1890.

SECRETARY OF STATE FOR INDIA v. SAKHARAM.

Lastly, as to the action of the settlement officers in 1885:—It is obvious on the face of their proceedings that they did not pretend to decide, or even to assert, that the village was still khoti; on the contrary, they were most guarded in their entries, the effect of which was that any decision given by them on the understanding that the village was khoti was not to be taken as admitting the rights of any one as khot. Section 39 (*e*) of Bombay Act I of 1880 obviously can have no application to the present case: for that refers to section 162 of the Land Revenue Code, which deals with the attachment of villages in respect of which there are arrears of revenue due. The attachment of Salpen never was in respect of any arrears.

We come back, then, to the conduct of the parties in 1849; and as nothing occurred in that year which would prevent the bar of limitation arising, we must reverse the decision of the District Judge and restore that of the Assistant Judge dismissing the suit. All costs throughout on plaintiffs.

Decree reversed.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

KRISHNARAO (ORIGINAL DEFENDANT), APPELLANT, *v.* BABAJI AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS.*

1899.
June 27.

Trees—Timber—Standing timber—Mango tree—Mango tree may be standing timber according to the custom of a locality—Registration Act (XX of 1866), Sec. 3.

By the term "timber" is meant properly such trees only as are fit to be used in building and repairing houses.

A mango tree, which is primarily a fruit tree, might not always come within the term "standing timber" used in the definition of immoveable property in section 3 of the Indian Registration Act (XX of 1866). But it may be classed as a timber tree where according to the custom of a locality its wood is used in building houses.

SECOND appeal from the decision of Ráo Bahádur A. G. Bhave, First Class Subordinate Judge, A. P., at Ratnágiri.

* Second Appeal, No. 645 of 1898.

1893.

KRISHNARAO v. BABAJI.

The plaintiffs sued to recover possession of a mango tree, alleging that the tree had been given to their father by defendant's grandfather by a deed of gift in Shake 1790 (1868 A.D.), and that the defendant wrongfully took away the fruit of the tree in April, 1893.

Defendant disputed the plaintiff's title under the deed of gift, which he alleged was a fabrication.

The Subordinate Judge at Devgad found that the deed of gift was genuine and awarded the plaintiff's claim.

On appeal the defendant contended that the standing tree in dispute was immoveable property; that under section 17 of the Registration Act (XX of 1866) (which was in force at the date of the deed of gift), its registration was compulsory, and that it was inadmissible for want of registration.

This objection was overruled by the First Class Subordinate Judge with appellate powers. He held that a mango tree, though a fruit-bearing one, might also be classed as a timber tree, especially in the Ratnagiri District, where its wood was often used not only for building houses, but also for boats, fences, furniture, carriages, &c.

The Subordinate Judge, therefore, held that the mango tree, being "standing timber," must for the purposes of the Registration Act be regarded as moveable property, and that the registration of the deed of gift was, therefore, not compulsory. He, therefore, confirmed the decree of the Court of first instance.

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

M. V. Bhat, for appellant:—The deed of gift relates to a mango tree. A mango tree is planted principally for its fruit and not for its wood. It is immoveable property within section 3 of Act XX of 1866. The section no doubt excepts "standing timber" from the definition of immoveable property. But the word "timber" does not include fruit trees. It applies to trees the wood of which is used for the purpose of durable and substantial buildings. Refers to Stroud's Judicial Dictionary, Craig on Trees, pages 10 and 11; and *Honeywood* v. *Honeywood*[1].

(1) (1874) L. R. 18 Eq., 306.

1899.

KRISHNARAO v. BABAJI.

Vasudev G. Bhandarkar, for respondent:—The definition of "timber" given in Stroud's Dictionary includes all trees which by the custom of a locality are used for building purposes. The lower Court finds that in the Ratnágiri District the wood of mango trees is used for building purposes. That being so, a mango tree in this district is timber within the meaning of section 3 of Act XX of 1866. The deed of gift, therefore, does not require registration.

PARSONS, J.:—It is argued that the deed of gift (Exhibit 36) executed in the year 1868 upon which the suit was founded is invalid for want of registration, the subject of it, a mango tree, not coming within the term "standing timber" used in the definition of immoveable property in section 3 of the Indian Registration Act, 1866. No doubt by the term "timber" is meant properly such trees only as are fit to be used in building and repairing houses. A mango tree, which is primarily a fruit tree, might not always come within the term, but in this respect the custom of a locality has to be considereed. "In Dart it is laid down that timber includes by local custom beech and various other trees, even trees which are primarily fruit trees, as cherry, chesnut and walnut (*Chandos* v. *Talbot*, 2 P. Wms., 606)." (See Stroud's Judicial Dictionary, 1890, under the heading "Timber.")

In the present case, the Judge says "the mango tree, though a fruit-bearing one, may be classed as a timber tree, more especially in this part of the country (Ratnágiri), where its wood is often used for building houses."

We, therefore, hold the deed admissible and confirm the decree with costs.

Decree confirmed
