

(1925) 02 BOM CK 0021
In the Bombay High Court
Case No : First Appeal No. 46 of 1923

Suryajirao Ganpatrao Jahagirdar

APPELLANT

Vs

Sidhanath Dhonddeo Garud

RESPONDENT

Date of Decision : 12-02-1925

Acts Referred:

Citation : AIR 1925 Bom 435 : (1925) 27 BOMLR 645

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

Norman Macleod, Kt., C.J.—The plaintiffs sued to obtain a declaration that the defendant was not entitled to claim more than Rs. 87-9-11 per year fixed by the original agreement, and to recover from the defendant Rs. 2,649-12-4 wrongfully recovered by the defendant with interest thereon and further interest till realisation, and for a permanent injunction to the defendant restraining him from demanding more than Rs. 87-9-11 per year.

2. The plaintiffs' title depended upon two documents, Exhibits 74 and 75. Those documents, we think, gave the plaintiff's predecessors-in-title the right to hold the land mentioned therein as permanent tenants on payment of the rents fixed by those documents. In 1911 and 1912 the defendant's property was being managed by the Court of Wards, and a notice of demand was served upon the plaintiffs by the Collector on behalf of the Court of Wards claiming a higher rent or assessment to be levied on the plaintiffs' land. An objection was raised in 1914 by the receiver of the plaintiffs' property claiming that the Court of Wards had no right to make such a demand, and threatening that a suit would be filed for a declaration restraining the Collector from making such a demand. Nothing further occurred until 1916. A notice was then issued by the Collector u/s 153 of the Land Revenue Code claiming the sums of Rs. 2,649 and Rs. 92-4-0 being the land revenue and local fund cess on plaintiffs' survey numbers from the years 1911 to 1915 and giving notice that if the arrears were not paid the Collector

proposed to declare the holding to be forfeited. The plaintiffs paid under protest and filed this suit on November 20, 1919.

3. The first issue raised was whether Government was a necessary party to the suit. We think that the Judge below was right in holding that this property was at the time of the notice under the superintendence of the Court of Wards, that the claim was not made by Government but by the Collector acting on behalf of the defendant's estate, that the Government was not concerned with the recovery of the demand from the plaintiffs, and that therefore Government was not a necessary party to this suit.

4. The findings on the 2nd and 3rd issues would follow that finding.

5. The next question is one of limitation. We think that the Judge was right in holding that time began to run from the date of the payment made by the plaintiffs under protest. It was contended that time began to run when the demand was first made. But although the fact that the demand for increased payment MO made might have given rise to a cause of action to enable the plaintiffs to seek for a declaration that that particular demand was unauthorised, it would not affect their right to file the present suit in which the relief claimed was on a different cause of action arising from the payment under protest made by them on the demand u/s 153, Land Revenue Code.

6. The only question left then is whether the plaintiffs were permanent lessees of the defendant, and whether the rent was liable to be enhanced on the defendant's demand. We think it is beyond doubt that the letters Exhibits 74 and 75 created permanent tenancies in favour of the plaintiffs' predecessors-in-title, Act that time the village was unsurveyed and the effect of those documents was to create a permanent tenancy in favour of the plaintiffs' predecessors-in-title at the fixed rents mentioned therein. The defendant expressly agreed that no further demand would be made against the tenant beyond the amounts so fixed. It was contended that Section 217 of the Land Revenue Code after the survey had been introduced into this village would affect the rights of the permanent tenants to avoid any enhancement of their rent. It is difficult to see how the provisions of Section 217 can affect contractual rights arising before the introduction of the survey. It states :-

When a survey settlement has been introduced, under the provisions of the last section or of any law for the time being in force, into an alienated village, the holders of all lands in which such settlement extends shall have the same rights and be affected by the same responsibilities in respect of the lands in their occupation as holders of lands in alienated villages have, or are affected by, under the provisions of this Act, and till the provisions of this Act relating to holders of land in unalienated villages shall be applicable, so far as may be, to them.

7. Now with regard to an unalienated village it would be competent to Government to enter into contractual relationship with tenants or occupants.

They might acquire fixity of tenure and fixity of rent. In this case as the village had been alienated, the alienee had entered into a contract with the plaintiffs' predecessors in-title granting not only fixity of tenure but also fixity of rent, and there is nothing in the provisions of Section 217 which would enable the alienees of the village to avoid their contractual liability, so that they could enforce against their permanent tenants the payment of the assessment levied on occupancy land. We think then the plaintiffs had acquired rights as permanent tenants against the inamdars which were not affected by the introduction of the survey into this village, and that they were entitled to the decree given to them by the trial Court. The appeal then will be dismissed with costs.