintiff is perfectly clear. It is based on a Sanad granted in 1727 by King Shahu Chhatrapati of Satara to Narsinhacharya bin Narsinhabhat of 20 Bighas. The said Narsinhacharya then made a gift of 10 bighas in favour of plaintiff's ancestor Narayanachārya bin Madhavacharya about 1730, and thereafter at the request of the donee, an order (Exhibit 63) was issued by which the gift to Narayanacharya was recognised, and it was ordered that the 10 Bighas should be continued in Inam to the said Narayanacharya and his heirs. It is quite clear from the wording of Exhibit 63 that what was granted was the soil and not merely the royal share of the revenue. The defendants admittedly are tenants in occupation of the land, and it has been found by both Courts, that the origin of the tenancy cannot be ascertained, and no satisfactory evidence of its commencement is forthcoming. Therefore the presumption allowed by section 83 of the Land Revenue Code arises, and the defendants must be taken to be permanent tenants. But it does not follow from that that they are Mirasi tenants. Section 83 says nothing whatever about Mirasi tenure. Therefore if the defendants are permanent tenants they are subject to the saving clause in section 83 which says "nothing contained in this section shall affect the

right of the landlord (if he have the same either by virtue of agreement, usage or otherwise) to enhance the rent payable, or services renderable, by the tenant."

It cannot be disputed that the landlord has in the case of a permanent tenant, not an occupancy tenant, the right by usage to enhance the rent. It seems to have been the opinion of the lower appellate Court that there had been an alienation in this case of a definite share of the village, so that section 216 taken together with section 217 of the Land Revenue Code applied. But the phrase "a definite share of the revenue of a village" or "the definite share of a village" is perfectly well-known in these Courts, and it cannot be said that a grant of 20 Bighas or 10 Bighas out of the cultivated area of a village can be construed as a grant of a definite share of a village. The result is, the only section that applies is section 83. Therefore the plaintiff in this case has a right to enhance to a reasonable extent. It is not disputed that the enhancement which the lower appellate Judge considered reasonable, namely three times the assessment, is unreasonable. Therefore in my opinion the order of the lower appellate Court in this and the companion appeal must be modified, and the plaintiff will be entitled in each suit to a declaration that he is entitled to recover enhanced rent at the rate of three times the assessment. The appellant will be entitled to the costs of this and the companion appeals Nos. 134 to 137 of 1918.

HEATON, J.:—We are dealing here with land in a surveyed unalienated village. The land was originally granted to the plaintiff's predecessors very many years ago, and has now become five survey numbers in this surveyed unalienated village. I gather from the judgments of the Courts below that these survey numbers are entered in the name of the plaintiff who is the

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holder, and who holds on special terms, but they are cultivated by other persons. The plaintiff claims that those other persons are his tenants. He said that they were annual tenants. But at any rate he claims that they are tenants, and that as such he has a right to demand increased rent from them. They reply that they are Mirasdars, and that the plaintiff was entitled only to receive the fixed assessment or *akar* on the land. In this appeal we are really only concerned with this question: whether the plaintiff is entitled to receive only the assessment, or whether he is entitled to demand more. The lower appellate Court held that the plaintiff was entitled only to receive the assessment, and the plaintiff has now appealed to this Court. I am unfortunately unable to follow the reasoning of the lower appellate Court. But I think at any rate his judgment displays some confusion in the use of the word 'Mirasdar'. The word is used in two senses. It is used, as I think somewhat incorrectly, to mean 'a permanent tenant.' It is also used, as I think correctly, to mean 'a person who has the occupancy rights of land', that is to say, who is an occupant, and not a tenant. If these two meanings are kept quite clear, it does not perhaps greatly matter that you use the word 'Mirasdar' meaning 'a tenant,' provided that you realise when you are so using it that you are speaking of a tenant. Now in this case it has not been found, and I do not suppose it could be found, on the materials in the case, that the defendants are Mirasdars in the sense that they have rights of occupancy, and are not tenants. I will here refer for a moment to the word 'occupant' as defined in the Land Revenue Code: which is that it means 'a holder in actual possession of unalienated land, other than a tenant.' That is to say an 'occupant' is not a 'tenant'. He has higher rights than a tenant, and there are occupants with such rights

even of alienated lands. But the finding in this case is merely that the defendants are permanent tenants, a conclusion that is reached by applying section 83. Now that conclusion as a finding cannot, I think, be challenged in second appeal. But if it were challenged, the answer would certainly be very easy. The facts as disclosed by the judgments of the lower Courts show absolutely conclusively that no satisfactory evidence is forthcoming of the commencement of the tenancy. There is a tenancy, but when it began or how it began we do not know, and cannot ascertain because of the length of time that has passed since its beginning. That is precisely the case to which section 83 of the Land Revenue Code applies, and there can, I think, be no doubt the lower Courts correctly arrived at the conclusion that the defendants were permanent tenants. But I think the lower appellate Court was wrong in the legal inferences that it drew from that position. Section 83 specifically provides that the rent can be enhanced by the landlord, if he has that right either by virtue of agreement, usage or otherwise. No doubt the landlord cannot plead that he has the right by virtue of agreement, but the usage is very widely known and well-understood. Permanent tenants who have not the rights of occupancy are liable to have their rents enhanced by their landlords. I think, therefore, that the decree of the lower appellate Court must be modified by allowing that enhancement of rent which it finds would be appropriate to the case; that is a total of Rs. 111-0-0, which is three times the assessment of the entire survey number. That will have to be split up proportionately amongst the respondents in these five appeals.

Decree modified.

J. G. R.