

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Candy.

1895.
December 13.

GOPA'LRA'O KRISHNA RA'JOPA'DHE (ORIGINAL PLAINTIFF), APPELLANT, v. MAHA'DEVRA'O BALLA'L MULE (ORIGINAL DEFENDANT), RESPONDENT.*

Landlord and tenant—Inámdár—Permanent tenant—Notice to pay enhanced rent or quit the land—Denial of landlord's right to enhance rent—Suit to recover enhanced rent—Limitation—Limitation Act (XV of 1877), Sec. 23.

An inámdár gave his permanent tenant notice to pay enhanced rent or quit the land on a certain date. The tenant denied the liability to pay enhanced rent and, stating that he held the land on payment of Government assessment only, refused to quit. The inámdár more than twelve years after the date mentioned in the notice sued the tenant to recover enhanced rent.

Held, that the plaintiff's (inámdár's) right to enhance the rent and to recover the land in default of payment of such rent was barred by limitation, the tenant so far as the right was concerned having been holding adversely to him for more than twelve years.

Held, also, that section 23 of the Limitation Act (XV of 1877) had no application to the case.

SECOND appeal from the decision of Ráo Bahádur Chintáman N. Bhat, First Class Subordinate Judge of Sátára with appellate powers, reversing the decree of Ráo Sáheb V. P. Deshapánde, Second Class Subordinate Judge of Tásgaon.

The plaintiff, an inámdár of the village of Vasambe, served the defendant, who was a permanent tenant of certain land in the village, with a notice dated the 5th September, 1879, to pay enhanced rent at the rate of one hundred and twenty-five rupees per annum or to quit the land on or before the 10th April, 1880.

The defendant in reply, by a notice served on the plaintiff on the 6th October, 1879, denied the plaintiff's right to enhance the rent.

The plaintiff subsequently continued to receive from the defendant the rent previously paid.

On the 6th July, 1892, he brought this suit to recover Rs. 294-13-9 on account of the balance of the enhanced rent for three years preceding the suit.

*Second Appeal, No. 119 of 1895.

The defendant denied the plaintiff's right to claim enhanced rent and contended (*inter alia*) that the claim for enhanced rent was now barred, as he had denied the plaintiff's right to enhance more than twelve years before suit.

The Subordinate Judge found that the plaintiff was entitled to enhance the rent, that rupees seventy-five per annum was the proper amount chargeable for rent, and that the claim was not time-barred. He awarded to the plaintiff Rs. 144-13-9 as the balance of the enhanced rent.

On appeal by the defendant the Judge reversed the decree and dismissed the claim, holding that it was time-barred.

The plaintiff preferred a second appeal.

Báláji A. Bhagavat for the appellant (plaintiff) :—The suit being for the recovery of rent, it is governed by article 110, Schedule II, of the Limitation Act (XV of 1877). The right to recover rent is a recurring right under section 23 of the Limitation Act (XV of 1877) and, therefore, it cannot be barred by the defendant's refusal in 1877 to pay enhanced rent. The right recurs every year, and we are entitled to recover three years' enhanced rent—*Vithalbowa v. Náráyan*⁽¹⁾.

Mahádeo R. Bodas for the respondent (defendant) :—Article 144, Schedule II, of the Limitation Act is applicable to the case, and not article 110. The right to enhance rent is an interest in immoveable property and is liable to be barred after twelve years. The notice was served by us on the plaintiff on the 6th October, 1879, by which we denied the plaintiff's right to claim enhanced rent. The present suit was not brought until July, 1892, that is, more than twelve years after we denied the plaintiff's right. The claim is, therefore, time-barred. The right to demand rent at the usual rate may be a recurring right, but the claim to demand enhanced rent is not a recurring right.

PARSONS, J. :—This is a suit by an inámdár to recover rent at an enhanced rate from the defendant, who is a permanent tenant. The lower Court has held the suit time-barred. It appears that the plaintiff in September, 1879, gave the defendant a notice

(1) I. L. R., 18 Bom., 507.

1895.

GOPÁLEÁO
?.
MAHÁDEV-
RÁO.

1895.

GOPÁLRÁO
v.
MAHÁDEV-
RÁO.

that he was to pay enhanced rent or quit the land on or before the 10th April, 1880. The defendant replied that he was not liable to pay enhanced rent, that he held the land on payment of the Government assessment only, and that he could not be ejected, and he refused to quit. He did not quit on the 10th April, 1880, and he has continued to hold on ever since, paying the assessment only.

The plaintiff's present suit was brought on the 6th July, 1892, that is, more than twelve years from the 10th April, 1880. The defendant, therefore, so far as the right of the plaintiff to enhance the rent and to evict the defendant in default of payment is concerned, has been holding adversely to the plaintiff for more than twelve years, and the plaintiff's right to enhance the rent and to recover the land in default of payment of such rent has become lost by operation of the law of limitation. Section 23 of the Limitation Act (XV of 1877) has no application to the present case. We confirm the decree with costs.

Decree confirmed.

APPELLATE CIVIL.

Before Chief Justice Farran and Mr. Justice Parsons.

1895.

December 17.

BA'BA'JI (ORIGINAL PLAINTIFF), APPLICANT, v. MAGNIRA'M AND OTHERS
(ORIGINAL DEFENDANTS), OPPONENTS. *

Mortgage—Redemption—Mortgagee—Mortgagee taking other land in exchange for mortgaged land—Land so taken in exchange is subject to the mortgagor's right to redeem—Forest Act (VII of 1878), Sec. 10, Cl. (d)—Land Revenue Code (Bom. Act V of 1879), Sec. 56.†

* Application No. 166 of 1895.

† Section 56 of the Land Revenue Code (Bom. Act V of 1879) :—

56. Arrears of land revenue due on account of land by any landholder shall be a paramount charge on the holding and every part thereof, failure in payment of which shall make the occupancy or alienated holding, together with all rights of the occupant or holder over all trees, crops, buildings and things attached to the land, or permanently fastened to anything attached to the land, liable to forfeiture, whereupon the Collector may levy all sums in arrear by sale of the occupancy or alienated holding, freed from all tenures, incumbrances and rights created by the occupant or holder or any of his predecessors in title, or in any wise subsisting as against such occupant, or holder, or may otherwise dispose of such occupancy or alienated holding under rules or orders made in this behalf under section 214.