APPELLATE CIVIL.

Before Mr. Justice Nánábhái Haridás and Sir W. Wedderburn, Bart., Justice.

GANGABA'I, WIFE OF SADÁSHIV (ORIGINAL PLAINTIFF), APPELLANT, *v.* KALÁPA DA'RI MUKRYA' (ORIGINAL DEFENDANT No. 1), RESPONDENT.* 1885 *March* 4.

Inám—Resumption—Landlord and tenant—Adverse possession—Assertion of adverse title—Lease—Permanent tenancy.

On the resumption of an *inám* the *inámdár's* right to exemption from the payment of the Government assessment ceases, and the *inámdár* becomes liable to pay such assessment; but all his other rights remain unaffected, and, therefore, those who were his tenants before the resumption do not thereby cease to be so, and can be ejected if they are not permanent tenants, or are not otherwise entitled to remain in possession.

Mere non-payment of rent to the landlord does not render possession by tenants adverse to the landlord.

The assertion of an adverse title by a person claiming a to be owner under a permanent lease does not save limitation, unless made to the knowledge of the landlord.

The words, "you must pay every year Government dues, and enjoy the fields along with the garden lands without disturbance *(sukhrup rdhdne)*, besides the fixed amount there will be no oppression on account of cesses", do not create a permanent tenancy, but only a tenancy from year to year.

THIS was a second appeal from the decision of C. F. H. Shaw, Judge of the district of Dhárwár, reversing the decree of the Subordinate Judge of Chikodi.

The plaintiff Gangábái as heir to her deceased brothers, Krishnáji and Govind, sued to eject the defendants from certain lands in Bedkihal. In 1858 this village, while it was held as *inám* by her father, Rámchandra, was resumed by Government.

The defendants denied the plaintiff's title, and contended that they held under a permanent lease dated 1755, and, having been in undisturbed possession ever since, could not be ousted. They further stated that, in 1858, Dári, an ancestor of theirs, applied to the Collector to have the lands in question entered in his name, claiming to be owner under the lease; that in 1862 Krishnáji (the plaintiff's brother), having applied to have the lands entered in the name of his mortgagee, (Venkápá), Dári resisted, and was left undisturbed in his possession by the Collector; and they con-

* Second Appeal, No. 462 of 1883.

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tended that the present suit, brought more than twelve years subsequently, could not be entertained.

The Subordinate Judge decreed in favour of the plaintiff.

The District Judge held that "as soon as the village became *khálsá*, it is plain the alienee, and those who held under him, ceased to have any rights; the profits or assessment of the village lands became payable to Government. If, therefore, Krishnáji wished to oust the tenant, it was his duty to file a suit within twelve years from 1862, and he did not do so." The Judge, therefore, reversed the decree of the Subordinate Judge.

The defendant Kálápa appealed to the High Court.

Macpherson (with him *Mánekshá Jehángirshá Táleyarkhán*) for the appellant.—There is nothing in the fact of the resumption of an *inám* by Government to alter the nature of the relationship between the plaintiff and the defendants. The only change which takes place is the imposition by Government of the full assessment. The estate in the lands continues—*Vishnu Trimbak* v. *Tátia alias Vásudev Pant*[1]. The grant gives no new title, and preserves the jural rights between the *inámdár* and those who have dealt with him. Non-payment of rent by tenants for more than twelve years creates no adverse title—*Dádobá* v. *Krishna*[2]. We deny that there was any assertion of claim by the defendants, for they continued to pay rent to our mortgagee, Venkápá, which was payment to us. The *kaul* or lease is the basis of the defendants' title, and that is not repudiated. The lease cannot be construed to create permanent tenancy.

K. T. Telang (with him *Y. V. Athlye*) for the respondent.—Without reference to the grounds of the District Judge's judgment I submit that his decree can be supported. The lease being permanent is in the nature of a conveyance, and the plaintiff is not our landlord. In 1858 we asserted our title of owner, and have been in possession adverse to the plaintiff for more than twelve years. We do not hold under the so-called lease, (exhibit No. 10). We say it is a gift at least.

