

(1917) 07 BOM CK 0006
In the Bombay High Court
Case No : First Appeal No. 78 of 1916

Shankerbhai Kashibhai

APPELLANT

Vs

Raisingji Jasvatsingji

RESPONDENT

Date of Decision : 13-07-1917

Acts Referred:

Gujarat Taluqdars Act, 1888 — Section 28, 29B

Citation : AIR 1917 Bom 235 : (1917) 19 BOMLR 855 : 42 Ind. Cas. 908

Hon'ble Judges : Beaman, J; Basil Scott, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Basil Scott, Kt., C.J.—The plaintiff is a mortgagee of certain Wanta land mortgaged to him in 1893 by the mother of a Talukdar who was appointed guardian of his property in the year 1881 under the Bombay Guardians and Wards Act, then in force, of 1864. The mortgage was usufructuary and it is not disputed that the plaintiff has been in possession up to the present time. The Talukdar's estate was taken under the management of the Talukdari Settlement Officer in the year 1896 under the provisions of Section 28 of the Gujarat Taluqdars' Act, VI of 1888. In 1905, after that Act had been amended by Bombay Act II of 1905 by the addition of Section 29B, the Talukdari Settlement Officer in accordance with the provisions of that section issued a notice calling upon all persons having claims against the Talukdar or his property to submit the same in writing within six months from the date of the publication of the notice. The six months expired on the 23rd June 1906 without any notice being given by the plaintiff to the Talukdari Settlement Officer and in 1914, the Talukdari Settlement Officer addressed a notice to the plaintiff u/s 202 of the Bombay Land Revenue Code (Bombay Act V of 1879) and Section 33 of the Gujarat Taluqdars' Act, informing him that the land had been in his possession under a mortgage deed for Rs. 1,200; that a notice had been issued u/s 29 of the Act on the 21st December 1905; that the plaintiff's claim was not submitted within six months;

and therefore, that the debt was satisfied u/s 29B(3); therefore the plaintiff's possession of the land was unlawful. He was therefore, ordered to give up possession within a month of the receipt of the notice.

2. In consequence of that notice the plaintiff filed the present suit praying for a declaration that he was entitled to retain possession of the land in suit as against the Talukdar and the Talukdari Settlement Officer and for a permanent injunction restraining: them from disturbing his possession. He contended that it was not necessary u/s 29B to notify his claim as it did not relate to Talukdari estate and if it were assumed that the mortgage was created by the Talukdar's guardian without the authority of the Court and was therefore invalid, the plaintiff had been in adverse possession for over twelve years.

3. The points which have been argued are, first, whether the claims against a Talukdar or his property in Section 29B are confined to claims against a Talukdari estate; secondly, whether the plaintiff can in any view of the facts be held to have had adverse possession for more than twelve years; and thirdly, whether the Talukdari Settlement Officer is entitled to evict the plaintiff under the provisions of Section 33 of the Gujarat Talukdars' Act, when read with Section 202 of the Bombay Land Revenue Code.

4. With regard to the first point, we are of opinion that there is no ground for limiting the words "claims against the Talukdar or his property " to " claims against any Talukdari estate." The group of sections of which Section 29B forms the first is headed " Ascertainment and Liquidation of Liabilities of Talukdars whose estates are taken under management," and the section provides that " where any Talukdari estate (i. e. according to the decisions of this Court any estate held on Talukdari tenure) has been taken under management, notice may be issued calling upon all persons having claims against such Talukdar or his property, to submit the same in writing within six months from the date of the publication of the notice." The object is clearly in order to ascertain what the liabilities of the individual Talukdar whose estate has been taken under management are and those liabilities cannot be ascertained unless the liabilities of the Talukdar personally and of such property as is not held on Talukdari tenure are known to the Managing Officer. That is why it is provided that notice should be given. It is to be notice of claims against Talukdar or his property. " His property " may be a far wider expression than "the Talukdari estate," having regard to the manner in which the latter expression has been construed in this Court. According to the plain words of the section, therefore, notice must be given regarding claims against any property of the individual whose estate is under management. That being so, the claim must be deemed to have been discharged when the six months from the date of the notice u/s 29B expired, i. e., on the 23rd June 1906 and from that date, unless the plaintiff had acquired some right by adverse possession, he would not be entitled to retain possession of the land against the true owner, his mortgagor or his representative.

