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Much reliance has been placed by the defendant's Counsel upon the case of *Yool v. Ewing*⁽¹⁾. That, however, was a case in which no question arose as to the right of inheritance to an impartible and inalienable estate and the words of the Rules and Orders relied upon by the Master of the Rolls as indicating that no suit for a declaration of bastardy could be maintained, are not identical with the terms of section 42 of the Specific Relief Act.

We affirm the decree of the lower Court and dismiss the appeal with costs.

We order the appellant to pay the Court fees which would have been paid by him if he had not been permitted to appeal as a *pauper*.

Decree affirmed.

G. B. R.

(1) (1904) Ir. Rep. 1 Ch. 434.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkur and Mr. Justice Heaton.

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July 8.

NANABHAI BAJIBHAI PATEL (ORIGINAL DEFENDANT), APPELLANT,
v. THE COLLECTOR OF KAIRA AND OTHER LEGAL REPRESENTATIVES
OF INAMDAR PANDURANG SADASHIV (ORIGINAL PLAINTIFF),
RESPONDENT.*

*Bombay Land Revenue Code (Bombay Act V of 1879), sections 3 (11) and 217†—
Survey settlement introduced into Inam village—Inamdar's name entered as
Khatedar—Permanent tenant of the Inamdar before the settlement—Inam-
dar's right to enhance rent.*

Section 217 of the Bombay Land Revenue Code (Bombay Act V of 1879) is not restricted in its application to registered occupants only: it invests "the holders of all lands" in alienated villages with the same rights and imposes

* Second Appeal No. 186 of 1905.

† The sections run as follows:—

Section 3 (11)—"holder" or "landholder" signifies the person in whom a right to hold land is vested, whether solely on his own account, or wholly or partly in trust

upon them the same responsibilities in respect of the lands in their occupation that occupants in unalienated villages have.

The term "holder" as defined in clause 11, section 3 of the Land Revenue Code, is wide enough to include even a tenant who has entered into possession under an occupant.

SECOND appeal from the decision of L. P. Parekh, Judge of the Court of Small Causes at Ahmedabad with appellate powers, reversing the decree passed by M. N. Choksi, Subordinate Judge at Nadiad.

Suit by an Inamdar to recover enhanced rent from his tenant.

The plaintiff, Pandurang Sadashivrao, as Inamdar of the village of Manjipura in the Nadiad Taluka, was the grantee of the Royal share of revenue. At his request Government introduced survey settlement into the village, at which the plaintiff's name was entered as Khatedar or registered occupant of the lands in the village, inclusive of the land in dispute.

The defendant was the permanent tenant of the lands in dispute and was in possession long before the survey settlement was introduced. He used to pay Rs. 45-13-1 every year to the plaintiff as rent.

The plaintiff then enhanced the rent to Rs. 80; but the defendant declined to pay and contended that all he was liable to pay was the survey assessment under section 217 of the Bombay Land Revenue Code, 1879.

The plaintiff filed a suit to recover the enhanced assessment from the defendant. The Court of first instance held that the plaintiff was not entitled to enhance the rent and dismissed the suit.

for another person, or for a class of persons, or for the public; it includes a mortgagee vested with a right to possession.

217.—When a survey settlement has been introduced, under the provisions of the last section or of any law for the time being in force, into an alienated village, the holders of all lands to which such settlement extends shall have the same rights and be affected by the same responsibilities in respect of the lands in their occupation as occupants in unalienated villages have, or are affected by, under the provisions of this Act, and all the provisions of this Act relating to occupants and registered occupants shall be applicable, so far as may be, to them.

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On appeal, the lower Appellate Court held that the plaintiff was entitled to enhance the rent to a reasonable extent. It therefore, in recognition of plaintiff's right to enhance the rent, allowed an enhancement of 10 annas and 11 pies.

The defendant appealed to the High Court. The Inamdar-plaintiff having died was represented by the Collector of Kaira.

The appeal came up for hearing before a Bench composed of Russell and Aston, JJ., when their Lordships delivered the following interlocutory judgment on the 8th November 1905.

RUSSELL, J. :—This is a suit by an Inamdar claiming the right to enhance the rent of the defendant, who has been held to be a permanent tenant. A similar point was lately discussed by this High Court in the case of *Rajya v. Balkrishna Gangadhar*⁽¹⁾. The judgment in that case lays down what are the essential issues to be decided in a case of this nature. Inasmuch as findings on these issues have not been recorded by the learned Judge, it is impossible for this Court to pass any decree in this case.

We accordingly remand this case to the lower Appellate Court for findings on the following issues :—

- (1) Was the Inam grant of the soil or of the Royal share of the revenue ?
- (2) Was the defendant, or any predecessor in title of his, in possession of the lands in suit at or before the date of the grant in Inam under which the plaintiff claims ?
- (3) If so, was he in possession at that time as tenant of the person to whom the Inam grant was made, and had he Mirasi rights ?
- (4) Is it rent or assessment that is payable ?
- (5) Has the plaintiff the right by virtue of usage or otherwise to enhance as against the defendant ?
- (6) If there is a right to enhance, then to what extent can the enhancement be made having regard (a) to the usage of the locality in respect of land of the same description and tenure and (b) what is fair and equitable ?

