

(1921) 01 BOM CK 0007
In the Bombay High Court
Case No : Second Appeal No. 340 of 1917

Sidhanath Martand Nadgir

APPELLANT

Vs

Chiko Bhagwantrao Nadgir

RESPONDENT

Date of Decision : 21-01-1921

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 83

Citation : AIR 1921 Bom 454 : (1921) 23 BOMLR 533

Hon'ble Judges : Norman Macleod, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Norman Macleod, Kt., C.J.—On the issue remanded both the lower Courts have held that the defendants are permanent tenants. Both the Courts have found as a fact that the tenancy commenced in 1805. That cannot be disputed on the defendants' own admissions. Both Courts seem to have thought that that was not enough for the plaintiff to prove in order to prevent a presumption u/s 83 of the Bombay Land Revenue Code arising, They seem to have, thought that although the plaintiff proved the actual commencement of the tenancy, he must also prove what the terms of the tenancy were. Paragraph 2 of Section 83 says nothing whatever about the terms of the tenancy. As I have pointed out in previous cases, it is the tenant, who alleges that he is a permanent tenant, who in the first instance has to prove that, and if he has got no document which gives him a right on the land as a permanent tenant, the presumption is that he is an annual tenant. But if he can show that he has been on the land so long that the commencement of his tenancy cannot be ascertained, then the presumption under para 2 of Section 83 arises, and it was held in Ramchandra v. Anant I.L.R (1894) Bom. 433 that even although it was proved that the origin of the tenancy was of a later date than the lessor's tenure, still the presumption would arise, provided, as I take it, that the actual date of the origin was not known. It seems that the learned appellate Judge has relied upon what appears to be said by Mr.

Justice Candy at page 437 of the report:

The question is, when we are satisfied that the tenancy commenced subsequently to the tenure of the landlord, can it be said that there is no satisfactory evidence of the commencement of the tenancy? In my opinion it can. If the Legislature had intended to say, "where by reason of the antiquity of a tenancy there is no satisfactory evidence that it commenced subsequent to the landlord's tenure, " it would have used plain words to that effect. The words simply mean, there is nothing to show satisfactorily the origin of the tenancy, i. e., the terms under which the tenant commenced to hold.

2. With all due respect I cannot read into the words "origin of the tenancy," or substitute for those words, the words, "the terms under which the tenant commenced to hold." I do not think it was necessary to do that for the purposes of that judgment. Paragraph 2 of Section 83 has only to do with the point of time at which the tenancy commences. There is not a word in that section with regard to the actual terms of the tenancy. The paragraph has only to do with duration. When the presumption arises, then the Court must hold that the tenancy is coextensive with the duration of the lessor's tenure. That means that the tenant cannot be turned out as long as the landlord's tenure continues. But there is no presumption as to what the terms of the tenancy are, that is to say, with regard to rent and other matters. It is very unfortunate that this question should have arisen again. The section appears to me perfectly plain. In my opinion once it is proved in a case that the tenancy has commenced in a particular year, then the tenant cannot take advantage of the presumption u/s 83.

3. The appeal, therefore, must succeed and the plaintiff-appellant will be entitled to the declaration he has asked for that the defendants are annual tenants.

4. Costs in proportion throughout.