

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

1900.
February 8.

BHIMA (ORIGINAL PLAINTIFF), APPELLANT, v. RAGHAVENDRACHARYA
(ORIGINAL DEFENDANT), RESPONDENT.*

Service tenure—Non-performance of service—Payment of assessment by mortgagee—Change of title—Redemption—Resumption.

Plaintiff was the holder of certain inám lands, which were exempted from payment of assessment in consideration of his rendering certain services to Government.

In 1873 the lands were mortgaged to defendant, on condition that he was to enjoy the usufruct in lieu of interest.

In the famine of 1876 plaintiff left the village, and as no service was rendered, Government appointed another person to perform the service and demanded payment of the full assessment from defendant. Defendant paid the assessment and continued in possession. But Government did not forfeit the holding, and the lands continued, as before, in plaintiff's name in the vatan register.

In 1896 plaintiff filed a suit to redeem the lands.

Held, that, in the absence of a declaration of forfeiture of the holding, the steps which Government took to recover the assessment in lieu of service had not the effect of creating any change of title, and that the plaintiff was, therefore, entitled to redeem.

SECOND appeal from the decision of B. C. Kennedy, Assistant Judge, F. P., at Bijápur.

The facts of the case are fully stated in the judgment of this Court.

G. S. Mulgaokar, for appellant.

N. V. Gokhale, for respondent.

PARSONS, J. :—The lands in suit, Survey Nos. 137 and 156, were mortgaged by the plaintiff to the defendant for Rs. 160 in 1873, the defendant was placed in possession, and he was to enjoy the profits in lieu of payment of interest. The lands were to be restored to the plaintiff on payment of principal. The lands stood entered in the survey register in the name of the plaintiff, and he was relieved from the payment of assessment in consideration of his performing the service of a *walikar*. In the famine of 1876

* Second Appeal, No. 543 of 1899,

1900.

BIHMA
v.
RAGHAVEN-
DRACHARYA.

the plaintiff left his village, and as no service was performed by him, the Government appointed some one else to perform the service and demanded from the defendant payment of the full assessment of the lands. This the defendant paid, and he has since continued in possession paying it. The plaintiff has now brought this suit to redeem the mortgage, and the question is whether the equity of redemption is still owned by him or not. The Judge of the first Court thought that it was, while the Judge of the appeal Court held the contrary, the decision of each being based upon a consideration of the result of the action of Government in recovering the full assessment on the land. If, in consequence of the plaintiff's failure to perform service, Government forfeited his tenure of the land and granted it to the defendant, which is the decision of the Appellate Court, then no doubt the plaintiff would not own the equity of redemption, but if the Government merely demanded the payment of assessment in lieu of the performance of service, then there would be no change of title, and the plaintiff would have the right to redeem. It appears to us that the latter is all that was done. The lands in suit still stand in the plaintiff's khata in the vatan register (Exhibit 23) and no declaration of forfeiture is exhibited. The tenure of the plaintiff, therefore, cannot be said to have been extinguished, while the fact that the defendant has no document of title from the Government shows that no grant of the lands has been made to him.

We find upon the first point raised in the lower Appellate Court that the steps which Government took with reference to this inám land have not the effect of creating an ownership by the defendant of the land. We must ask the Judge to record a finding on the second point raised by him and certify it to this Court within a month.

Case remanded.
