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that this particular caste is not mentioned in Borradaile's Caste Customs when alluding to other Kunbi castes of Gujarát in connection with such a custom. We must, therefore, reverse the decree of the Court below, and dismiss the plaintiff's suit, with costs throughout on the plaintiff.

Decree reversed.

APPELLATE CIVIL.

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

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APPA KÁLGA NA'IK AND OTHERS, (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* MALLU BIN MOWNA AND OTHERS, (ORIGINAL DEFENDANTS), RESPONDENTS.*

Practice—Judgment omitting mention of important documents—Presumable omission to consider important portions of the evidence—Finding based on statements not on evidence—Reversal and reconsideration.

The lower Court, in its judgment, having omitted to make any mention of certain important documents, or their bearing on the terms of a tenancy which were in question;

Held, that the lower Court having presumably omitted to consider important portions of the evidence, the findings arrived at by it ought not to be accepted.

Held, also, that the finding of the lower Court as to the plaintiffs' claim being barred by limitation being based on statements without referring to any evidence to establish them, could not be accepted.

Case sent back for reconsideration and fresh decision.

THIS was a second appeal from the decision of G. McCorkell, District Judge of Kánara.

This was an action instituted by the plaintiffs, Appá Kálga Náik and others, to recover possession of certain garden land, together with past mesne profits. The plaintiffs had claimed future mesne profits also.

The defendants, Mallu bin Mowna Pátil and others, contended *(inter alia)* that they held the land in dispute as *ardheli* tenants, and that the claim was time-barred.

The Subordinate Judge (Ráo Sáheb R. D. Páranjpe) awarded the plaintiffs' claim; and in doing so he relied, among other documents, on exhibits 96 and 97 in the case. Exhibit 96

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was a *chalgeni chithi*, (that is, a *kabuláyat* passed by a tenant-at-will), dated the 1st February, 1856, and it showed that the land was leased to the defendants only upon *chalgeni* tenure. Exhibit 97 was a letter dated the 17th July, 1856; it was written by Mahamad Ashraf Káji, the original owner of the land, to Mowna Pátil, the father of defendants Mallu and others. It stated that the land was sold, and that Mowna and another were tenants of the land, but did not contain a statement that they were *ardheli* tenants. The Subordinate Judge further relied on the circumstance that in the sale-deed, exhibit 87, which was passed by Mahamad Ashraf Káji, the original owner, to Ibráhim and Yusuf, from whom the land was acquired by the plaintiffs, no mention was made of the *ardheli* tenure.

Against the decree of the Subordinate Judge the defendants appealed to the District Court, which reversed the decree and rejected the plaintiffs' claim.

The District Judge made the following observations:—

"In 1872 the defendants were criminally prosecuted for theft of cocoanuts from the land in suit. They then asserted their tenancy, and the matter was referred to a Civil Court. Neither the plaintiffs, nor their predecessors, have ever taken any steps to silence the assertion of the defendants. Since 1872 the defendants are holding under a title adverse to that of the plaintiffs. Even if it could be held that the tenancy is not proved, the claim would be time-barred for these reasons.

"The principal ground on which the Subordinate Judge disbelieves the tenancy is the silence in the sale-deed from Mahamad Ashraf to Ibráhim and Yusuf, and also the silence of subsequent deeds of sale. The first is, however, the only important one to mention, as the silence of that one would naturally be repeated in the others. This silence in the sale-deed from Mahamad Ashraf is suspicious, but not conclusive. The fact that in a revenue paper the defendants are shown as *chalgenidárs* is also not conclusive, unless it can be shown that the entry was made with their consent. The case for the defendants rests on positive statements and documents. That for the plaintiffs on mere negotiations. I am, therefore, of opinion that the defendants' plea must prevail."

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Against the decree of the District Court the plaintiffs appealed to the High Court.

Shámráv Vithal for the appellants:—The lower Court has remarked that our claim was barred by limitation, because in the year 1872 the respondents set up *ardheli* tenure. The mere allegation of a particular kind of tenure would not operate against our claim, unless the allegation is clearly proved. The lower Court has not referred to any exhibit in the case to support its remark. On the contrary there is evidence in the case which shows that, in a former suit brought against our father, the respondents were not considered to be *ardheli* tenants.

The lower Court was wrong in holding that our case rested on mere negotiations. The sale-deed, exhibit 87, is not only silent as to the defendants' alleged *ardheli* right, but it contains statements to the effect that the respondent's ancestors were *chalgeni* tenants. The lower Court has not looked at that part of the deed which contains these statements. It has not taken into consideration the other documentary evidence which supports our case. (Refers to several exhibits.)

Pándurang Balibhadra for the respondents.

SARGENT, C. J.:—The District Judge says that the case of the defendants rests on positive statements and documents, but he has entirely omitted to consider the effect of the plaintiffs' documents, with the exception of the sale-deed of 1856; and as to the effect of that document, whilst remarking that its silence as to the *ardheli* tenancy is suspicious, but not conclusive, he has omitted all reference to the mention, in the deed, of the *kabulâyats*, exhibit 96 and exhibit 97. We think, therefore, that, as the District Judge has presumably omitted to consider important portions of the evidence, we ought not to accept his findings on the first issue. It is true that the District Judge also finds the plaintiffs' claim barred, but his conclusion is based on statements without referring to any evidence whatever to establish them. We must, therefore, without intending to express any opinion on the merits, reverse the decree and send back the case for a fresh decision. Costs to abide the result.

Decree reversed and case sent back.