5. The argument, however, was advanced that the plaintiff had acquired a title by

adverse possession and for the purpose of the argument., the plaintiff contended that the mortgage was invalid, although no one else had ever so contended. The argument was that the mother who effected the mortgage was-appointed guardian under the Act of 1864 and under that Act a mortgage without the consent of the Court by a guardian was void, not merely voidable and therefore, a mortgage effected by her in 1893 was void and the plaintiff had been in adverse possession claiming as mortgagee ever since, or if not claiming as mortgagee, claiming absolutely. In 1893, however, the Act of 1864 was no longer in force, but had been superseded by the Guardians and Wards Act of 1890, under which certificates granted under previous Acts, thereby repealed, were-to be taken to have been granted under the Act of 1890. Under the Act of 1890 mortgages effected without the sanction of the Court are voidable only and not void according to the provisions of Section 30. Therefore the mortgage to the plaintiff was a valid mortgage until it was avoided by any person entitled so to do. It has never been avoided, although it must? be deemed to have been discharged. Therefore, the plaintiff has no claim by adverse possession.

6. The third point is whether the Talukdari Settlement Officer, or the Collector of Broach who has now taken his place and is deemed to be a Talukdari Settlement Officer, has a right u/s 33 of the Gujarat Talukdars" Act in the events which have happened to evict the plaintiff summarily. His powers u/s 33 can only be applied to any " estate " to which the Act extends and that, we think, having regard to the decisions of this Court, must be taken to be the estate held on Talukdari tenure. It does not extend to all property of any kind of the individual Talukdar. That being so, as the property from which the Officer threatens to evict the plaintiff is Wanta land and not estate held on Talukdari tenure, he has not the powers which he asserts. The plaintiff's claim, however, in my judgment substantially fails. The suit was instituted to establish his right to the property notwithstanding the provisions of Section 29B of the Gujarat Talukdas" Act and the point about the eviction under that Act is quite a minor point, for the plaintiff can be ejected according to law by the defendant No. 1 or such, officer as is in management of his estate.

7. Another point which was taken in connection with Section 29B should perhaps be mentioned. It was that in 1896 an attempt was made to treat the plaintiff as a tenant and his name was entered in the lists of tenants of Talukdar. He, however, then represented that he was a mortgagee in consequence of which rent was no longer demanded from him and his name was erased from the lists of tenants. It can hardly be contended that that was a notice complying with the provisions of Section 29B. At that time Section 29B had not been added to the Statute book and no notice could be called for by the Talukdari Settlement Officer. It was nine years afterwards when a different Talukdari Settlement Officer was installed that Section 29B became law and was acted on in the present case. The plaintiff is not entitled to the injunction in general terms which he seeks and after the judgment in this suit, it is hardly conceivable that the Talukdari Settlement Officer will proceed otherwise than in due course of law. Therefore, a modified

injunction which the plaintiff might strictly be entitled to according to this judgment relating merely to the powers of the Collector or the Talukdari Settlement Officer u/s 33 of the Gujarat Talukdars" Act does not appear to me to be called for. I would dismiss the appeal with costs.

Beaman, J.

8. I concur. I think it unnecessary to add more than this, that on the second point, I should have been disposed perhaps to hold that the possession of the plaintiff had been adverse from 1893, if the mortgage of that year had been proved to be void. But as has been pointed out, it falls under the later Act and is only voidable. This takes the case clean out of the principle established by *Churcher v. Martin* (1889) 42 Ch. D. 312 upon which alone the plaintiff might else have succeeded. As to the third point, I am in some doubt whether the plaintiff might not in strictness be entitled to the limited injunction mentioned by my Lord the Chief Justice, but I agree that it would be unnecessary to grant it, as the revenue authorities, I take it, will abide by the law laid down in the judgment of my Lord the Chief Justice. Upon all other points I am in full concurrence with the judgment just delivered.