APPELLATE CIVIL.

Before Mr. Justice Candy and Mr. Justice Crowe.

1899. *July* 3.

GANPARSHIBAI (ORIGINAL PLAINTIFF), APPELLANT, *v.* TIMMAYA SHIVAPPA HALEPAIK (ORIGINAL DEFENDANT), RESPONDENT.*

Landlord and tenant—Land Revenue Code (Bombay Act V of 1879), Secs. 56, 57, 81, 214 (e) and (i)—Lease—Failure to pay Government assessment—Forfeiture—Payment of the arrears by tenant actually in possession—Forfeiture not followed by sale of occupancy—Lease not destroyed by the forfeiture—Tenant's liability for rent subsequent to the forfeiture.

A registered occupant of land having failed to pay the arrears of Government revenue, his occupancy was forfeited under section 56 of the Land Revenue Code (Bombay Act V of 1879), but the forfeiture was not followed by sale of the occupancy, the Collector having allowed the registered occupant's tenant under a lease to be registered as occupant on his paying up all arrears of Government revenue due on the land. Afterwards a question having arisen as to the tenant's liability for rent under the lease subsequent to the forfeiture,

Held, that the tenant was liable. When a registered occupant's tenancy is forfeited under section 56 of the Land Revenue Code, and that forfeiture is not followed by sale of the occupancy (the Collector allowing the person actually in possession to be registered as occupant on his paying up all arrears of Government revenue due on the land), the lease by which the person actually in possession was holding from the former registered occupant is not destroyed by the forfeiture, and the lessee is still under liability to his landlord.

SECOND appeal from the decision of H. L. Hervey, District Judge of Kánara, confirming the decree of Ráo Sáheb T. V. Kalsulkar, Subordinate Judge of Honávar.

Suit for arrears of rent due und[illegible]lgeni lease dated March, 1886.

The defendant denied plaintiff's right to the rent, alleging that her (the plaintiff's) husband had failed to pay Government assessment, and had, therefore, forfeited his occupancy; that he (the defendant) had paid off the arrears, and being already in possession had thereupon become the registered occupant under the Land Revenue Code (Bombay Act V of 1879).

The Subordinate Judge found that the forfeiture had taken place in February, 1894, as alleged by the defendant. He allowed the plaintiff's claim for rent up to that date. On appeal, the

* Second Appeal, No. 18 of 1899.

Judge confirmed the decree, holding that the plaintiff's interest in the land ceased at the date of forfeiture. The plaintiff appealed.

Scott (Acting Advocate General) with *N. G. Chandavarkar*, for the appellant (plaintiff) :—The defendant was in possession as the plaintiff's tenant, and when the plaintiff failed to pay the assessment it was no doubt recovered from the defendant as actual occupant. No sale took place, and the question is, was the relationship of landlord and tenant put an end to ? We contend that it was not. The holding was forfeited by the plaintiff's default, but the forfeiture was removed by the payment made by the defendant, who was already in occupation as tenant—*Narayan* v. *Parshotam*(1). After the forfeiture the Collector did not adopt the course laid down in sections 56 and 57 of the Land Revenue Code (Bombay Act V of 1879). Until the sale takes place, the tenure cannot be put an end to. Forfeiture by itself has no operation under the Code. Failure to pay assessment cannot alter the relation existing between a landlord and tenant. The defendant has by paying the arrears of assessment benefited himself. If the land had been sold to a stranger, he would have lost the benefit of his lease—*Bhau* v. *Hari*(2) ; *Mulchand* v. *Shapurji*(3).

Ganpatrao S. *Mulgaonkar*, for respondent (defendant) :—As the holding was forfeited, there remained nothing in the landlord which entitles him to claim the benefit of the lease. In *Narayan* v. *Parshotam*(4) it was held that the forfeiture cannot operate to the prejudice of third parties. The plaintiff is a registered occupant, through whose neglect the forfeiture took place. If it is held that a forfeiture does not destroy all the rights of the defaulting registered occupant, and that there must be a sale after a forfeiture in order to produce that effect, then the provisions as to forfeiture are nugatory and it is useless to take the trouble to effect a forfeiture. A sale is a further step in the procedure, but there cannot be a sale without forfeiture. The Land Revenue Code has made no provision for such a sale. Under section 81 of the Code, the Collector is empowered to transfer the holding to the name of another person after it is forfeited. It does not contemplate a sale at all.

(1) (1896) 22 Bom., 389.
(2) (1895) 20 Bom., 747.
(3) P. J., 1898, p. 8.
(4) (1896) 22 Bom., 389.

1899.

GANPARSHI-BAI v. TIMMAYA.

CANDY, J. :—The question as argued before us is simply this: when a registered occupant's occupancy is forfeited under section 56 of the Land Revenue Code, and that forfeiture is not followed by sale of the occupancy, the Collector allowing the person actually in possession to be registered as occupant on his paying up all arrears of Government revenue due on the land, is the lease, by which the person actually in possession was holding from the former registered occupant, destroyed by the forfeiture, and does the person actually in possession hold the land from the date of the forfeiture free from any liability towards his landlord?