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In addition we would add a further issue, *viz*,

(7) Inasmuch as the learned Judge has found that the survey settlement has been introduced into this village, what effect, if any, will that have, having regard to section 217, Land Revenue Code, upon the plaintiff's alleged right to enhance the defendant's rent or assessment?

Fresh evidence to be adduced if necessary.

Findings to be returned in two months.

The findings recorded on the issues were as follows :—

- (1) That the *inam* was the grant of the Royal share of revenue.
- (2) In the negative.
- (3) Not necessary to decide.
- (4) It is the rent that is payable.
- (5) The plaintiff as owner has a right to enhance the rent as against the defendant.
- (6) That the rent can be enhanced to Rs. 46-8-0 only.
- (7) That the introduction of survey settlement in the village will have no effect on the right to enhance the defendant's rent.

The appeal came up for disposal before Chandavarkar and Heaton, JJ.

L. A. Shah for the appellant :—

The defendant, as permanent tenant, is a holder of the land in dispute (see section 3, clause 11 of the Bombay Land Revenue Code, 1879) ; and as such he is liable to pay only Government assessment under section 217 of the Code. The mere fact that the Inamdar is the registered occupant makes no difference. The defendant is the holder and as such he is entitled to the benefit of section 217. See also *Surshangji v. Naran*⁽¹⁾.

G. S. Rao, Government Pleader, for the respondent :—

The applicability of section 217 is governed by the expression "so far as may be" which it contains. The Inamdar is the registered occupant, and as such he is the "holder" within the

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meaning of the section. His tenant—permanent or otherwise—is not a holder. If it were not so, the result would be that a registered occupant cannot let out his land on any term he likes, which is not the case even in a Khalsa village.

L. A. Shah, in reply.

CHANDAVARKAR, J.:—The respondent is Inamdar of the village in which the land in dispute is situate and brought the suit out of which this appeal arises to recover enhanced rent. The appellant contested the claim on several grounds, one of which, material for the purposes of this appeal and decisive of the case, was that he was entitled to the benefit of section 217 of the Land Revenue Code and liable to pay only the Government rate of assessment levied on the land. The lower Appellate Court has disallowed that defence on the ground that the appellant is not a registered occupant of the land. But section 217 does not restrict its application to registered occupants only. It may be and indeed the lower Court finds that the appellant holds the land as a mere tenant under the Inamdar and that the latter has also acquired the right of occupancy. But section 217 invests “the holders of all lands” in alienated villages with the same rights and imposes upon them the same responsibilities in respect of the lands in their occupation that occupants in unalienated villages have. “Holder,” as defined in clause 11 of section 3 of the Code, is wide enough to include even a tenant who has entered into possession under an occupant.

It was urged for the respondent that by the concluding part of section 217 the legislature intended it to apply “so far as may be.” But those words are used of the latter part of the section only and do not, when grammatically read, operate to limit the plain language of the first part.

The decree must be reversed and the plaintiff must be given a declaration that he is entitled to recover from the defendant only the amount of assessment levied under the Land Revenue Code. As the defendant admits the amount claimed, the claim as to that is also awarded, but this award shall be without prejudice to the right declared by this decree. The respondent must pay the appellant’s costs throughout.

HEATON, J.:—It is now established beyond controversy that the plaintiff is grantee only of the Royal share of the revenue; that the defendant is a permanent tenant under the plaintiff and that when the survey settlement was introduced into this village the Inamdar's name was entered as Khatedar or registered occupant of the lands in suit. At that time however, as for long before and since, the actual occupant was the defendant or his predecessor in title, who held as a permanent tenant. That being so, how does section 217 of the Bombay Land Revenue Code operate in this case? In virtue of being a permanent tenant, the actual occupant at the date of the settlement was one "in whom a right to hold land is vested." Therefore he was a "holder" within the meaning of that term as used in the Land Revenue Code. Consequently he "shall have the same rights and be affected by the same responsibilities in respect of the lands in his occupation as the occupants in unalienated villages." Therefore the defendant during the continuance of the settlement is only under an obligation to pay the survey assessment and no more.

The fact that at the time of the settlement the Inamdar's name was entered as Khatedar does not seem to me to affect the question. The right to cultivate the land vested in the tenant and that right carried with it a right to hold during the continuance of the settlement at no higher rent than the survey assessment, as soon as by the will of the Inamdar the settlement was introduced.

That is sufficient in my opinion for the decision in the case and therefore it is unnecessary to express any opinion on the other interesting point in the case: *viz.* whether after the earlier litigation evidenced by exhibits 61 and 62 it was open to the Courts to find on the evidence that the defendant or his predecessor in title was not in possession of the lands in suit, at or before the date of the grant in inam.

Therefore I agree with the order proposed by my learned colleague.

Decree reversed.

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