

1921.

DEVU
JETIRAM
v.
REVAPPA
SATAPPA.

section 20 cannot apply to the case of a person who was not an agriculturist when the decree was obtained, whatever his status may be thereafter when execution comes to be taken out against him."

It has been argued that section 20 of the Dekkhan Agriculturists' Relief Act expressly refers to a decree passed against an agriculturist, whether before or after the Act came into force, while section 15 B only refers to decrees for redemption, foreclosure or sale in suits of the descriptions mentioned in section 3, clause (y) or clause (z), and consequently the fact that a defendant, or any of the defendants, was not an agriculturist at the time the decree was passed, but became one thereafter, does not prevent his being a party to a suit of that description. But we think that considering the nature of the Act, the description of "suit" in section 3 is not confined to the relief claimed in the suit, but also includes the status of the parties. Otherwise the result would be that in all suits for redemption, foreclosure or sale, if subsequently the defendant brought himself within the definition of an agriculturist, he would be entitled to the benefit of section 15 B, and we do not think that was the intention of the Legislature, or that is what the law enacts. We think, therefore, that the decision of the Court below was correct and the appeal ought to be dismissed with costs.

Appeal dismissed.

R. B.

APPELLATE CIVIL.

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

1922.

February 13.

RAJARAM SITARAM POTPHODE AND OTHERS (ORIGINAL DEFENDANTS),
APPELLANTS v. JAGANNATH GOVINDRAO YESHWANTRAO (ORIGINAL
PLAINTIFF), RESPONDENT^o.

*Khoti Settlement Act (Bombay Act I of 1880), sections 20, 21—Decision of
Recording Officer—Finality—Entry in Settlement Register by itself not
conclusive.*

^o Second Appeal No. 564 of 1921.

1921.

The Khoti Settlement Act nowhere provides that the mere entry in the Settlement Register of the name of a particular person as the occupant of a survey number is either final and conclusive, or binding upon all parties concerned, unless and until it is reversed or modified by a decree of the Civil Court. What is made binding by the provisions of section 21 of the Act is the "decision" of the Recording Officer and not a mere "entry" of a person's name in the Settlement Register.

RAJARAM
SITARAM
v.
JAGANNATH
GOVINDRAO.

SECOND appeal from the decision of C. C. Dutt, District Judge of Ratnagiri, confirming the decree passed by M. H. Limaye, Subordinate Judge at Devrukh.

Suit to recover possession of land.

The plaintiff was a Khot of Kosumb a village in the Ratnagiri District. He claimed the land in dispute as his Khoti Khasgi.

The defendants contended that the land was Khoti Kulargi and that it had been in their possession as occupancy tenants for many years. They relied on the entry of the land as of their "occupancy ownership" in the D Patrak and in the Botkhat.

The lower Courts held that the plaintiff was entitled to recover possession of the land. They also held that the mere entry in the Botkhat did not avail the defendants, and that the entry was not a "decision" within the meaning of section 21 of the Khoti Settlement Act.

The defendants appealed to the High Court.

A. G. Desai, for the appellants :—Plaintiff may have proved his possession, but he has no title. In an ejectment suit, it is not necessary to prove title. The entry in the Botkhat is in favour of the appellants. The entry stands there uncorrected. The time for getting it corrected is over and it is binding on the plaintiff. If so, he has no title. The rulings referred to as militating against my contention are

1922.

RAJARAM
SITARAM

v.

JAGANNATH
GOVINDRAO.

distinguishable on the ground that the entry in this case was made with the consent of the Khots. It is an entry based on agreement on the part of Khots. In such a case, there is no occasion for a dispute and the entry must be accepted as binding, unless it is set aside within time.

P. B. Shingne, for the respondents.

[COYAJEE J. :—Have you come across a decided case where the entry was based upon consent of all the parties affected thereby ?]

No. But besides the rulings to be found in 21 Bom. L. R. there are unreported rulings to the same effect. If there is no decision or determination as required by the Act the entry need not be set aside.

COYAJEE, J. :—The plaintiff in this case and the 12th defendant are Khots of Mouje Kosamb in the Ratnagiri District. The defendants Nos. 1 to 11 are members of a family named Potphode. The plaintiff brought the suit which has given rise to this appeal to recover possession of lands comprised in Survey No. 269 *falni* No. 4, alleging that he was the owner thereof, that they formed part of his *khoti khasgi* estate, and that the Potphode defendants had unlawfully dispossessed him of the same.

The 3rd defendant was the only party who contested this claim in the trial Court. He denied the plaintiff's title and possession as alleged, and asserted that the said lands belonged to and were continuously enjoyed by members of the Potphode family. He further contended that the suit lands were entered in the village *botkhal* in the name of some members of his family, that the plaintiff did not get such entry reversed or modified by the decree of a competent Court within the period prescribed by law, and that, therefore, the entry had become binding upon the plaintiff.

1922.

BAJARAM
SITARAM
v.
JAGANNATH
GOVINDRAO.

The first two issues framed by the trial Court related to the questions whether the plaintiff had proved his title and his possession within the twelve years preceding the commencement of this suit. The third issue was : whether the said entry in the *botkhat* was a "decision" within the meaning of section 21 of the Khoti Settlement Act, 1880, so as "to give finality against plaintiff, and what would be its effect."

