Act where a penalty is imposed, a right of appeal is conferred upon the assessee, in this particular case that important right should not be conferred upon the assessee. But in our opinion, what clinches the matter is a reference to s. 47 which provides for recovery of penalties and there is no provision for recovery of penalty imposed under s. 18A (9). If the contention of the Commissioner were to be accepted, then the assessee would be in the happy position of not having to pay the penalty at all because there is no provision in law for recovering the penalty. The reason why s. 18A (9) is not mentioned in s. 47 is because, again, the Legislature has looked upon the imposing of penalty on the grounds mentioned in s. 18A (9) as the exercise of power under s. 28 and not under s. 28 (1) (c), and as s. 47 provides for recovery of penalties imposed under s. 28 it was unnecessary to refer to s. 18A (9).



In our opinion, the Tribunal was in error in holding that the appeal was not competent. Therefore we must answer the question as fallows:

"The order of the Income Tax Officer imposing the penalty was passed under s. 28 (1) (c) read with s. 18A (9) and an appeal against that order lay to the Appellate Assistant Commissioner and thereafter to the Tribunal."

The Commissioner to pay the costs.
Attorneys for Applicants: *S. P. Mehta.*
Attorney for Respondent: *N. K. Petigara.*

*Answer accordingly.*
P. M. P.

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## APPELLATE CIVIL

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*Before Mr. Justice Dixit and Mr. Justice Vyas.*

RACHGOUDA PARAGOUDA PATIL (ORIGINAL APPLICANT), PETITIONER *v.* APPASAHEB TATYASAHEB DESAI AND OTHERS (ORIGINAL OPPONENTS) OPPONENTS.*

1955
*Sept. 27*

*Bombay Tenancy and Agricultural Lands Act (Bom. LXVII of 1948), ss. 14, 27, 29 (2)—Land Sub-let on October 12, 1948—Notice terminating tenancy dated Sept. 7 and 21, 1951 on the ground of sub-letting—Application for possession on November 21, 1951—Whether application within time.*

*Held*, a landlord's application filed on Nov. 21, 1951 for possession of land on the ground that the tenant had sub-let contrary to s. 27 on Oct. 12, 1948 was beyond the time prescribed under s. 29 (2) of the Bombay Tenancy and Agricultural Lands Act 1948 inasmuch as the right to obtain possession must be deemed to have accrued on Oct. 12, 1948, the date of sub-letting and not the date of notice since no such notice was

*Special Civil Application No. 1521 of 1955.

1955

RACHGOUDA PARAGOUDA PATIL
*v.*
APPASAHEB TATYASAHEB DESAI

*Dixit J.*

necessary before January 12, 1953, the date on which the Proviso to s. 14 came into force.

Application under Arts. 226 and 227 of the Constitution of India.

The facts are sufficiently stated in the judgment.

*S. C. Javali*, Advocate for the Petitioner.

*V. V. Albal*, Advocate for Opponent No. 2.

*Dixit J.*—This special civil application raises a question of limitation under s. 29 (*2*) of the Bombay Tenancy and Agricultural Lands Act, 1948.

The facts of the case in which the question arises are simple. The applicant is the owner of a certain land and he let it out to the first opponent for the year 1948-1949. On October 12, 1948, while the first opponent was the applicant's tenant, the first opponent sublet the land in dispute to opponent No. 2. On December 28, 1948, the Bombay Tenancy and Agricultural Lands Act, 1948, was applied to the place from which this application arises and on November 21, 1951, the applicant filed the present application against the two opponents for possession under s. 29 (*2*) of the Act. Upon that application, a question arose as to whether the application preferred by the applicant was within two years as contemplated by s. 29 (*2*). The Mamlatdar, Athani, who heard the application, held that the application was not filed within two years of the date on which the right to obtain possession accrued to the applicant and having come to that conclusion, the application was dismissed. There was then an appeal to the Prant Officer, Chikodi, and the appellate authority, agreeing with the Mamlatdar, held that the application was not within time and dismissed the applicant's appeal. From the appellate Order, the applicant went in revision before the Bombay Revenue Tribunal and that Tribunal, consisting of Mr. K. C. Sen, President, and Mr. S. B. Hubli, held that the application was out of time. The applicant now applies under art. 227 of the Constitution.

Upon this application, Mr. Javali for the applicant contends that the application preferred by him on November 21, 1951, was within time because the application was made within two years either from September 7, 1951, or September 21, 1951, when the applicant gave notice to the first opponent terminating the tenancy. In determining the question of limitation, it is necessary to just look at three sections of the Act. The first of these is s. 14 which, so far as material, provides by sub-s. (*1*) that:

"Notwithstanding any agreement, usage, decree or order of a Court of law, the tenancy of any land held by a tenant shall not be terminated unless such tenant.........(*d*) has sublet the land or failed to cultivate it personally."