NÁNÁBHÁI HARIDAS, J.—We cannot agree with the District Judge in his opinion that "as soon as the village became *khálsá*

(1) 1 Bom. H. C. Rep., 22, A. C. J. (2) I. L. R., 7 Bom., 34.

* * * * the alienee, and those who held under him, ceased to have any rights." When an *inám* is resumed, the *inámdár's* right to exemption from the payment of the Government assessment ceases. He thereafter becomes liable to pay such assessment; but all his other rights remain unaffected. Those who were his tenants before the resumption do not thereby cease to be such. The relationship of landlord and tenant continues the same as before. If, therefore, the nature of the tenancy in this case be such that the plaintiff, under the circumstances which have occurred, would have been entitled to eject defendants 2 and 3, had no resumption of the *inám* taken place, such her right is in no way affected by the resumption. It is found by the District Judge that "the family of the Mukryás (defendants) have been tenants of the alienee for over a century, and that the *kaul* (exhibit No. 10) is genuine," and that the plaintiff Gangábái represents the alienee or *inámdár* through his mortgagee, Venkápa Náik.

The District Judge finds, however, that "the plaintiff cannot now oust the Mukryás, as they have not been disturbed since 1862, nor is it proved that plaintiff has within twelve years derived any profit from the lands." But if they were tenants before 1862, the presumption is that they have continued in possession as such, and the mere non-payment of rent to the landlord has not rendered their possession adverse so as to bar this suit against them. It is argued, however, that in 1858, after the death of the mortgagee's widow Gajrábái, the defendant's father applied to the Mámlatdár to transfer the *kháta* to his name, alleging he was the owner under a permanent lease, and that, that being an assertion of an adverse title, the suit is now barred by limitation. But we are not referred to anything in the record which shows that that assertion, assuming it to be one of an adverse title, was made to the knowledge of the plaintiff, or of her brother Krishnáji. It appears that Krishnáji had applied to have the *kháta* entered in his name, and that that was done in 1862. We are, therefore, of opinion that this suit is not barred by the law of limitation.

Now comes the question whether the plaintiff is entitled to eject the defendants. This depends upon the nature of their

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tenancy. They rely upon exhibit No. 10, which, though held not proved by the Subordinate Judge, is held proved by the District Judge. That, they say, is the lease under which they have held for more than a century. We have, therefore, to see what the nature of the tenancy created by that document is. The words in it relied upon by Mr. Athlye as creating a permanent tenancy are these:—"You must pay every year Government dues, and enjoy the fields along with the garden lands without disturbance, *(sukhrup ráháne)*, besides the fixed amount there will be no oppression on account of cesses." We are unable to hold that these words create a permanent tenancy. There is nothing said in the document itself, nor is there any extrinsic evidence, as to the circumstances under which, or the consideration for which, the lease was granted, to render it probable that a permanent tenancy was intended to be created. Nor do exhibits 6 and 59, referred to by Mr. Athlye, evidence any such intention. No doubt the tenancy has, in fact, continued for a very long time; but there is nothing to prevent a tenancy from year to year continuing for a century, or even longer, if neither the landlord nor the tenant chooses to put an end to it.

The decree of the District Judge must, therefore, be reversed, and that of the Subordinate Judge restored, with costs in both appeals on the present respondent.

Decree reversed.

APPELLATE CIVIL.

1885. *March* 19.

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Birdwood.

SHANKAR BHARATI SVA'MI (ORIGINAL DEFENDANT), APPELLANT, *v.* VENKA'PA NA'IK (ORIGINAL PLAINTIFF), RESPONDENT.*

Math—Liability of savasthán of math for money borrowed by the svámi.

The *svámi* of a *math* presumably has no private property, and must be assumed to be pledging the credit of the *math* when he borrows money for the purposes of the *math*.

Proper purposes are to be determined by the usage and custom of the *math*.

* Appeal No. 30 of 1883.