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remained suspended until the Insolvency Court gave its sanction for execution. But the execution itself is a proceeding of the High Court with which the Insolvency Court has absolutely no connection. The Insolvency Court itself has no power of execution at all. It can only enter up judgments under section 86 of its Act, and those judgments are not executory without its sanction. But once they are executory, the execution is carried out by the High Court in its ordinary and not in any way in its insolvency jurisdiction. I do not think, therefore, this case comes within section 638.

In conclusion I am of opinion that this execution must be carried out according to the rules laid down in chapter xix of the present Civil Procedure Code (Act XIV of 1882).

Attorneys for the Official Assignee.—Messrs. *Smith and Frere.*

APPELLATE CIVIL.

Before Mr. Justice Kemball and Mr. Justice Birdwood.

BHIKAIJI RA'MCHANDRA OKE (ORIGINAL PLAINTIFF), APPELLANT, *v* NIJA'MALI KHA'N (ORIGINAL DEFENDANT), RESPONDENT.* *May 5.*

Khoti Settlement (Bom.) Act I of 1880—Land Revenue Code (Bom.) Act V of 1879, Sec. 162—Khot's right to profits for one year when khoti village under Government attachment—Right to levy same from khoti co-sharer—Limitation.

The position of a *khot,* in the villages to which the Bombay Khoti Act I of 1880 has been extended, is that of a superior holder, and in the event of attachment of his village his rights in respect of *khoti* profits, on his resuming the management of the village, would be regulated by section 162 (1) of the Revenue Code,

*Second Appeal, No. 610 of 1883.

(1) Section 162—The village or share of a village so attached shall be released from attachment, and the management thereof shall be restored to the superior holder on the said superior holder's making an application to the Collector for that purpose at any time within twelve years from 1st of August next after the attachment.

* * * The Collector shall make over to the superior holder the surplus receipts, if any, which have accrued in the year in which his application for restoration of the village, or share of a village, is made, after defraying all arrears and costs; but such surplus receipts, if any, of previous years shall be at the disposal of Government.

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Bombay Act V of 1879. But this rule does not hold good where the village attached is one in the Kolába District to which the Khoti Settlement Act (I of 1880) has not been extended, unless the *khots* therein are *sanadi* or *vatandár khots*,

Where plaintiff sued the defendant, his *khoti* co-sharer, to recover from him the *khoti* profits for the year during which the village was under Government attachment, and it was found that the Khoti Act I of 1880 was not extended to the village and that the plaintiff was not a *sanadi* or *vatandár khot*,

Held that the plaintiff was not entitled to recover the profits from the defendant, nor could he do so from Government under the Revenue Code even if it had collected them for the year of attachment. The Government could not be said to have been trustee for the *khots* of the village.

Tajubái v. *The Sub-Collector* of *Kolába* (1). followed.

THIS was a second appeal from the decision of Khán Báhádur M. N. Nánávati, First Class Subordinate Judge with appellate powers at Thána.

The plaintiff Bhikáji brought this suit in 1879 against the defendant to recover from the latter the value of his five-annas four-pie share in respect of the *khoti* profits for the year 1875-76 during which the village of Vamani, in the Kolába District, of which the plaintiff and defendant were *khoti* co-sharers, lay under Government attachment.

The plaintiff alleged that the defendant held some lands in the village in his private occupation; that, no *khot* having passed a *kabuláyat* for the year the village continued under attachment, the defendant ought to have paid the profits for that year to the *taláti*, and that, as he did not do so, the cause of action accrued to the plaintiff as against the defendant on 31st July, 1876, when the attachment upon the village was removed.

The defendant *(inter alia)* contended that the plaintiff was not entitled to sue him; that for more than twelve years the practice had been not to levy any profits from a sharer *khot*, but to deduct them from what is payable to him for his share; and that he did not levy the profits for the year in dispute.

The Subordinate Judge of Mahád, before whom the suit came originally, awarded the plaintiff's claim.

