

(1916) 09 BOM CK 0018
In the Bombay High Court
Case No : Second Appeal No. 478 of 1915

Ganesh Vinayak Joshi

APPELLANT

Vs

Sitabai Narayan Joshi

RESPONDENT

Date of Decision : 11-09-1916

Acts Referred:

Limitation Act, 1963 — Article 131

Citation : AIR 1916 Bom 143 : (1916) 18 BOMLR 950

Hon'ble Judges : Heaton, J; Beaman, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Beaman, J.—This case has occasioned us much difficulty, partly because the pleadings in themselves are very far from precise, partly because on a first view the issues seem to throw the onus upon the wrong party and partly because both the learned Judges, who have dealt with the case, being versed in matters of this kind, particularly Mr. Saldanha who has exceptional knowledge and experience of Inam and Khoti cases have apparently felt no doubt or difficulty whatever, in deciding in favour of the plaintiff. It is true that the trial Judge, in order to elucidate the pleadings, felt obliged to examine both the plaintiff and the defendant, and we understand the process of his reasoning upon that additional material to have been something of this kind. The plaintiff is admittedly one of two Inamdars of the village in which the land is situated. The land in suit is admittedly land upon which the Government Judi has been calculated, and it appears to be virtually an admitted principle, or if not admitted, then well established by legal decision, that all lands in such villages not being in the actual possession of Inamdars themselves and falling under the calculation of Government Judi are liable in turn to pay customary rent, assuming that there has been no survey and assessment or contractual rent agreed upon, to the Inamdars who are directly liable to Government for the Judi. Having arrived at that position, the learned trial Judge, perhaps rightly, though on this we

express no confident opinion, framed an issue throwing the whole burden of proof upon the defendant. He called upon the defendant to show that on the facts admitted the land in suit was exempt from the payment of customary, rent to the plaintiff, Now the defendant being thus put to his, defence and aware of the form of the issue, it became specially incumbent upon him, if he really relied upon any such plea, to give the Court ample information. He, however, never more appeared to conduct his defence. The result is that the record is confined to the statements of the plaintiff and defendant taken before the issue was framed. Yet neither the learned trial Judge nor the learned Judge of first appeal appear to have entertained the very least doubt but that upon the facts so disclosed this land was liable to the plaintiff as one of two Inamdars, who had paid the Judi to Government for hall the customary rent, and in the circumstances we have stated, particularly in the absence of all evidence led by the defendant we do not feel we are in a position to disturb findings so confidently reached.

2. The only point upon which we have felt some doubt at a later stage of the case was whether, on the plaintiff's admission that no dhara or assessment or customary rent, whichever term be preferred, had been levied for the last thirty-five years, the present suit was within time. Here, again, the learned Judge of first appeal seems to have felt no doubt and the reason is, we think, that this must be treated as a recurring right falling within the contemplation and language of Article 131. In order that such a recurring right should be time-barred, it is necessary for the defendant to show, as we held in a recent case, that there has been a definite demand and refusal. Mere omission on the part of the person having such right to exercise it will not start a period of adverse possession under Article 131. It is exactly on all fours with an ordinary suit for rent where the landlord has for many years made no demand. In all such cases, unless there has been an express repudiation of the landlord's title and an open declaration that the lessee holds adversely in interest to his original lessor, I am not aware that a suit for rent has ever been held time-barred, merely because rent has not been paid over a long period.

3. That being our view upon the special point of limitation, we think that the suit is within time, and we must now hold that the appeal fails and must be dismissed with all costs.

Heaton, J.

4. I agree to the order proposed and entirely concur with the views expressed by my learned colleague generally and especially on the point of limitation. I think it probable that had I been the Judge of first instance, I should have framed the issues which the defendant asked for. But I confess I do not feel that I can say with confidence that the Judge was indubitably wrong in refusing to frame them, and whatever may be the error in the decision arrived at, if there is an error, it is undoubtedly due to the negligence of the defendant in declining to produce whatever evidence he had and to put his case fully before the Court.