1900.

KRISHNAJI v. TARAWA.

were only postponed in the order of inheritance to more distant males. The express object kept in view was to prefer even remote male heirs to females in the order of succession, and female heirs were allowed to come in as heirs with a view to avoid escheat. The effect of the Act is, therefore, obviously not a mere postponement in the order of time, but a preference of one set of heirs to others. There is, therefore, no vested right created as regards vatan property in the female heir other than the widow of the last owner. In her case, also, the Act provides expressly that her interest shall be for life or until marriage. The other female heirs could not, therefore, claim any interest of the kind claimed for the respondent Tarawa, who is not the widow of the last male owner. The Assistant Judge has been led to think that the object of the provision was only to prevent lapses to the State. The history of the previous legislation, however, shows that this was only a secondary object. The chief object was to ensure that vatan property should be in the hands of male heirs who can render personal service in preference to females. I would, therefore, reverse the decree of the lower Appellate Court, and restore that of the Court of first instance with costs throughout on the respondents.

Decree reversed.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

BAPUJIRAO AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* GANU AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

1900. *February* 23.

Khoti Act (Bombay Act I of 1880), *Sec.* 33—*Khot—Occupancy tenants—Thal—Thal to be determined by survey officer and not by Civil Court—Rent-suit.*

Under section 33 of the Bombay Khoti Act (Bom. Act I of 1880) it is the duty of the survey officer to determine the *thal* or customary rent payable to a khot by an occupancy tenant.

Until a new determination has been made by the survey officer, under section 33, of the rent payable to the khot, a Civil Court must award rent at the old rate legally fixed.

* Second Appeal, No. 641 of 1899.

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BAPUJIRAO v. GANU.

SECOND appeal from the decision of Thakurdas Mathuradas, Assistant Judge at Ratnágiri.

Plaintiffs were khots and defendants occupancy tenants holding certain khoti lands.

At the survey of 1887, the *botkhat* or record prepared by the survey officer, under section 17 of the Khoti Act, specified that the rent payable to the khot by the defendants was the Government assessment and grain at 8 *páilis* per rupee on the amount of the assessment.

The *botkhat* further stated that this settlement was to remain in force until the revision of the survey.

In 1897 a new survey settlement was introduced into the village. But the survey officer did not either re-assess the lands or alter the nature and amount of rent payable by the defendants to the khot on the ground that there were no means to ascertain what share of produce the tenants used to pay formerly as *thal* (or customary rent).

In 1898, plaintiffs sued for a declaration that they were entitled to levy *thal* from the defendants and to recover the same for the year 1896-97 A.D.

Defendants contended that they were not liable to pay *thal*, but only *makta* or fixed rent; that they had not paid *thal* for more than thirty years; and that the plaintiffs were only entitled to rent at the old rates.

The Court of first instance held that the plaintiffs were not entitled to recover *thal*, and rejected the claim.

On appeal the Assistant Judge reversed this decision, holding that plaintiffs were entitled to levy *thal* at the rates prevailing before the new survey of 1897.

His reasons were as follows:—

"The survey officer has not determined the *thal*. Section 33 of the Khoti Settlement Act imposes upon him the duty of determining the *thal*. The settlement is to be made, not for each holding but for the whole village. The survey officer has to settle the *thal* on hearing the whole body of tenants. It is not for the Court to determine it in every case that comes before it.

For the purpose of securing uniformity, and in order to bind the whole village with the settlement, it is necessary that the enquiry should be full and thorough. All the tenants should be heard. This cannot be done in an individual case. On a consideration of these circumstances, and on reading section 33 of the Khoti Settlement Act, I find that it is the duty of the survey officer to settle the *thal* or customary rent, and that this Court has no power to do so (compare *Antaji* v. *Antaji*[1], *Krishnaji* v. *Krishnaji*[2] and *Hari* v. *Balaji*[3]).

"In the present case, the survey officer has not determined the customary rent, saying that there are no means to do so. If the survey officer failed to do what the law required him to do, the proper course for the plaintiff was to make an appeal to the Commissioner and finally to Government. But he cannot ask the Court to determine the *thal*. So long as the *thal* has not been determined, the plaintiff is entitled to get profits at the rate at which he used to receive them immediately before the new survey of 1897, or rather at the rate at which the defendant admits he is liable."

Against this decision plaintiffs preferred a second appeal to the High Court.

