
(1926) 01 BOM CK 0007
In the Bombay High Court
Case No : Second Appeal No. 271 of 1925

Shri Bala Maharaj

APPELLANT

Vs

Sakharam Venkatesh Joshi

RESPONDENT

Date of Decision : 05-01-1926

Acts Referred:

Limitation Act, 1963 — Article 131

Citation : (1926) 28 BOMLR 633 : 95 Ind. Cas. 851

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

Norman Macleod, Kt., C.J.—The plaintiff, now appellant before us, filed this suit as Inamdar of Badkundri to recover from the defendants the difference between the revised survey assessment and the Local Fund cess on Survey No. 45 of Badkundri and the assessment actually paid by the defendants for six years from 1916-1921 with interest and costs.

2. The defendants' ancestors had been entered as Khatedars of Survey No. 45 since 1843. Although the assessment at that time was Rs. 16-8-0, it is admitted that from 1813 to the present day the same amount of rent, viz., Rs. 2-12-0, had always been paid, A Government survey of the land took place about 1887 and the rates according to that survey were introduced in 1903, whereby the assessment on the suit land became Rs. 17. The survey rates were again revised in 1917, and the assessment was raised to Rs. 21-14-0. The defendants, not having any grant of the land ensuring them possession on payment of the annual rent of Rs. 2-12-0, would be liable to have their rent raised, at any rate, up to the amount of the assessment at the Survey Settlement.

3. But against the claim of the plaintiff for such assessment, the defendants pleaded that the plaintiff was not entitled to recover anything more than Rs. 2-12-0 which was a customary rent which had been recovered in previous years

by the plaintiff and his ancestors from time immemorial, and that the plaintiff" was not entitled to enhance the rent as sought. The defendants pleaded that they had denied, to plaintiff's knowledge, his right to recover from them anything more than Rs. 2-12-0 in respect of the suit land, and that the plaintiff having failed to get his right to recover higher rent as per survey assessment reognizad within twelve years before suit, the suit was barred.

4. The plaintiff's suit has been dismissed in both the Courts with this exception that the District Judge allowed the plaintiff five annas increase in the annual amount payable by the defendants owing to the increase in the Local Fund Cess,

5. We think that the whole question, whether the plaintiff is entitled to succeed in this suit, depends upon the effect to be given by the Court to the fact that in 1905 the plaintiff's brother Pandit Maharaj, who was the then registered Khatedar Inamdar, filed a suit No. 653 of 1905 in the Ohikodi Court to recover survey assessment from the defendants, who pleaded then that they were entitled to remain in possession of the land on payment of the annual rent of Rs. 2-12-0. The suit was eventually withdrawn with permission to file another suit. The present suit was not filed until September 4, 1922,

6. If the plaintiff's suit is merely a money claim to recover a certain amount of rent from his tenant, then, the amount being under Rs 500, there will be no second appeal to this Oourt. But it is perfectly clear that the plaintiff is seeking to establish his right to recover assessment, whatever that may be, according to the survey rates current for the time being, and the suit then comes within Article 131 of the Indian Limitation Act. Such a suit is barrod after twelve years from the time when the plaintiff was first refused the enjoyment of the right, It is difficult, then, to see how the present suit can be maintainable, considering that the defendants first refused the enjoyment of the right claimed by the plaintiff in their written statement in the suit of 1905. The plaintiff in that suit was really claiming an interest in Immovable property, and if the nature of the suit be considered from that point of view, then Article 114 will also be applicable, as here, the interest claimed, viz., the right to recover rent from a person in possession according to the amount of assessment then leviabale was denied by the defendants and to that extent the possession of the defendants became adverse to that of the plaintiff.

7. In Oopat Rao v. Mahadev Rao I. L R.(1895) 2 Bom. 391 an Inamdar gave his permanent tenant notice to pay enhanced rent or quit the land on a certain date. The tenant denied the liability to paj enhanced rent and, stating that he held the land on payment of Government assessment only, refused to quit. The Inamdar, more than twelve years after the date mentioned in the notice, sued the tenant to recover enhanced rent. It was held that the plaintiff's right to enhance the rent and to recover the land in default of payment of such rent was barred by limitation, the tenant, so far as the right was concerned, having beea holding adversely to him for more than twelve years.

8. Then, in *Oanesh Vinaynh v. Sitabai Narayan* (1916) 18 Bom. L B 950 it was held that the payment of Dhara or assessment or customary rent was a recurring right within Article 131 of the Indian Limitation Act, and such a recurring right could be time-barred, There must be a demand and refusal. A mere omission on the part of a person having such a right to exercise it will not start a period of adverse possession under Article 131. So that, if the Inamdar in this case had continued to receive the Rs. 2-12-0 per annum from his tenants for a particular survey number, and had made no demand for the actual assessment which was in excess of the amount which the tenants had to pay, that fact would not debar him from claiming assessment if he chose to do so. Once he claimed assessment and the right to claim assessment was denied by the tenant, then clearly limitation began to run against the Inamdar. The fact that the fresh survey rate was introduced in 1917 would not create a new right in the Inamdar to recover that particular rate of assessment from the tenant. If the right to levy the assessment was all along from 1843 in favour of the Inamdar, then, as pointed out by Mr. Justice Shah in *Sakharam v. Trimbakrao* (1920) 23 Bom. L R. 314 the only result of the introduction of the Survey Settlement would be to regulate the amount of assessment that was leviable as from the date of the introduction of the Survey Settlement,

9. Therefore, as we are of opinion that the right of the Inamdar to recover the assessment for the time being was denied by the defendants in their written statement filed in 1906 in the suit of 1905, they were holding adversely as far as the right claimed by the plaintiff Inamdar was concerned, and when the suit to establish that right was withdrawn with leave, time had already begun to run against the Inamdar, and any fresh suit had to be brought within twelve years.

10. We think, then, that the judgment of the Court below was right, and the appeal must be dismissed with costs. There is no substance in the cross-objections, and they are dismissed with costs.