

*Shevadhari*s generally. (5) The order interferes with the decree passed by the High Court. One of these decrees recognised the rights of the *Pujaris* to take part in the *Alankar puja* as held by the First Class Magistrate. This remark applies to the other *Shevadhari*s also to a less extent.

In these several respects, the procedure followed by the District Magistrate appears to be defective. It was held in *Queen-Empress v. Gobind Chandra Das* (1) that it is obligatory on the Magistrate to inform the parties concerned of the grounds of the report or complaint before he makes an order under section 145. It is also the duty of the Magistrate to ascertain who are the parties concerned, and give them notice before he makes his final order—*Ram Chandra Das v. Monohur Roy* (2); *Protap Narain Singh v. Rajendra Narain Singh* (3). An order is bad if all the parties interested are not made parties—*Behary Lall v. Darby* (4). Following the authorities quoted above, we must hold that the procedure followed by the District Magistrate was defective, and that his order must be set aside. The District Magistrate should re-hear the case after making all the persons interested parties, and receiving the evidence they may produce before him, and pass a fresh order.

Order set aside and case remanded for further hearing.

(1) (1893) 20 Cal., 520.

(3) (1896) 24 Cal., 55.

(2) (1893) 21 Cal., 29.

(4) (1894) 21 Cal., 915.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

DATTATRAYA GOPAL AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS,
v. RAMCHANDRA VISHNU AND OTHERS (ORIGINAL DEFENDANTS),
RESPONDENTS.*

1900.

February 5.

Khot—Mortgagee of a co-sharer in the khotki—Khoti Act (Bom. Act I of 1880), Sec. 16—Settlement register—Entry in the register—Survey officer's authority to determine the title of persons claiming as mortgagees only from a co-sharer—Declaratory suit—Limitation.

The word "khot" as used in the Bombay Khoti Act (Bom. Act I of 1880) does not include a mortgagee of a co-sharer in the khotki.

* Second Appeal, No. 585 of 1899.

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The Khoti Act does not give the survey officer, when preparing the settlement register, any authority to investigate and determine the title of persons who claim as mortgagees only of a share in the khotki, still less to determine whether an alleged mortgage of a share has been redeemed or is still subsisting.

On 28th April, 1888, the survey officer after determining the co-sharers in a khoti village prepared the settlement register under section 16 of Bombay Act I of 1880, in which he entered the names of defendants as mortgagees of a certain share in the khotki. In 1891 plaintiffs, who claimed to be entitled to the said share, on becoming aware of the entry, petitioned the Collector for a removal of the names of the defendants from the register on the ground that their mortgage had been redeemed. This petition was opposed on 15th October, 1892, by defendants, who denied plaintiff's title, and was finally rejected by the Collector on 25th November, 1892. In 1896 plaintiffs filed the present suit to cancel the entry in the register and for a declaration of their own title.

Held, that the suit was not time-barred. The cause of action accrued on 15th October, 1892, when defendants denied plaintiffs' title, and not on 29th April, 1888, when defendants' names were entered in the register as mortgagees.

SECOND appeal from the decision of Ráo Bahádur M. R. Nadkarni, Additional First Class Subordinate Judge A.P. at Ratnágiri.

Plaintiffs sued for a modification of an entry in the settlement register prepared on 29th April, 1888, under section 16 of the Khoti Act (Bom. Act I of 1880).

The entry related to the share of one Ganesh Govind Thakur (defendant No. 4) in the khotki of the village of Goval in the Ratnágiri District.

The entry was as follows :—

- | | | | |
|---|---|---|---|
| 1 | 4 | 0 | Ganesh Govind Thakur Desai. |
| | 0 | 6 | 8 Out of self-mortgagees as below mentioned. |
| | 0 | 3 | 4 Bhau Manik Thakur Desai. In this there are mortgagees by right of inheritance and heirship as detailed below :— |
| | | 8 | 0 0 Ramchandra Bapuji (5-4-0). |
| | | | Vaman Vishnu Gokhale (2-8-0). |
| | | 8 | 0 0 Vasudev Dhondshet Narkar (2-8-0). |
| | | | Nama bin Babu Joshi (2-8-0). |
| | | | Babu bin Devji Mandavkar (2-8-0). |
| | 0 | 3 | 4 Ohintaman Manik (out of) mortgagees by heirship as above. |
| | 0 | 3 | 4 Out of Krishnaji Manik mortgagees by heirship as above, |

The plaintiffs alleged that the survey officer had wrongly entered the names of the defendants Nos. 1 to 3 as mortgagees of 1 anna 16 visvas share out of the 1 anna 4 pies share standing in the name of Ganesh Govind Thakur (defendant No. 4); that the mortgage to defendants Nos. 1 to 3 had been redeemed; and that they, the plaintiffs, were now entitled to the said 1 anna 16 visvas share (*viz.* 3 pies 4 visvas as owners and 9 pies 12 visvas as mortgagees of defendant No. 4).

