

(1939) 06 BOM CK 0002

In the Bombay High Court

Case No : Second Appeal No. 545 of 1937

Narhar Sonajee Jahagirdar

APPELLANT

Vs

Trimbak Shridhar Jahagirdar

RESPONDENT

Date of Decision : 28-06-1939

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 102

Citation : AIR 1940 Bom 12 : (1939) 41 BOMLR 1174

Hon'ble Judges : Lokur, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Lokur, J.—The appellant is one of the co-sharers of the inam village of Shindi Digar, his share being annas 3 and 9 3/7 pies. The respondent and one Gopal Shankar are the managing inamdars of the village. The inam-dars of the village are said to be alienees of land revenue. The plaintiff is said to be a co-sharer who is recognized in the khatavani as holding a share of annas 3 and 9 3/7 pies. The village land revenue is recovered by the village officers and then distributed among the different sharers according to the shares as entered! in the village khatavani. The respondent holds certain lands for which he has to pay Rs. 16-13-3 as land revenue every; year. He did not pay the assessment for the year 1928-29, and the plaintiff filed this suit to recover his share in that amount together with interest thereon by way of damages. Both the lower Courts upheld the respondent's contention that the plaintiff was not entitled to file a suit directly against a khatedar tenant to recover his share in the land revenue, and he has presented this second appeal. A preliminary objection is raised that as the claim is such as can be taken cognizance of by a Small Cause Court and is less than five hundred rupees, no second appeal is maintainable u/s 102 of the Civil Procedure Code. But it was held in Madhavrao Moreshvar v. Rama Kalu ILR (1914) 39 Bom. 131 that sums payable by a khatedar to an inamdar as superior holder are " dues ", and a suit to recover such dues is not cognizable by a Court

of Small Causes, and a decree passed in such suit is subject to a second appeal. I, therefore, hold that this second appeal lies; but on merits, the appeal must fail.

2. Admittedly the appellant's name is not registered as a sharer in Village Form No. 3. It is true that the appellant's name is entered in the hkatavani as a sharer. But as stated in Section 176 of Joglekar's Alienation Manual (p. 144), the object of the entry of the names of co-sharers in the village khatavmi is to enable the village officers to distribute the land revenue among them. Section 171 of that Manual (p. 142) shows that it is only the registered managing inamdar who " has the sole right to manage the village, i.e., to recover revenue etc." Were it not so, every co-sharer, who is not registered in the Village Form No. 3 as such, might file a suit to recover his own share individually from the different khatedars in the village. It is to avoid a confusion which necessarily would arise from this that managing inamdars are appointed, and village officers recover the land revenue from the khatedars on behalf of all the inamdars. It is for them to distribute the land revenue thus recovered among the recognized co-sharers. If any of the village khatedars fail to pay the land revenue into the hands of the village officers, then it is for the managing inamdars to seek assistance from the Mamlatdars under Sections 86 and 87 of the Bombay Land Revenue Code, 1879, or to file a suit against them in a civil Court. But other co-sharers who are not recognized as managing inamdars cannot file a suit or seek assistance against the khatedars directly. Their remedy is to sue the managing inamdars for an account and to recover their share in the land revenue which may have been recovered or which may have been negligently omitted to be recovered by the managing inamdars. It is urged in this case that the khatedar being himself a managing inamdar, he cannot file a suit against himself. But there is another managing inamdar in this case who could have filed a suit against the respondent. But, even if there be only one managing inamdar, he is liable to account to his co-sharers not only for the land revenue recovered by him through the village officers, but also by way of damages for whatever he has failed to recover owing to negligence or laches or through his own default. The present suit is filed against the respondent in his capacity as a khatedar and not as a managing inamdar. Such a suit is rightly held to be not maintainable.

3. I, therefore, dismiss the appeal with costs.