The District Judge held that the interest of the landlord (the former registered occupant) ceased on the day that the forfeiture was declared. Is there authority for that view? We think not. On the contrary we think that there is authority for the opposite view. In *Mulchand* v. *Shapurji*[1] this Court said (p. 10): "The forfeiture in itself has no direct legal consequences under the Code." The cases there quoted may not have been quite apposite; for in *Bhau* v. *Hari*[2] no forfeiture was shown to have taken place, and *Narayan* v. *Parsholam*[3] was the peculiar case of a superior holder (mulgar) seeking the assistance of the revenue authorities to recover the rent due to him from his permanent tenant (mulgenidár), and the revenue authorities thereupon declaring the mulgeni right to be forfeited, and putting the mulgar into possession. It was held that the mulgar was not entitled to possession, and that the action of the revenue authorities did not free the land from a mortgage incumbrance created by the mulgenidár before his mulgeni right was forfeited. The head-note to the case in the reports is too broadly worded for the decision on the particular facts of that case, though there are expressions in the judgment of the late Chief Justice which perhaps justify the general rule. But it is unnecessary to examine the facts of that case in detail. It is sufficient to compare the simple facts of the present case, as presented to us in second appeal, with the words of the Land Revenue Code.

The lessor failed to pay the arrears of land revenue; therefore his "occupancy" was liable to forfeiture: it was so forfeited,

(1) P. J., 1898, p. 8.

(2) (1895) 20 Bom., 747.

(3) (1896) 22 Bom., 389.

whereupon the Collector could have levied all sums of land revenue in arrear by sale of the occupancy, in which case the occupancy would have been freed of the rights created by the occupant in favour of the tenant (defendant) who was then actually in possession. The reason for such a provision is obvious: no purchaser would care to buy unless he could get a clean title. But the Collector is not bound to sell: he may otherwise dispose of the occupancy under rules or orders made in this behalf under section 214. What he did was to take the arrears of land revenue from the person actually in possession (the tenant) and to register that person as the occupant. This action is not directly covered by any of the Rules 30 to 64 under Chapter IX—Rules for the disposal of forfeited holdings, sections 56 and 214 (*e*) and (*i*), to be found in the existing rules in the Revenue Department. Therefore forfeiture, followed by a such disposition of the occupancy as is not justified by the rules under section 214, would not put an end to the lease under which the person actually in possession was holding under the previous registered occupant. The District Judge takes for granted that plaintiff's interest in the land altogether ceased on the day that the forfeiture was declared. So it may have done as between him and Government. But the forfeiture *per se* did not destroy the relations existing between him and his tenant. The tenant by paying the arrears of land revenue, which, according to the contract between plaintiff and the tenant, should have been paid to Government by the plaintiff, is equitably entitled to deduct them from arrears of rent due from him to his landlord, but the lease under which he holds is still subsisting.

As noticed above, the Collector has not been shown to have acted under any rule under section 214; nor did he take action under section 57: he did not take immediate possession of the land, nor did he place in possession any purchaser or any one else: he left the plaintiff's tenant in possession. It may be conceded that the power given to the Collector by section 56 of disposing of a forfeited occupancy under rules or orders under section 214 would not exclude his power to take appropriate action under any other section of the Land Revenue Code. Turning to section 81 we find that if it shall appear to the Collector that a sale of the

S 1899.

GANPARSHI-BAI v. TIMMAYA.

occupancy will operate unfairly to the prejudice of other persons interested in the continuance of the occupancy, it shall be lawful for him, instead of selling the occupancy, to forfeit only the registered occupant's interest in the same, and to substitute the name of any such other person as registered occupant on his payment of all sums due on account of land revenue for the occupancy. The Collector apparently acted under the above section: it might obviously have been to the prejudice of the tenant in possession if there had been a sale of the occupancy. Had the tenant not succeeded in becoming the purchaser, he would have lost all rights under his lease and would have been ejected. By preventing a sale he preserved his rights. But he cannot be said to have at the same time put an end to the lease under which he was in possession.

For the above reasons, we are of opinion that the District Judge should have found in the affirmative on the first issue framed by him, *i.e.*, that the plaintiff was entitled to recover rent from defendant for the period subsequent to the forfeiture of occupancy; and we amend the decree by awarding rent for the full amount claimed, deduction being of course made of the Government assessment paid by defendant. Defendant must pay all the costs up to date.

Decree amended.

APPELLATE CIVIL.

Before Mr. Justice Candy and Mr. Justice Crowe.

1899. *July* 3.

SANGAPPA (ORIGINAL PLAINTIFF), APPELLANT, *v.* SHIVBASAWA (ORIGINAL DEFENDANT), RESPONDENT.*

Receiver—Subordinate Judge, power of, to appoint—Appeal from order of refusal of Subordinate Judge—Jurisdiction—Civil Procedure Code (Act XIV of 1882), Secs. 503 and 505.

A Subordinate Judge, when considering the expediency of the appointment of a receiver, is acting under section 503 of the Civil Procedure Code (Act XIV of 1882) as explained by section 505. When he does appoint, his order is passed under section 503, and when he refuses to take the necessary step preliminary

* Appeal, No. 6 of 1899, from order.