Plaintiffs further alleged that they were not aware of the proceedings before the settlement officer or of his decision till 27th May, 1890; that when they came to know of the entry in the survey register, they petitioned the Collector on 11th September, 1891, praying for a removal of the names of defendants Nos. 1 to 3 as mortgagees from the settlement register; that their petition was opposed by defendant No. 1 on 15th October, 1892, when he denied the plaintiffs' title; and that the petition was finally rejected on 25th November, 1892.

Hence the present suit which was filed in 1896.

Plaintiffs sought for a cancellation of the above entry and for a declaration of their title to the 1 anna 16 visvas share out of the 1 anna 4 pies share of defendant No. 4 in the khotki.

Defendants Nos. 1 to 3 alleged that their mortgage had not been redeemed, and that the claim was time-barred.

The Court of first instance held that the suit was not barred by limitation, as the cause of action did not accrue until the 15th of October, 1892, at the earliest, when the defendant No. 1 denied plaintiffs' title.

The Court, therefore, granted the declaration sought.

On appeal the First Class Subordinate Judge A.P. reversed this decree and held that the suit was barred by limitation.

His reasons were as follows:—

“The plaintiffs' cause of action arose on 29th April, 1888, when the settlement officer made his decision as to the interests of several co-sharers in the khotki under section 20 of the Act, and this suit, not having been brought within six years from the

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date of that decision, is under article 120, Schedule II of Act XV of 1877, barred by limitation."

Against this decision plaintiffs appealed to the High Court.

N. G. Chundavarkar for appellants.

M. B. Choubal for respondents Nos. 1 and 2.

PARSONS, J.:—The First Class Subordinate Judge, A. P., has held that "the plaintiffs' cause of action arose on 29th April, 1888, when the settlement officer made his decision as to the interests of the several co-sharers in the khotki under section 20 of the Act, and this suit, not having been brought within six years from the date of that decision, is, under article 120, Schedule II of Act XV of 1877, barred by limitation." The suit was instituted by the plaintiffs to cancel the entry of the names of the defendants Nos. 1 to 3 as mortgagees of the 1 anna 16 visvas share out of the 1 anna 4 pies share of the khotki of the village of Goval standing in the name of the defendant No. 4, on the ground that the mortgage had been redeemed by them to that extent, and for a declaration of their own title to the said 1 anna 16 visvas share, namely, to 3 pies 4 visvas of it as owners and to 9 pies 12 visvas of it as mortgagees of the defendant No. 4, and for an order that the same be entered in their names. The defendant No. 4 admitted the title of the plaintiffs to the share claimed by them. The defendants Nos. 1—3 pleaded that their mortgage had not been redeemed, and that they had still the right to hold possession of the whole share of 1 anna 4 pies. The Court of first instance held that the mortgage of the defendants Nos. 1 to 3 had been redeemed by the plaintiffs under the decrees in the suits of 1871 and 1874, and that the plaintiffs had proved their right to the share claimed. The Appellate Court without going into the merits dismissed the suit as barred by limitation as above stated.

It is not disputed in the case that the survey officer prepared the register after determining the co-sharers in this khotki on the 29th April, 1888. He made the following entry as to this 1 anna 4 pies share:—

1 4 0 Ganesh Govind Thakur Desai—

0 6 8 Out of self-mortgagees as below mentioned.

0 3 4 Bhau Manik Thakur Desai. In this there are mortgagees by right of inheritance and heirship as detailed below :—

8 0 0 Ranchandra Bapuji (5-4-0).

Vaman Vishnu Gokhale (2-8-0).

8 0 0 Vasudev Dhondshet Narkar (2-8-0).

Nama bin Babu Joshi (2-8-0).

Babu bin Devji Mandavkar (2-8-0).

0 3 4 Chintaman Manik (out of) mortgagees by heirship as above.

0 3 4 Out of Krishnaji Manik mortgagees by heirship as above.