N. V. Gokhale for appellants.

D. A. Khare for respondents.

PARSONS, J.:—The plaintiff sues to recover from the defendants, who are occupancy tenants, *thal* rent for the lands in their occupation at the rate of one-half share of the rice produce with a proportionate amount of straw. The Assistant Judge finds that the plaintiff is entitled to *thal*, but he adds: "The survey officer has not determined the *thal*. Section 33 of the Khoti Settlement Act imposes upon him the duty of determining the *thal*. The settlement is to be made, not for each holding, but for the whole village. The survey officer has to settle the *thal* on hearing the whole body of tenants. It is not for the Court to determine it in every case that comes before it. For the purpose of securing uniformity, and in order to bind the whole village with the

(1) (1896) 21 Bom., 480 at pp. 491, 493 and 494. (2) (1896) 21 Bom., 167, p. 475.
(3) P. J., 1895, p. 519.

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settlement, it is necessary that the enquiry should be full and thorough. All the tenants should be heard. This cannot be done in an individual case. On a consideration of these circumstances, and on reading section 33 of the Khoti Settlement Act, I find that it is the duty of the survey officer to settle the *thal* or customary rent, and that this Court has no power to do so (compare *Antaji* v. *Antaji* [1], *Krishnaji* v. *Krishnaji* [2] and *Hari* v. *Balaji* [3]). In the present case the survey officer has not determined the customary rent, saying that there are no means to do so. If the survey officer failed to do what the law required him to do, the proper course for the plaintiff was to make an appeal to the Commissioner and finally to Government. But he cannot ask the Court to determine the *thal*. So long as the *thal* has not been determined, the plaintiff is entitled to get profits at the rate at which he used to receive them immediately before the new survey of 1897, or rather at the rate at which the defendant admits he is liable." It is argued that this decision is incorrect, and that the Civil Court ought, in the absence of a determination by the survey officer, to determine itself the customary amount payable by occupancy tenants. We think that the actual decision itself cannot be found fault with. The Assistant Judge has not expressed himself perhaps as clearly as he might, but his decision merely is that until a new determination has been made by the survey officer, under section 33, of the rent payable to the khot, a Civil Court must award rent at the old rates legally fixed. In the present case, at the survey of 1887, the *botkhat* or record prepared on the 12th July, 1887, by the survey officer under section 17 of the Khoti Act, specified that the rent payable by the defendants was the Government assessment and grain at 8 *pâilis* per rupee on the amount of the assessment, and it was also stated therein that this settlement was to remain in force until the revision of the survey (Exhibit 48). These were, therefore, for this period the only rents that could legally be recovered by the khot. In 1897 a new survey settlement was introduced into the village. It was then competent to the survey officer to re-assess the lands and alter the nature and amount of rent payable according

(1) (1896) 21 Bom. 480, at pp. 488, 491, 493 and 494.

(2) (1896) 21 Bom., 467 at p. 475.

(3) P. J., 1895, p. 519.

to the provisions of section 33 of the Act and prepare the record under section 17 accordingly. Apparently, however, that officer did neither of these things. The decision arrived at by him as to the *thal* is thus quoted by the Assistant Judge: "There was no agreement in force as to the rice land and fruit trees between the khots and the tenants, nor were there means to ascertain what share of produce the tenants used to pay formerly as *thal*; so no *thal* could be fixed." No entry from the *bothkhat* is exhibited in the case. We must, therefore, conclude that there has been no fresh determination of rents and no substitution of any new rates for the old rates. Under these circumstances, the Civil Court can only act upon the record of 1887 and award the rents therein specified. This is just what the Assistant Judge has done, and his decision must be upheld. If the khot on the one hand or the occupancy tenants on the other think that a revision of the rents ought to be made by determination of the survey officer under section 33, they can apply to him, and in case of his failure to perform the duty which the law casts on him, they have a remedy open to them, not only under the Act itself, but in the ordinary course of law.

We confirm the decree with costs.

Decree confirmed.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

KARIYAPPA AND ANOTHER (ORIGINAL DEFENDANTS NOS. 1 AND 2), APPELLANTS, *v.* RACHAPA AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.*

1900. *February* 26

Limitation Act (XV of 1877), Sec. 20—Payment of interest as such—Interest—Settlement of accounts.

To satisfy the requirements of section 20 of the Limitation Act (XV of 1877) the payment of principal or interest, as such, need not be in money. It may be in goods or by a settlement of accounts between the parties; but the payment must be of such a nature that it would be a complete answer to a suit brought by the creditor to recover the amount.

Where a debtor consents that money due by him for interest should be credited to the account of the principal, and the interest balance reduced by

* Appeals Nos. 110 and 111 of 1899.