APPELLATE CIVIL.

Before Chief Justice Farran and Mr. Justice Parsons.

1895. *November* 25.

GOPA'L RA'MCHANDRA NA'IK (ORIGINAL PLAINTIFF), APPELLANT, *v.* DASHRATHSHET AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Khoti Settlement Act (Bom. Act I of 1880), *Secs.* 16, 17, 20, 21, 22 *and* 33†—*Land Revenue Code (Bom. Act V of* 1879), *Secs,* 109, 110, 120, 129, 156, 203, 211 *and* 212—*Determination by the survey officer of the liability of the defendant to khot—Entry in the settlement register as occupancy tenant—Revision of the record by the Collector—Power of alteration—Decision as to the rent payable not final and conclusive evidence—Difference between declaring an entry to be a final and conclusive evidence and a decision to be final—Appeal lies from a decision.*

In May, 1885, under section 33 of the Khoti Settlement Act (Bom. Act I of 1880), the survey officer determined the liability of the defendant to pay to the khot as rent for his land the survey assessment and the local fund cess, and this was entered in the record made under section 17 of the Act, notwithstanding that in the settlement register the defendant was entered as an occupancy tenant. In April, 1889, the Collector, on the application of the plaintiff, revised the former record, which, as revised, showed that the defendant was liable to pay one-third of the produce of his land as rent to the khot.

A question having arisen as to the legality of the revised entry by the Collector,

Held, that the revised entry in the record was duly made by the Collector under section 17 of the Khoti Settlement Act (Bom. Act I of 1880) and was conclusive and final evidence of the liability established by it. It is not open to a Civil Court to inquire into the legality or otherwise of the reasons which may have led to the determination of the amount of rent payable.

The Khoti Settlement Act (Bom. Act I of 1880) does not make the decision of rent final. In section 17 it only makes the entry, which is the result of the decision, final and conclusive evidence. Under section 33 an appeal lies from a decision, and the decision can be revised under section 211 of the Land Revenue Code (Bom. Act V of 1879) by the authorities therein mentioned.

* Second Appeal, No. 51 of 1894.

† Sections 16, 17, 21 and 33 of the Khoti Settlement Act (Bom. Act I of 1880), *see ante* p. 7; sections 20 and 22 are as follow.

Section 20 of Act I of 1880:—

"If it shall appear to the survey officer, who frames the said register or other record, that there exists any dispute as to any matter which he is bound to record, he may, either on the application of any of the disputant parties or of his own motion, investigate and determine such dispute and frame the said register or other record accordingly."

Section 22 of Act I of 1880:—

"No suit shall lie against the said survey officer or against Government, or any officer of Government to set aside any such decision of a survey officer; but the record shall from time to time be amended by the said survey officer, or when the survey-settlement is concluded, by the Collector, in accordance with any such decree as aforesaid which the parties may obtain *inter se* on an application, accompanied by a certified copy of such decree, being duly made to the said survey officer, or to the Collector for that purpose."

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SECOND appeal from the decision of A. S. Moriarty, Acting District Judge of Ratnágiri, confirming the decree of B. Y. Gupte, Subordinate Judge of Devrukh.

The plaintiff as khot sued to recover a certain amount as *thal* rent (rent in kind) due to him by defendants for three years in respect of his eight-annas share in a certain khoti village.

The defendants pleaded (*inter alia*) that the settlement officer had decided in the year 1885 that they were liable only to pay assessment and local fund cess on their lands, and that the plaintiff could not claim *thal* rent without setting aside the settlement officer's decision.

The Subordinate Judge found that the settlement officer's decision was final and conclusive, and could not be set aside by any subsequent proceedings in a Civil Court. He, therefore, rejected the claim.

On appeal by the plaintiff the Judge confirmed the decree. The plaintiff preferred a second appeal.

Dáji A. Khare for the appellant (plaintiff):—Our claim was rejected on the ground that under section 17 of the Khoti Settlement Act (Bom. Act I of 1880) the determination by the settlement officer (Exhibit 37) that the defendants were liable to pay assessment and local fund cess was conclusive. In Exhibit 37 the defendants are entered as khatedár kuls. We submit that under section 17 of the Khoti Settlement Act, the decision of the settlement officer is not final and conclusive. The decision is liable to be modified or set aside by a competent Civil Court. Under section 17 of the Act, the entry as to the tenant's liability is only final and conclusive.

Vásudeo G. Bhandár[illegible] for the respondents (defendants):—In the year 1885 the settlement officer made the entry under section 20 of the Khoti Settlement Act, and the entry is final and conclusive under section 17. Subsequently the Collector revised the entry on the plaintiff's application. We submit that the Collector had no power to do so. Section 20 read along with section 17 of the Act, shows what entries are final and conclusive, and what entries can be interfered with by Civil Courts. Section 3, clause (12), of the Act enacts that any word or expression

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which is defined in the Land Revenue Code (Bom. Act V of 1879), and is not defined in the Khoti Act, shall be deemed to have the meaning given to it by the code. Section 212 of the code lays down that when a decision or order is final, no appeal can lie against it. The order passed by the settlement officer being final, no appeal could, therefore, lie against it. The Collector was, therefore, wrong in revising it. Entries made by officers specially appointed are held to be final, as, for instance, entries made by officers appointed to settle boundaries under sections 119 and 120 of the Land Revenue Code—*Bái Ujam* v. *Valiji Rasulbhai*[1].

