The plaintiff No. 2 claims it as being assigned to her for her maintenance. The plaintiff No. 1 sides with her. We think it is clear on the assignment that the plaintiff No. 2 is entitled to the money just as she was entitled to the field, *i. e.*, to the usufruct of it for her life.

We amend the decree and grant the plaintiff No. 2 a declaration that she is entitled to the usufruct of the money for her life. In the absence of any agreement between the parties the Subordinate Judge should see that the capital amount is secured, so that on plaintiff No. 2's death it may pass intact to those entitled thereto, plaintiff No. 2 being paid the interest only for the term of her natural life. We order the plaintiff No. 1 to bear his own costs and defendant to pay his own costs and to pay a moiety of plaintiff No. 2's costs throughout.

Decree amended.

APPELLATE CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Parsons.

1896.
February 24.

DATTAJI SAKHARAM RAJADHIKSH (ORIGINAL PLAINTIFF), APPELLANT, *v.* KALBA YESE PARABHU AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

Hindu law—Widow—Powers of management—Lease granted by the widow for long term of years—Lease voidable on the widow's death, but not ipso facto void—Suit by heir to recover properly from lessee six years after widow's death—Compensation for tenants' improvements—Lying by—Landlord and tenant.

A Hindu widow adopted a son, but reserved to herself for life the right of managing her husband's property. The adopted son sold his interest in the property to the plaintiff. In 1885 the widow granted a lease of the property to defendants for fifty-nine years at a rent of Rs. 50 a year. She died the following year (1886). The defendants continued in possession of the property under the lease and expended money in improvements. In 1892 the plaintiff as purchaser from the adopted son sued for possession.

Held, that he was entitled to recover and to have the lease set aside, but only on payment to the defendants of compensation for the sum properly expended by them in improving the land after the widow's death.

The lease granted by the widow Jankibai was not *ipso facto* void, but only voidable by the plaintiff on her death. It did not necessarily determine at her death. That being the legal position of the defendants, the plaintiff allowed the defendants to go on improving the property, and took no steps to warn the defendants until he brought

* Second Appeal, No. 308 of 1895.

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this suit to recover possession. His conduct was such as to induce a belief in the mind of the defendants that the lease would be treated as valid. There was not merely a lying by, but a lying by under such circumstances as to induce a belief that a voidable lease would be treated as valid.

SECOND appeal from the decision of H. L. Hervey, Assistant Judge of Ratnágiri.

Plaintiff sued for possession of certain property, alleging that in 1875 he had purchased it from one Chitko, the adopted son of one Raghunath Rajadhyaksh, to whom it originally belonged. This suit was filed in 1892.

It appeared that Chitko had been adopted by Raghunath's widow Jankibai, who, at his adoption, had reserved to herself the right of managing her husband's property for her life. She died on the 13th October, 1886, and the plaintiff contended that he then became entitled to possession. He prayed for possession and for mesne profits for three years preceding suit.

The defendants pleaded that by a lease dated 18th June, 1885, Jankibai had let the lands in question to them for fifty-nine years at a rent of Rs. 50 per year, that they had expended a large sum of money in improving the property, and as to the claim for mesne profits they alleged that by Jankibai's directions they had paid the rent to one Vithal Atmaram. They contended that they had a right to retain possession for the period of the lease; but, if not, that the plaintiff should repay them the amount expended in improving the property.

The Subordinate Judge held that the plaintiff was entitled to recover possession of the land, and that he was not bound to recoup the defendants the sums expended in improving the property. He further held that the plaintiff could not recover the rent which the defendants had paid to Vithal Atmaram. He gave the plaintiff a decree for possession with mesne profits from the date of suit till delivery of possession.

On appeal the Judge held that the plaintiff should refund to the defendants the sums expended in improvement. He, therefore, amended the decree by directing "that plaintiff do recover possession from the defendants of the property, together with mesne profits (to be determined in execution) from the date of

suit till delivery, on payment to defendant No. 2 of the sum of Rs. 203-3-7" which the Subordinate Judge had found to have been spent by the defendant on the property. The following is an extract from his judgment:—

"Nevertheless, defendant No. 2 at once proceeded to spend money in carrying out improvements on the property by planting trees, sinking a well, &c. If he had been conscious of fraud on his own part, or even if he had realized that the validity of his title was doubtful, it appears to me that he would have acted more cautiously. Further, it has been shown that plaintiff after Jankibai's death allowed defendant to go on for some years improving the property, and took no steps to obtain possession until he instituted the present suit. Under these circumstances, I see no injustice in ordering plaintiff to pay a fair sum as compensation for the improvements by which he will benefit, and I am of opinion that defendant No. 2 is in equity entitled to receive such compensation."

