
(1920) 08 BOM CK 0019

In the Bombay High Court

Case No : Second Appeal No's. 594 and 507 of 1919

Bhimabai Padappa Desai

APPELLANT

Vs

Swamirao Shriniwas Parwati

RESPONDENT

Date of Decision : 17-08-1920

Acts Referred:

Limitation Act, 1908 — Article 131

Citation : AIR 1921 Bom 175 : (1921) 23 BOMLR 100

Hon'ble Judges : Norman Macleod, J; Fawcett, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Norman Macleod, Kt., C.J.—The plaintiff sued to recover from the defendant as inferior holder the assessment and local fund case for 1912-13 of certain lands in five villages. The trial Court held that the plaintiff was not entitled to recover as Inamdar, but allowed the claim for Judi and local fund case for the lands in suit to the extent of Rs. 140-10-9 u/s 69 of the Indian Contract Act. The lower appellate Court dismissed the suit altogether. The learned Judge held that the plaintiff was barred from recovering the assessment for the suit lands by the principle of res judicata, because certain suits had been filed by the defendant to recover possession of the land and mesne profits from the tenants and the plaintiff's husband was a party to those suits. But I do not think that the question, which is now in issue whether plaintiff is entitled to levy assessment against the defendant, was in issue in these suits though Padappa was a party. The learned appellate Judge does not seem to have considered the question whether the defendant had acquired a right to the suit lands by adverse possession. But it is admitted that these lands were purchased by the defendant in execution of a decree obtained against Kalava, the then Inamdar, in 1874. Therefore he purchased all the Inamdar's rights including the right to levy assessment on the suit lands. No doubt it was held in the litigation regarding other lands belonging to the Inamdars that the defendant had not purchased anything beyond the

rights of Kalava, and that on her death Padappa was entitled to succeed. But as a consequence of succeeding in that suit Padappa took no steps either to levy assessment or to recover possession of the suit lands. It cannot be disputed that the present respondent has been in possession of the suit lands for more than twelve years adversely against the plaintiff. It was suggested that the right to levy assessment was a recurring right and the period of limitation should be as prescribed by Article 131 according to which time begins to run when there has been a demand and refusal. That may very well be if the relationship of landlord and tenant or superior holder and occupant has ever existed. Once that relationship is established, then the mere non-payment of rent or assessment would not be sufficient to enable the tenant or occupant to begin to set up a title by adverse possession. There must be some overt act such as a refusal to pay the rent or assessment before time begins to run. But here there was no relationship, as regards the suit land between the Inamdar and the respondent. By the purchase at the sale at which the Inamdar's rights were put up for sale he was not recognized as in any way liable to pay assessment. Therefore it cannot be said that there was any recurring right in the appellant, who now occupies the position of Inamdar, to recover the assessment. The decision, therefore, in Ganesh Vinayak Joshi Vs. Sitabai Narayan Joshi, can be distinguished. In my opinion, therefore, the respondent has clearly established a right to hold this land against the Inamdar free of assessment by adverse possession.

2. As regards the claim of the plaintiff, which was allowed by the trial Court, to recover Judi and local fund cess, I agree with the learned appellate Judge that it should be disallowed. The Judi is payable in the lump sum by the Inamdar to Government, and if the Inamdar is so remiss as to lose his right of getting the assessment from the occupancy tenants, it Cannot be said that the obligation to pay Judi for those lands for which the payment of assessment was lost, falls upon the persons in occupation of them. Section 69 only applies when a person is interested in the payment of money which any; other is bound by law to pay, and therefore, if ho pays it, he is entitled to be re-imbursed by the other. Here it has not been proved that the defendant is bound by law to pay the Judi. Therefore if the plaintiff pays it, it must be considered it has been paid in his own interest and he certainly cannot be entitled to recover it from the defendant u/s 69.

3. Therefore the decision of the learned appellate Judge must be confirmed and the appeals dismissed with costs.

Fawcett, J.

4. I concur. Reliance was placed for the appellant on the view taken in some reported cases that under Article 131, in order that a recurring right of the kind specified in that Article should be time-barred, it is necessary for the defendant to show that there has been a definite demand and refusal. In my opinion, that view should be limited to cases where the circumstances are such that mere non-

compliance with the right does not of itself amount to a refusal. I would point out that under Article 131, 3rd column, limitation does not run from the time when the enjoyment of the right is first demanded and refused, but when the plaintiff is first refused the enjoyment of the right. If we compare this Article with Articles 88, 89 and 103 where the words used are "demanded and refused", it will be seen that it is rather reading into the Article words, which are deliberately omitted from it, to say that under Article 131 there must be shown a definite demand, to which there was a refusal. In the present case the circumstances, in my opinion, are such that the non-payment of any rent or assessment by the defendant to the plaintiff necessarily constitute a refusal within the meaning of this Article. The defendant had acquired the right, title and interest of the Inamdar at the Court auction. There had been a lengthy litigation between the parties and the defendant was admittedly in adverse possession of the lands for a period which absolutely barred the plaintiffs right to recover them, although the plaintiff was successful in the litigation which went to the Privy Council.

5. I think, therefore, that even supposing the case does fall Under Article 131, the plaintiff was first refused the enjoyment of the right over twelve years before the institution of the present suit, and that his claim to levy any assessment is clearly barred.

6. On other points I agree with the learned Chief Justice.