The defendant appealed to the Subordinate Judge with appellate powers at Thána, who reversed the decree of the lower Court.

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The plaintiff appealed from this decision to the High Court.

Máhádev Chimnáji Apte for the appellant.

There was no appearance for the respondent.

BIRDWOOD, J.—The appellant sued, as mortgagee of one-third of the *khoti* village of Vamani, to recover his share of the *khoti fayada* due by the defendant (who is one of the *khoti* co-sharers) in respect of certain lands in his private occupation during the year 1875-76, when the village was under Government attachment. It is contended for the appellant that, during the period of attachment, the defendant was liable to be assessed for *khoti* profits; that though no profits were collected by Government, they still remain payable; and that they are payable to the *khots* generally, on the resumption of their management of the village, because, during the attachment, the Government, if any *khot's* profits had been collected, would have retained them for the eventual benefit of the *khots*, and that, therefore, the appellant, now that the management has been restored, has the right to sue for his share of the profits accruing during the attachment.

In *Rámchandra Narsinha Máhajáu* v. *The Collector of Ratnágiri*[1] it was held that a *khot* is liable to be assessed for *khoti* profits in respect of land in his private occupation during the time that his village is under attachment by Government. Assuming that *khot's* profits were payable by the defendant to Government for the year 1875-76, we are yet of opinion that the plaintiff is not entitled to claim any share of those profits which remained uncollected at the end of the year.

The village of Vamani is in the Kolaba District; and the Khoti Settlement Act (Bom. Act I of 1880) has not been extended to it. In the Ratnágiri District and those villages (if any) in the Kolabá District to which the Act has been extended, the *khot* enjoys the position of a superior holder; and, in the event of the attachment of his village, his rights in respect of *khot's* profits, on his resuming the management of the village, would be regulated by the provisions of section 162 of the Bombay Land Revenue Code of 1879. The Collector would make over to him the surplus profits, if any, which had accrued in the year in which his application for restoration of the village was made

(1) 7 Bom. H.C. Rep., A.C.J., 41.

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after defraying all arrears and costs. The surplus profits, if any, of previous years would be at the disposal of Government. The *khot's* right to the surplus profits of one year at least would be clear if his application were made "at any time within twelve years from the first of August next after the attachment."

But in the case of the plaintiff's village, until the Khoti Settlement Act is extended to it, no right on the part of the *khots* to receive profits for any year while the village is under attachment can apparently be recognized. In the case of *Tajubái* v. *The Sub-Collector of Kolába*(1) the *khot* of half the village of Pegodeh, which is a village in the Kolába District, was held, by the majority of the Judges who decided that case, to be an hereditary farmer of the Government revenues. No doubt, the rights and privileges of *khots* varied much in different villages before Bombay Act I of 1880 became law. Those rights were, in some cases, determined by grant, and sometimes by prescription, and were, indeed, a matter of evidence in each village. In many villages in the Ratnágiri District, the *khots*, especially those known as *vatandár* and *sanadi khots*, admittedly possessed a proprietary interest in the soil. But in the Kolába District, since the decision in *Tajubái's* case, it would not be safe to hold in the case of any particular village, in the absence of evidence that the *khot* is a *sanadi* or *vatandár khot*, that his rights are of a higher order than were found to belong to the *khot* of Pegodeh. In the plaint in the present case there is not even any allegation that the *khot* is a *vatandár* or *sanadi khot*. Having regard to the remarks at page 150 of the report in *Tajubái's* case, we must hold that the Government did not act in any way as trustee for the *khots* of Vamani in the year 1875-76. If Government had collected any *khoti* profits in and for that year, no claim could have been put forward in respect of those profits by the *khots* under the Land Revenue Code; and no other authority is relied on in the present case in support of the appellant's claim, as brought. We think, therefore, that the claim was rightly rejected by the lower Appellate Court. The decree appealed against is confirmed with costs.

Decree confirmed.

(1) 3 Bom. H. C. Rep., A. C. J., 132.