
(1922) 07 BOM CK 0007
In the Bombay High Court
Case No : Second Appeal No. 500 of 1920

Damodar Mahadev Bhonde	Vs	APPELLANT
Kashinath Sadashiv		RESPONDENT

Date of Decision : 10-07-1922

Acts Referred:

Bombay Revenue Jurisdiction Act, 1876 — Section 4(b)

Citation : AIR 1923 Bom 79 : (1922) 24 BOMLR 1040 : 76 Ind. Cas. 897

Hon'ble Judges : Pratt, J;Lallubhai Shah, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Shah, Acting C.J.

1. I agree. As regards the nature of the suit, it is based upon the special right which the plaintiffs claim in virtue of the Miraspatras and it is not merely as ordinary holders that they question the right of the Inamdar or of the Collector to fix the amount of assessment and fine leviable in consequence of any particular holding having been used for non-agricultural purposes. Their claim against the defendants is based on the ground that they are in no sense bound to use the lands only for agricultural purposes, and that they have got a right to use the land for any purpose they like, subject to the payment of assessment less Rs. 50 under the terms of the Miraspatras.

2. Such a suit is not barred by Section 4(b) of the Bombay Revenue Jurisdiction Act. As pointed out in Lakshman v. Govind I.L.R.(1903) 28 Bom. 74; 5 Bom. L.R. 694 if, without questioning the legality or propriety of the amount or incidence per se, he asserts a right independent of and having no relation to it, such as a right to pay a certain fixed amount annually under a contract between him and the Inamdar, he cannot be said to object to the amount or incidence of the assessment" within the meaning of that clause, and it is further pointed out that "an objection to come within either of the two heads of Clause (b) of Section 4

must be an objection which reaches them directly, i.e., an objection to them per se which admits the liability to pay land revenue on the part of the objector but quarrels with its amount or incidence or the validity and "effect of the notification of survey settlement as by themselves objectionable, not because some other right affects them or makes them inapplicable to his particular case." The present suit is really directed against the Inamdars, and the Government have no interest whatever in the suit. The appellants before us have caused unnecessary confusion by attempting to show that the rules framed in 1907 as regards alienated villages for the levy of increased assessment and fines for using agricultural holdings for building purposes were ultra vires. I do not think that any question as to their validity arises. They provide a method and means for the determination and realisation of the amount of extra dues for the benefit of the Inamdars: and they do not touch the special rights of any particular holders against the Inamdars. The question whether any holder is free from the liability to pay such extra dues to the Inamdar is a matter which is outside the scope of the rules and outside the prohibition of the Bombay Revenue Jurisdiction Act.

3. The second point relates to the interpretation of Section 217 of the Land Revenue Code. It is urged by the learned Government Pleader that whatever the terms of the Miraspatras may be, the plaintiffs are in the position of holders and as such subject to the same rights and obligations as occupants in an unalienated village in virtue of the provisions of that section. But that section in my opinion invites the application of the provisions applicable to the occupants in an unalienated village to the holders in an alienated village "so far as may be". I think that the special right which a holder claims in virtue of any grant or contract between him and the Inamdar, is not in the slightest degree affected by Section 217 or the provisions of Sections 65 and 66 which are rendered applicable to the holders in an alienated village. On that point also it seems to me that the observations in *Lakshman v. Govind* ILR (1903) 28 Bom. 74; 5 Bom. L.R. 694 are applicable. In dealing with the argument in that case with reference to Sections 52 and 217 of the Land Revenue Code Mr. Justice Chandavarkar observes as follows :-

The effect of the first is to give the Collector the discretion to fix the assessment; the effect of the second is to render the occupants in alienated villages subject to a settlement like the occupants in unalienated villages. But neither section takes away any legal right which an occupancy tenant may have acquired independently of his status as an occupancy tenant liable to pay the land revenue according to survey rates.

4. Those observations are a complete answer to the arguments which have been advanced by the Government Pleader. I am quite satisfied, therefore, that if on the construction of the Miras Patras the right of the plaintiffs is established, they are entitled to a decree against the Inamdar.

5. As regards the construction of the Miraspatras I agree with what has been said by my learned brother in the judgment just delivered. The earlier Miras Patra

(Exhibit 33) is not so clear in its terms as the later one (Exhibit 34). But on the whole I think that the nature of the grant under Exhibit 33 is the same as that under Exhibit 34 which clearly conveys all the interest in the land which the Inamdar had at the time : and in the present case it is common ground that the Inamdar had a full right to the soil, the Inam not being confined merely to the royal share of the revenue.

6. As regards the argument urged by Diwan Bahadur Rao that the present suit is confined to the fines and not to the increased assessment levied in consequence of certain lands having been used for building purposes, I am not satisfied that the word "fine" used in the plaint is indicative strictly of the "fine" as distinguished from the "increased assessment." But, whatever the exact scope of the prayer may be, it is quite clear that both the increased assessment and the fines levied in consequence of the lands having been used for building purposes must stand on the same footing, and the plaintiffs' right, based as it is upon the ground that they do not hold the lands only for agricultural purposes, must apply to the fines as well as increased assessment for using an agricultural holding for building purposes.