The plaintiff preferred a second appeal.

Vasudev G. Bhandarkar for the appellant (plaintiff):—We are entitled to recover the land without paying the defendants for the improvements. Jankibai had no right to grant the lease. She had only a life-interest. The plaintiff's right accrued at her death. She died in 1886, a year after granting the lease, and the improvements were made after her death. The lower Court has made the plaintiff pay the costs of the improvements, because the defendants appear not to have been aware that Jankibai had no power to give the lease. They ought to have ascertained what her power was before taking it. Having failed to do so they cannot now claim the benefit of the lease or compensation for improvements—Act XI of 1855, section 2; Transfer of Property Act (IV of 1882), section 51; *Gourgopaul Dutt* v. *Bissonath Ghose*[1]; *Shaik Husain* v. *Govardhandas Parmanandas*[2]; *Sadashiv Bhaskar Joshi* v. *Dhakubai*[3]; *Radanath Doss* v. *Gisborne and Co.*[4]; Dart on Vendors and Purchasers, p. 1032; Sugden on Vendors and Purchasers, p. 747.

The defendants did not plead that the plaintiff stood by while the improvements were made. That point was suggested by the first Court, which, however, held that the plaintiff had no knowledge of the improvements. Further, it should be remembered that the defendants have enjoyed the profits of the land,

(1) Coryton's Reports, p. 41.
(2) I. L. R., 20 Bom., 1.
(3) I. L. R., 5 Bom., 450.
(4) 14 Moore's I. App., 1.

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which is a sufficient compensation for the improvements they have made.

Ghanasham N. Nadkarni for the respondents (defendants) :—Jankibai was full owner during her life, and the lease is good. She granted it as manager of the property. The plaintiff ought to have asserted his right immediately after her death. If he had done so, the defendants would not have spent money on improvements. But he did not bring this suit for six years, and during all that time allowed us to expend money in improving the land. The improvements made became remunerative just at the time the suit was brought, and the plaintiff claims to have the benefit of them. He ought to pay for them—*Navalchand* v. *Amichand* [1]. The defendants are entitled to get compensation—*Kunhammed* v. *Narayanan* [2]; *Yeshwadabai* v. *Ramchandra* [3]; *Dattatraya* v. *Shridhar* [4]; *Dunia Lal Seal* v. *Gopinath Khetry* [5]; *In the matter of the petition of Thakoor Chunder Paramanick* [6]; *Mudhoo Soodun Chatterjee* v. *Juddooputty Chuckerbutty* [7]; *Bai Kesar* v. *Bai Ganga* [8].

Vasudev G. Bhandarkar, in reply :—The rule to be applied is the rule in *Ramsden* v. *Dyson* [9]; *Shaik Husain* v. *Goverdhandas* [10]. The Judge has not found facts which would entitle the defendant to compensation. Further, there is no evidence in the case to show that we were aware that the improvements were being made. Excepting the circumstance that we did not take steps earlier, the Judge has not found anything in favour of the defendant and against us. Mere delay in bringing the suit is not sufficient to entitle the defendant to claim compensation. In the pleadings in the Courts below the defendants did not rest their case on the delay in bringing the suit—Woodfall on Landlord and Tenant, p. 9; *Premji Jivan Bhate* v. *Haji Cassum Jooma Ahmed* [11]. As to acquiescence by us, see *Willmott* v. *Barber* [12].

(1) P. J., 1891, p. 104.
(2) I. L. R., 12 Mad., 320.
(3) I. L. R., 18 Bom., 66.
(4) I. L. R., 17 Bom., 736.
(5) I. L. R., 22 Cal., 820.
(6) Beng. L. R. Full Bench Rul., 595.
(7) 9 Cal. W. R., 115.
(8) 8 Bom. H. C. Rep., A. C. J., 31.
(9) L. R., 1 H. L., 129.
(10) I. L. R., 20 Bom., 1.
(11) I. L. R., 20 Bom., 298.
(12) 15 Ch. Div., 96.