The learned Judge held that the plaintiff had satisfactorily established his title and also his possession within the twelve years immediately preceding the suit ; and that the entry in the *botkhat* was not such a "decision" as was contemplated by section 21, and was, therefore, not binding upon the plaintiff. He, therefore, granted the reliefs claimed in the plaint.

From that decree an appeal was preferred to the District Court, not by the 3rd defendant, but by the defendants Nos. 2, 9 and 10 who until then had taken no part in the proceedings. The appeal, however, failed, the learned Judge recording his complete agreement with the findings made by the trial Court.

The original defendants Nos. 2, 3, 9 and 10 have now brought this appeal here and it is contended on their behalf that the entry in question has become binding upon the plaintiff according to the provisions of the said section 21.

For the determination of this question it becomes necessary to examine the material provisions of sections 16 to 21 which come under Part III of the said Act.

Section 16 provides that the Settlement Register prepared under section 108 of the Bombay Land Revenue Code, 1879, shall show whether a particular survey number is held by a privileged occupant or not ; and

1922.

RAYARAM
SITARAM
v.
JAGANNATH
GOVINDRAO.

if it is held by one or more privileged occupants then the said register shall further specify : (1) the tenure; (2) the names of the occupants ; and (3) in the case of land held by a permanent tenant whether his interest therein is transferable otherwise than by inheritance or not. In this case the entry in question does specify the names of some members of the Potphode family as the occupants of the suit lands. By section 17 it is provided that the other records prepared under the said section 108 shall specify the description and amount of rent payable to the Khot. These two sections (16 and 17) are headed "*Settlement Records.*"

Sections 18 to 21 fall under a different heading : "*Custody and Amendment of Records : Determination of Disputes.*" Section 18 deals with the custody and amendment of the Settlement Register ; and here I do not overlook sub-section (3) (e).

Then section 19 (1) enacts that—

" If it appears to the Recording-officer that there exists any dispute as to any matter which he is bound to record, or as to any amendment proposed to be made under section 18, he may, either on the application of any of the disputant parties, or of his own motion, investigate and decide such dispute, and frame or amend the Settlement Register or other record accordingly."

It is only when a dispute arises as to any matter which the Recording Officer is bound to record that he proceeds to "investigate" it in the manner provided in sub-section (2) ; as a result of such investigation he arrives at his "decision" and he has then to "frame or amend the Settlement Register or other record accordingly," i. e., to make an *entry* in accordance with the result of his *decision*.

Section 20 enacts that entries recording (1) certain facts regarding the interest of a permanent tenant, or (2) the liability of a privileged occupant to pay rent, shall be "conclusive and final evidence of the fact or liability so recorded."

1922.

Lastly, it is provided by section 21 that "in any other matter" the decision of the Recording Officer shall be binding upon all the parties affected thereby until reversed or modified by a final decree of a competent Court.

RAJARAM
SITARAM

v.
JAGANNATH
GOVINDRAO.

It becomes clear then that—these being the only sections bearing on the question—the Act nowhere provides that the mere entry in the Settlement Register of the name of a particular person as the occupant of a survey number is either final and conclusive, or binding upon all parties concerned unless and until it is reversed or modified by a decree of the civil Court. In support of his contention Mr. Desai, who has presented the appellants' case with care and ability, appeals to the provisions of section 21. But what is made binding by those provisions is the *decision* of the Recording Officer and not a mere *entry* of a person's name in the Settlement Register. As observed by Scott C. J. in *Mahomed Ibrahim v. Ali Mahomed Ali*⁽¹⁾, "It seems to us quite clear that the word 'decision' refers to a determination of a dispute either in the presence or not in the presence of parties such as is referred to in section 19." And as there, so in this case, "there is no indication that any such dispute had arisen for the decision of the Recording Officer." In *Bhiva Bhika v. Babu Balshet*⁽²⁾ Hayward J. interpreted section 21 thus: "Now that section makes conclusive certain decisions of the officer defined as the Recording Officer. What those decisions are is to be gathered from the preceding sections and a perusal of those preceding sections seems to me to make it clear that the mere entry of the name of some particular person as occupant

⁽¹⁾ (1915) S. A. No. 850 of 1914,

decided by Scott C. J. and

Shah J. on the 12th July

1915. (Unrep.)

⁽²⁾ (1918) 43 Bom. 469.

1922.

RAJARAM
SITARAM
v.
JAGANNATH
GOVINDRAO.

was not intended to be included among those decisions of the Recording Officer." I am of the same opinion. The Act does not invest a mere entry, such as we have here, with any degree of finality ; and much could be said in favour of the view that the Legislature has deliberately refrained from giving to it that effect. Mr. Desai has, however, urged that the proviso to section 21 favours his contention. But it seems to me that the expression "such decision or entry" occurring there means no more than "such decision or the entry which is the result of such decision." Reference may in this connection be made to the material words in section 19 (1) which are that "the Recording Officer may investigate and decide such dispute, and frame or amend the Settlement Register accordingly."

Finally, it was contended for the appellants that the entry in question may be regarded as a "decision" of the Recording Officer based upon a consent of all parties affected thereby. The argument derives no support either from the language of sections 19 and 21, or from the decisions referred to above. It is, however, sufficient to say that this contention was not placed before the lower Courts and it cannot, therefore, be allowed to be raised here for the first time in this second appeal.

I would for these reasons affirm the decree of the lower Court and dismiss this appeal with costs.

MACLEOD, C. J. :—I agree.

Appeal dismissed.

R. R.
