(1940) 07 BOM CK 0005

In the Bombay High Court

Case No : Second Appeal No. 546 of 1938

Shri Injal Devi APPELLANT

Vs

Bhujya Avaji Ramoshi RESPONDENT

Date of Decision : 05-07-1940

Acts Referred:
Bombay Land Revenue Code, 1879 — Section 83

Citation : AIR 1941 Bom 29 : (1940) 42 BOMLR 1031

Hon'ble Judges : Sen, J;N.J. Wadia, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

N.J. Wadia, J.—This appeal raises a short but very interesting question of law whether a presumption of permanent tenancy u/s 83 of the Bombay Land Revenue Code, 1879, can arise in the case of land belonging to a temple. The few facts which are necessary for the purpose of the appeal are these. The land in suit is dewasthan inam land belonging to the deities Shri Injal Devi and Maruti Dev of Apasinge. The suit was brought by the vahivatdar or manager of the temple for possession of the land. The defendants are the tenants of the land and contended that they had been in possession of it for a very long time. They had at the trial relied on a kaul or grant of permanent tenancy of the year 1845 under which they claimed Mirashi rights. In the alternative they had claimed that they were permanent tenants u/s 83 of the Bombay Land Revenue Code. The trial Judge found that the kaul which was produced to prove the grant of Mirashi rights was not such as could be relied on. He therefore held that the defendants had not proved that they were Mirasdars. That is a finding of fact which is not challenged now. The learned Judge also found that the defendants'' ancestors had been on the land as far back as 1857, that the origin of the tenancy was lost in antiquity, and there was no satisfactory evidence forthcoming with regard to its commencement or the period of its intended duration. He therefore held that a presumption of permanent tenancy u/s 83 of the Bombay Land Revenue Code arose. He held that the plaintiff was entitled to obtain enhancement of rent and he enhanced the rent to twice the assessment. The judgment was confirmed in appeal by the Extra Assistant Judge of Satara. The plaintiff has come in appeal.

2. The only question which has been argued before us is whether a presumption of permanent tenancy u/s 83 of the Bombay Land Revenue Code can arise with regard to land belonging to a temple. The appellant contends that such a presumption cannot be raised, and in support of this contention reliance is placed on the decision of the Privy Council in Daivasikhamani Ponnambala Desikar v. Periyanan Chetti (1936) 38 Bom. L.R. 702, P.C.. That was a case of a permanent lease of land belonging to a temple made by the manager. It was held by their Lordships that a permanent lease or absolute alienation of debutter property is beyond the ordinary powers of management whether in the case of the head of a math, the sebait of a family idol or the dharmakarta (manager) of a temple: such alienation can be justified only by proof of necessity for the preservation of the endowment or institution; and that in the case of the manager of a temple, as in the case of the head of a math, a permanent lease granted or an alienation by sale made by him is not altogether void, but is valid during his tenure of office. The position as regards the powers of a manager of temple property was stated by the Privy Council in AIR 1923 175 (Privy Council) :

In each case they relate to the effect of an attempt on the part of a trustee to dispose of the property by a permanent mukurrari lease. This he has no power to do, though he is at liberty: to dispose of it during the period of his life and a grant made for a longer period is good, but good only to the extent of his own life interest. It follows, therefore, that possession during his life is not adverse, and that upon his death the succeeding trustee would be at liberty to institute proceedings to recover the estate, and the statute would only run against him as from the time when he assumed the office.

3. Mr. Dalvi for the appellant asks us to apply the principle laid down by the Privy Council to the present case and hold that the tenancy of the respondents must be presumed to be a new tenancy commencing with the period of management of each succeeding manager, and that being so, no question of the origin of the respondents'' tenancy being lost in antiquity can possibly arise, and the tenancy must be presumed to have commenced with the commencement of the management of the present manager. But the principle laid down by the Privy Council in the cases to which reference has been made applies where an original grant by some manager has been proved, and in such a case the principle laid down is that there is presumed to be a fresh grant made by each succeeding manager. But where no original grant is proved, as in the case before us, it seems to us that no presumption of a fresh grant by each succeeding manager can arise. It has been found as a fact that the origin of the respondents'' tenancy is lost in antiquity, and it is possible that the tenancy began before the land was granted as dewasthan inam to the temple. It is perfectly possible that the land was not temple land when the respondents'' tenancy began and there is no

reason why the presumption u/s 83 of the Bombay Land Revenue Code should not apply. That Section makes no distinction between land belonging to a temple or a deity and land belonging to private owners. In our opinion the view taken by the learned Judges in the Courts below is correct. On the facts proved the presumption of permanent tenancy u/s 83 of the Bombay Land Revenue Code clearly arises.

4. The appeal must be dismissed with costs.