FARRAN, C. J:—We have already intimated our opinion that the defendant Kalba having *bonâ fide* paid the rent of the garden land to Vithal Atmaram before suit, cannot be called on again to pay that rent or mesne profits to the plaintiff. The farm lease granted by Jankibai, while the manager of the estate, to Vithal had not been set aside, nor had the plaintiff given notice to the defendant Kalba not to pay his rent to Vithal. The lease granted by Jankibai to Vithal was voidable, not void, on the death of Jankibai, and the defendant Kalba was, therefore, justified in paying his rent to Vithal until he received notice not to do so.

We also agree with the Assistant Judge that equity requires that the plaintiff in setting aside the lease granted by Jankibai to the defendant Kalba should compensate the latter for the money properly expended by the defendant in improving the land after the death of Jankibai. The plaintiff failed to give the defendant notice of his intention to set the lease aside, and it, like that of Vithal, was voidable only by the plaintiff on the death of Jankibai, and was not *ipso facto* void.

A Hindu widow is not a mere tenant for life. She is invested with a fuller estate and more ample powers of management, and a lease granted by her at a fair rent, as in this case, though for a long term of years, does not necessarily determine at her death. The heir coming in after her has to show that in granting it she has exceeded her power. That being the legal position of the defendant, the Assistant Judge has found that the plaintiff after Jankibai's death allowed the defendant to go on for some years improving the property and took no steps to warn the defendant or proceedings to obtain possession of the garden until he instituted the present suit. His conduct was such as to induce a belief in the mind of the defendant that his lease would be treated as valid. It is not, it is true, specifically found by the Assistant Judge that the plaintiff knew that the defendant was making these improvements, but he was the owner of the land on Jankibai's death, and there is no reason for believing that he did not keep himself aware of what was being done upon it. The case seems to us to fall within the principle laid down in *Stiles* v. *Cowper* [1], which is thus stated by Mr. Woodfall (p. 9) in his work on

(1) 3 Atk., p. 692.

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Landlord and Tenant. "But in a case where the remainder-man lay by, and suffered an assignee of an invalid lease to lay out money in rebuilding and might be presumed to have had notice of the fact, Lord Hardwicke directed a new lease with proper covenants to be granted to the assignee for the remainder of the term." Here there is not merely a lying by, but a lying by under such circumstances as to induce the belief that a voidable lease will be treated as binding. We confirm the decree of the Assistant Judge with costs.

Decree confirmed.

FULL BENCH.

APPELLATE CIVIL.

Before Sir C. Farran, Kt., Chief Justice, Mr. Justice Parsons and Mr. Justice Candy.

1896. *March* 9.

WILLIAM ALLEN AND ANOTHER (ORIGINAL DEFENDANTS), APPELLANTS, *v.* BAI SHRI DARIABA (ORIGINAL PLAINTIFF), RESPONDENT.*

Jurisdiction—Bombay Civil Courts' Act (Bom. Act XIV of 1869), *Sec.* 32†, *as amended by Act X of* 1876, *Sec.* 15, *and Act XV of* 1880, *Sec.* 3—*Regulation II of* 1827, *Sec.* 43—*Suit against officer of Government—Acts done by the defendant in his official capacity.*

On the death of the Tálukdár of Kerwáda leaving a widow and minor son, the Mámlatdár of A'mod, acting under the order of the Collector of Broach, entered the Tálukdár's house, made an inventory of the moveables, took possession of the property of the deceased, and locked up some of the rooms. Among the property seized (it was alleged) was certain property belonging to the widow. She brought this suit against the Collector and Mámlatdár, claiming damages for these wrongful acts. The suit was filed in the Court of the Subordinate Judge.

* Appeal No. 36 of 1894 under the Letters Patent.

† Section 32 of Bombay Civil Courts' Act (Bom. Act XIV of 1869) as amended by Act X of 1876, Section 15, and Act XV of 1880, Section 3:—

32. No Subordinate Judge or Court of Small Causes shall receive or register a suit in which the Government or any officer of Government in his official capacity is a party, but in every such case such Judge or Court shall refer the plaintiff to the District Judge, in whose Court alone (subject to the provisions of section 19) such suit shall be instituted:

Provided that nothing in this section shall be deemed to apply to any suit, merely because—

(*a*) A Municipal Corporation constituted under Bombay Act No. VI of 1873, or any other enactment for the time being in force, is a party to such suit, and an officer of Government is, in his official capacity, a member of such corporation, or

(*b*) An officer of a Court appointed under the Code of Civil Procedure, section 456, last paragraph, is, in virtue of such appointment, a party to such suit.