There is a proviso to s. 14, but this proviso was added to s. 14 by the amending Act No. 33 of 1952 which came into force on January 12, 1953. It is clear, therefore, that the proviso does not apply to the facts of this case. Section 14 (*1*) (*d*) would, therefore, show that the tenancy of a land held by a tenant is not liable to be terminated unless the tenant has sublet the land. Since the proviso does not apply, it is not necessary for the landlord to give three months' notice as contemplated by the proviso to s. 14 (*1*). It is enough if the landlord terminates the tenancy by an indication of his intention to so terminate it by filing a proceeding under s. 29 (*2*) of the Act. Then the next section to look at his s. 27 which by sub-s. (*1*) provides, so far as material, that

"No sub-letting of the land.........held by a tenant shall be valid. Such ...........sub-letting.........shall make the tenancy liable to termination."

Section 27 (*1*), therefore, shows that if a tenant sub-lets, then the sub-letting would be invalid and as a consequence the tenancy is liable to termination. The remaining section to which reference must be made is s. 29 (*2*) which provides that:

"no landlord shall obtain possession of any land or dwelling house held by a tenant except under an order of the Mamlatdar. For obtaining such order he shall make an application in the prescribed form and within a period of two years from the date on which the right to obtain possession of the land or dwelling house, as the case may be, is deemed to have accrued to him."

In our view, the key words in s. 29 (*2*) are the words "deemed to have accrued". Now, to obtain possession a landlord has to make an application and the question is as to when the right to obtain possession must be deemed to have accrued to the applicant in the circumstances of this case. Mr. Javali argues that the right to obtain possession can arise only after he has given some indication of his intention to terminate the tenancy. To justify such a construction, there are no words in s. 29 (*2*) in favour of Mr. Javali's contention. In a case where the proviso to s. 14 does not apply, it is clear that no notice is necessary. In cases where the proviso applies, a notice to terminate the tenancy is necessary and so long as a notice is not given, the tenancy is not terminated. It follows that the landlord has no right to possession until the period of the notice has expired. But the words as used in s. 29 (*2*) are the words

"the right to obtain possession is deemed to have accrued to him."

Now, the sub-letting in this case took place on October 12, 1948, and it is on that date that a right to obtain possession must be deemed to have accrued to the applicant, that is, the landlord. Section 29 (*2*) does not use the words

"the right to obtain possession has accrued to the landlord."

1955

RACHGOUDA PARAGOUDA PATIL v. APPASAHEB TATYASAHEB DESAI

*Dixit J.*

The right to obtain possession would accrue to the landlord only when the period of notice has expired, because it is only from the expiry of the period of the notice that the landlord would be entitled to obtain possession of the land. But the language used in s. 29 (*2*) is "the right to obtain possession is deemed to have accrued to him." In the face of this language, it is impossible to hold that the limitation would not begin to run on October 12, 1948, but only on November 7, 1951, when the applicant gave notice to the first opponent.

In our view, therefore, the authorities below were right in taking the view that the application was barred by time under s. 29 (*2*). In view of this conclusion, the application must fail and the rule will be discharged with costs.

*Rule discharged,*
G. N. V.

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## APPELLATE CRIMINAL

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*Before Mr. M. C. Chagla, Chief Justice and Mr. Desai.*

1955
*Aug. 24*

PURSHOTTAMDAS GOVINDJI HALAI, PETITIONER *v.* B. M. DESAI AND OTHERS, RESPONDENTS.*

*Indian Income-tax Act (XI of 1922), s. 46 (2)—Criminal Procedure Code (Act V of 1898), s. 491—Constitution of India, arts. 14, 22, 226—Bombay City Land Revenue Act (Bom. II of 1876), s. 13—Bombay City Land Revenue (Second Amendment) Act (Bom. XLVII of 1954)—Bombay Land Revenue Code (Bom. V of 1879), s. 157—Whether s. 46 (2) of Indian Income-tax Act offends against art. 14—Equality with regard to procedure—Applicability of art. 22.*

Section 46 (*2*) of the Indian Income-tax Act, 1922, does not offend against Art. 14 of the Constitution of India.

Article 14 of the Constitution of India does not require that all laws should be similar or that all laws should have universal application; it does not forbid classification; in fact it permits classifications. What Article 14 requires is that if any law discriminates in the application of the law as between a citizen and a citizen, there must be some reasonable basis for such discrimination.

Under Art. 14 of the Constitution equality before the law means equality before the law-procedural as well as the substantive; but if the law so challenged does not itself discriminate, it cannot be challenged under art. 14.

*The State of West Bengal* v. *Anwar Ali Sarkar*[1] and *Suraj Mall Mohta and Co.* v. *A. V. Visvanatha Sastri,*[2] distinguished.

*Shree Meenakshi Mills Ltd.* v. *Sri A. V. Visvanatha Sastri,*[3] referred to.

*Erimmal Ebrahim Hajee* v. *Collector of Malabar,*[4] dissented from.

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*Criminal Application No. 806 of 1955.

1. [1952] S. C. R. 284.
2. [1955] 1 S. C. R. 448.
3. [1955] 1 S. C. R. 787.
4. [1954] 26 I. T. R. 509.