PARSONS, J.:—There is no dispute about the facts of this case. On the 3rd May, 1885, under section 33 of the Khoti Settlement Act, 1880, the survey officer determined the liability of the defendant to pay to the khot, as rent for his land, the survey assessment and the local fund cess, and this was entered in the record made under section 17 of the Act, notwithstanding that in the settlement register the defendant was entered as an occupancy tenant. On the 25th April, 1889, the Collector on the application of the plaintiff revised the former record, and as it now stands it shows that the defendant is liable to pay one-third of the produce of his land as rent to the khot. We have held in the case of *Báláji Raghunáth* v. *Bál bin Rághoji*[2], that it is not open to a Civil Court to enquire into the legality or otherwise of the reasons which may have led to the determination of the amount of rent payable. The Court must accept an entry in a record duly made under section 17 as conclusive and final evidence of the liability established by it.

The only point, therefore, that arises is, whether the revised entry in the record was duly made by the Collector. The Act of 1880 is not very clear in its terms, but sections 16 and 17 read together show that the record of rent is a separate record from the settlement register, so that the restrictions as to alterations and corrections of the latter contained in sections 109 and 110 of the Bombay Land Revenue Code would not apply to the former. The terms of section 33 itself seem to imply a power of alteration, since it speaks of an agreement made at some period subsequent to the framing of the survey record. Section

(1) I. L. R., 10 Bom., 456. (2) *Ante* p. 235.

20 provides for the investigation and determination of disputes, section 21 declares that the decision, when not final, shall be binding till reversed or modified by a decree of a competent Court, and section 22 provides for the amendment of the record in accordance with such decree when obtained.

As section 17 has declared the decision of the rent payable to be conclusive and final evidence, and as no suit lies to reverse or modify that decision, there can be no amendment possible under section 22. We are, therefore, driven to the conclusion, that the Act of 1880 gives no express power of appeal or of revision. We can, however, look to the Land Revenue Code itself to see whether there is anything in it which gives such power. Section 203 gives a general right of appeal from all decisions or orders passed by a revenue officer to that officer's immediate superior in the absence of express provision to the contrary. Section 212 restricts this power by declaring that no appeal shall lie from a decision or order declared in the Act to be final.

It has been argued before us, and it is the opinion of the lower Courts, that the Act of 1880 has declared the decision of rent to be final. This, we think, is a mistake. Had the Legislature intended to make the decision final, it would have expressly said so in section 33 (*Cf.* sections 120, 129 and 156 of the Land Revenue Code). It does not, however, there say a word about the decision, and in section 17 it only makes the entry, which is the result of the decision, final and conclusive evidence. There is a marked difference between declaring an entry to be final and conclusive evidence and a decision to be final.

There being, then, no express provision prohibiting an appeal, we think that an appeal lies from a decision under section 33, as indeed it is only right an appeal should lie from a decision on such an important point. It follows that not only an appeal lies, but that the decision can be reviewed under section 211 of the Land Revenue Code by the authorities therein mentioned. In the present case the Collector on the application (it is called an appeal in the document itself) of the plaintiff has modified the decision of the survey officer, which was that the defendant, though only an occupancy tenant, was liable to pay rent as if he

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were a dhárekari, and has held him liable to pay the rent that an occupancy tenant is liable to pay. It is not within our power to go behind that later decision or to inquire into the validity of the reasons which induced the Collector to exercise his jurisdiction. It is an entry duly made under section 17, and we must accept it as final and conclusive evidence of the liability established thereby.

We reverse the decrees of the lower Courts and award the claim with costs throughout.

Decree reversed.

APPELLATE CIVIL.

Before Chief Justice Farran and Mr. Justice Parsons.

1895. *November* 25.

NA'RA'YAN BHA'SKAR KHOT (ORIGINAL PLAINTIFF No. 1), APPELLANT, *v.* BA'LA'JI BA'PUJI KHOT (ORIGINAL DEFENDANT), RESPONDENT.*

Small Cause Court suit—Second appeal—Civil Procedure Code (Act XIV of 1882), *Sec.* 586—*Suit to recover a certain sum on account of a share in property—Amount to be found due on taking account—Title.*

Plaintiffs sued to recover, on account of their share in the produce of certain *dhára* and *khoti* properties, Rs. 339-14-2 or any other sum which might be found due to them on taking account from the defendant, who was the managing khot. The defendant denied the plaintiffs' right to the produce of some of the properties. The first Court and the Court of appeal found that the amount due to plaintiffs was Rs. 72-14-11. On second appeal,

Held that the suit was a Small Cause Court suit, and no second appeal lay. The mere fact of a question of title arising does not prevent a suit being cognizable by a Court of Small Causes. By merely asking, in the alternative, for an account of the profits, a suit cognizable by a Small Cause Court cannot be converted into one of a different nature.

SECOND appeal from the decision of T. Walker, Assistant Judge of Ratnágiri, confirming the decree of Ráo Sáheb K. S. Pátankar, Subordinate Judge of Dápoli.

The plaintiffs sued to recover Rs. 339-14-2 as their one-twelfth share in certain *dhára* and *khoti* properties, or any other sum which might be found due to them from the defendant, who was the managing khot, on taking accounts between them.

* Second Appeal, No. 213 of 1894.