

APPELLATE CIVIL.

Before Mr. Justice Heaton and Mr. Justice Hayward.

BHIVA BHIKA CHOKEKAR AND OTHERS (ORIGINAL DEFENDANTS NOS. 1 TO 6), APPELLANTS v. BABU BALSHEET BOBHATE (ORIGINAL PLAINTIFF), RESPONDENT.

1918.

September 25.

Khoti Settlement Act (Bombay Act I of 1880), section 21†—Decision of the Recording Officer—Finality—Mere entry in revenue records as occupant is not such decision—Scope of the section.

Section 21 of the Khoti Settlement Act, 1880, makes conclusive certain decisions of the Recording Officer. The mere entry of the name of some particular person as occupant is not such a decision. What are contemplated as conclusive are decisions as to the class of tenure and as to the complicated rights of the Khots.

SECOND appeal from the decision of M. B. Tyabji, modifying the decree passed by G. V. Jadhav, Joint Subordinate Judge at Rajapur.

Suit to recover possession of certain lands by partition.

The lands in dispute belonged originally to brothers, Bhika (father of defendants Nos. 1 to 6) and Mahadu (husband of defendant No. 6). The two brothers lived as members of joint Hindu family. During his lifetime, Mahadu sold his half share in the lands to the plaintiff in 1897. The plaintiff's name was entered in the revenue records and he was placed in possession

* Second Appeal No. 82 of 1917.

† The material portion of the section runs thus :

21. In any other matter the decision of the said Recording-Officer shall not be open to appeal or revision, and shall be binding upon all the parties affected thereby until reversed or modified by a final decree of a competent Court.

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of the lands. One of the thikans bearing Survey No. 151, Falni No. 3, however, stood in the name of defendant No. 6 in the revenue records.

In April, 1909, the plaintiff was dispossessed of the lands by the defendants. He, thereupon, filed the present suit to recover his share by partition of the lands.

The Court of first instance decreed the suit except as to Survey No. 151, Falni No. 3, which was excluded from partition on the ground that the entry of it in the revenue records against the name of defendant No. 6 was conclusive against the plaintiff.

On the appeal, the decree for partition was confirmed, but it was modified by including Survey No. 151, Falni No. 3, among the property to be partitioned.

Defendants Nos. 1 to 6 appealed to the High Court.

P. B. Shingne, for the appellants:—The entries in the revenue records were final and also conclusive on the question of title: see sections 19 to 21 of the Khoti Settlement Act, 1880.

S. S. Patkar, for the opponent:—The entries in the revenue records made under the Khoti Settlement Act are not concerned with the question of title of the occupants. The object and scope of the inquiry made in order to prepare the records under the Act are to record the position of the Khot, of co-sharers in a Khotki, and of occupants or tenants in their relation towards the Khot; they are not concerned with the question of title between the tenants or occupants *inter se*: see *Mahomed Ibrahim v. Ali Mahomed Ali Pangarkar*⁽¹⁾.

HAYWARD, J. :—The plaintiff sued the six defendants for partition of his half share in certain lands in his possession on the strength of a sale-deed of 1879. The

⁽¹⁾ S. A. No. 850 of 1914 (Un. Rep.).

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six defendants joined in one written statement denying his possession as purchaser. The trial Court, however, found the purchase proved and gave a decree for partition with the exception of a plot of land entered in the name of defendant No. 6 in the Survey Records. The first appellate Court modified the decision by including in the partition the plot standing in the name of the sixth defendant. In second appeal it has been urged that this plot ought to be excluded, on the ground that the entry of the name of defendant No. 6 in the Survey Records was conclusive as to her title, under section 21 of the Khoti Settlement Act.

It is unfortunate that we have not in evidence the particular entry of the sixth defendant's name in the Survey Records. All we have is the document, Exhibit 26, in which the validity of the sale-deed was expressly admitted by defendant No. 6 before the Survey Settlement Officer. There can, in my opinion, be no doubt that on that evidence the particular plot entered in the name of defendant No. 6 ought not to be excluded from the partition, and effect would have to be given to that conclusion unless clear legal objection should appear under the provisions of section 21 of the Khoti Settlement Act.

Now that section makes conclusive certain decisions of the officer defined as the Recording Officer. What those decisions are is to be gathered from the preceding sections and a perusal of those preceding sections seems to me to make it clear that the mere entry of the name of some particular person as occupant was not intended to be included among those decisions of the Recording Officer. What were contemplated as conclusive were decisions as to the class of tenure and as to the complicated rights of the Khots. The appellants, could not,

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therefore, in this appeal have recourse to the provisions of section 21 of the Khoti Settlement Act.

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The appeal ought, therefore, in my opinion, to be dismissed with costs. A similar view was taken in the case of *Mahomed Ibrahim v. Ali Mahomed Ali Pangarkar*⁽¹⁾, by another Bench of this Court.

HEATON, J.:—I agree,

Appeal dismissed.

R. R.

(1) S. A. No. 850 of 1914 (Un. Rep.)

APPELLATE CIVIL.

Before Mr. Justice Heaton and Mr. Justice Hayward.

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PANDU VITHOJI LADKE (ORIGINAL DEFENDANT NO. 1), APPELLANT v.
GOMA RAMJI MARWADI AND OTHERS (ORIGINAL PLAINTIFFS AND
DEFENDANT NO. 2), RESPONDENTS.*

September 27.

Hindu law—Mitakshara—Joint family property—Sale of entire property by one co-parcener—Sale operates only upon the co-parcener's share in the property—Purchaser cannot get joint possession of the share but is only entitled to declaration of his rights.

Under the Mitakshara, as interpreted in the Bombay Presidency, a co-parcener can sell his own interest in joint family property, provided there is valuable consideration for the sale. The sale is valid, even though the sale deed takes the form, not of a sale of his interest but of a sale of the whole property. In such a case, joint possession cannot be given to the purchaser, but merely a declaration that he has acquired the interest of the vendor, whatever that may be in the particular property, and a direction that he be left to recover that interest by separate suit for partition in which all necessary parties and properties should be joined.

SECOND appeal from the decision of R. B. Milne, Assistant Judge at Poona, confirming the decree passed by A. Majid, Additional Subordinate Judge at Khed.

*Second Appeal No. 586 of 1917.