In his decision he mentions the contentions of the khots that the share had been redeemed and of the mortgagees that it had not been, and he decided in favour of the latter and entered the names of the defendants accordingly. The Judge of the Appellate Court admits that the plaintiffs were no parties to the proceedings before the survey officer, and apparently is also of opinion that this suit filed in 1896 would be in time if time was counted from the date the plaintiffs had notice of the entry in the register, but he thinks that under the Khoti Act the date of the decision must be taken as the date from which limitation began to run. It is not necessary to discuss the correctness of this opinion founded on the Khoti Act, because we must hold that the general law applies, and that under it, the plaintiffs' suit, in so far as it seeks a declaration of their title against the title set up by the defendants Nos. 1 to 3 and a consequent reversal of the decision of the survey officer, is within time.

The Khoti Act could only govern this case if the decision of the survey officer was passed under its provisions. Section 16 of that Act says "that the said register shall also contain a list of all the co-sharers of the khotki, if the village be not held by one khot in his own sole right, and shall specify the extent of each such co-sharer's interest in the khotki." All, therefore, that the survey officer is bound to record is the co-sharers of the khotki and the extent of the interest of each, and he is authorised,

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to investigate and determine a dispute as to this matter only. The word "khot" as used in the Act is defined to include a mortgagee lawfully in possession of a khotki, and "khotki" means the aggregate of the rights and interests vested in a khot as such. Thus the only mortgagee recognised by the Act is one who is in possession of the khotki; the term co-sharers of the khotki is not defined, and in the absence of definition it cannot, we think, be held to include mortgagees of co-sharers. This being so, the law nowhere gives the survey officer authority to investigate and determine the title of persons to whom no share of the khotki has been transferred either absolutely or conditionally, but who claim as mortgagees only of a share of the khotki, still less can he decide whether any of those alleged mortgages have been redeemed or are still subsisting. The defendant No. 5 and the defendants Nos. 1—3 might have a dispute upon that latter point and might go before the survey officer to have the dispute settled, but their conduct cannot affect the plaintiffs, and the decision of the survey officer is in excess of his powers, and must be treated as a nullity, and not as a decision under the Khoti Act binding on them. Under the general law applicable to declaratory suits, time will not run until the right to sue accrues. As shown by the Judge of the first Court, this was not until the 15th October, 1892, when the defendants denied the plaintiffs' title.

There is a further point which apparently has been overlooked by the appellate Judge. The shares of the khotki stand entered in the botkhat in the names of persons who are dead. Cause of action would not accrue to their successors-in-title to have their names entered until the death of those sharers, and, similarly, until a title had been acquired, no cause of action would exist in the acquirer. We only mention this, as there is nothing on the record to show when the plaintiffs acquired the title to the share on which they have founded their present claim.

We must, therefore, reverse the decree of the lower Appellate Court, which was founded on a wrong determination of the question of limitation, and remand the appeal for a hearing on the merits; and in reference to the last argument, that the plaintiff cannot claim a transfer of names in the register or to have their names entered as mortgagees in place of the defendants Nos. 1—3,

we would only observe that the suit ought now to be treated not as merely one for that purpose, but as one asking also for a declaration of their title as against the title set up by the defendants Nos. 1 to 3, and the Appellate Court ought to see whether the decree of the lower Court, which has included both within its scope, is right or not as to either.

We reverse the decree and remand the appeal for trial on the merits with reference to the above remarks. Costs to be costs in the cause.

Decree reversed and case remanded.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

GOPIKABAI (ORIGINAL DEFENDANT), APPELLANT, *v.* LAKSHMAN
(ORIGINAL PLAINTIFF), RESPONDENT.*

1900.

February 12.

Land Revenue Code (Bombay Act V of 1879), Sec. 216—Holder of an alienated village—Application for introduction of survey by a co-sharer of an inám village.

Under section 216 of the Land Revenue Code (Bombay Act V of 1879) it is competent to one out of several co-sharers of an alienated village to apply on behalf of and with the consent of all the other co sharers for the introduction of a survey into the village; and it is not open to the cultivators of lands in the village to question the action of Government in introducing the survey on such application.

The section does not require that the application should be made or signed by all the sharers.

APPEAL from a remand order passed by M. B. Tyabji, District Judge of Thána.

Bapuji Sakharam was the principal sharer in the inám villages of Taran Khop and Rámraj in the Thána District.

The villages were entered in Bapuji's name in the Government records and were entrusted to his management by all the co-sharers.

On the 2nd June, 1885, Bapuji applied to Government, under section 216 of the Land Revenue Code (Bombay Act V of 1879), for the introduction of survey into the village.

* Appeal, No. 43 of 1899, from order.