

aside was made on the 7th July 1914, whereas the plaints were presented on the 30th September 1917. Therefore it would be no use for us to set aside the order of the District Judge rejecting the plaint on the ground that the suit was barred under section 4 (a) of the Bombay Revenue Jurisdiction Act of 1876, as if the plaints were again presented, they would have to be rejected on the ground that on the facts set out in the pleadings and on the face of the plaints they were presented beyond the time prescribed by the Limitation Act. All the appeals will, therefore, be dismissed with costs.

Decree confirmed.

J. G. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

DAMODAR RAGHUNATHI KARANDIKAR AND ANOTHER (ORIGINAL DEFENDANTS NOS. 1 AND 2), APPELLANTS v. VASUDEO PARASHRAM KETKAR AND OTHERS (ORIGINAL PLAINTIFF AND DEFENDANTS NOS. 3 TO 12), RESPONDENTS.*

Khoti Settlement Act (Bom. Act I of 1880), sections 9 and 10—Occupancy tenants—Transfer of occupancy rights—Possession—Right of Khot to forfeit occupancy rights.

Defendants Nos. 2 to 6 were the occupancy tenants of the plaintiff Khot. On the 12th January 1912 the defendants sold their occupancy rights to defendant No. 1 giving him possession. The plaintiff having sued for a declaration that by transfer the defendants had forfeited their occupancy rights and that, therefore, he was entitled to possession of the property,

Held, dismissing the suit, that although the transfer to defendant No. 1 was null and void as against the Khot, the defendants Nos. 2 to 6 still remained his occupancy tenants.

Yesa bin Rama v. Sakharam Gopal⁽¹⁾, followed.

* Second Appeal No. 18 of 1918.

(1) (1905) 30 Bom. 290.

1919.

DAMODAR
KRISHNA
v.
THE
SECRETARY
OF STATE
FOR INDIA.

1919.

September 15.

1919.

SECOND appeal against the decision of T. R. Kotwal, Assistant Judge at Ratnagiri, reversing the decree passed by R. B. Khangaonkar, Subordinate Judge at Chiplun.

DAMODAR
RAGHUNATH
v.
VASUDEO
PARASHRAM.

Suit for a declaration and possession.

Plaintiff was a Khot of the village of Ketki in Ratnagiri district. Defendants Nos. 2 to 6 were the occupancy tenants of the plaintiff Khot.

On January 12, 1912, defendant No. 2 for himself and for defendants Nos. 3 and 4 as their Mukhtyar sold their occupancy rights to defendant No. 1 and put him in possession of the lands.

The plaintiff, thereupon, sued for a declaration that the occupancy right respecting the plaint property was extinguished or forfeited and that the property had become the absolute property of the Khot and for possession and future mesne profits.

The defendants contended *inter alia* that the lands were not held by them as occupancy tenants; that they were sold to them by plaintiff's ancestor and the sale was subsequently notified by other Khoti sharers; and that the suit was barred by limitation.

The Subordinate Judge dismissed the suit on the ground that the plaintiff as the managing Khot was not entitled to recover possession.

On appeal, the Assistant Judge, reversed the decree on the ground that there was determination of the tenancy of defendants Nos. 2 to 4 by the sale and by delivery of possession to defendant No. 1.

The defendants Nos. 1 and 2 appealed to the High Court.

G. S. Rao and A. G. Desai, for the appellants :—The present case is governed by Bom. Act I of 1880. Under

1919.

 DAMODAR
 RAGHUNATH
 v.
 VASUDEO
 PARASHRAM.

section 10 of the Act, a Khot was entitled to forfeit the occupancy tenants' rights under the following three circumstances :—(1) If the occupant resigned the land ; (2) if he died without leaving any heirs ; or (3) if he failed to pay the rent due in respect of his occupancy.

The present case, however, does not fall under any one of the three classes and therefore the Khot can have no power to determine the rights of the occupancy tenants (defendants Nos. 2 to 6) in consequence of the sale of their occupancy rights made by them to defendant No. 1 : *Yesa bin Rama v. Sakharam Gopal*⁽¹⁾.

The transfer in itself may be invalid and the legal effect of section 9 is to make the transfer inoperative but it does not extinguish the occupancy tenants' rights which remain unaffected unless they are determined in one of the three ways mentioned above.

S. R. Balhale, for respondent No. 1 :—The legal effect of transfer is to make the person in occupation an ordinary tenant under the Khot because the Khot is the landlord of the whole village ; see section 6 of Bom. Act I of 1880.

The occupancy tenants have transferred all their rights and parted with possession in favour of defendant No. 1 and in consequence thereof a contractual relationship of landlord and tenant is established between the Khot and defendant No. 1. This defendant was given notice to quit under section 84 of the Land Revenue Code, 1879.

The ruling in *Yesa bin Rama v. Sakharam Gopal*⁽¹⁾ does not apply.

MACLEOD, C. J. :—In this case the plaintiff sued for a declaration that the occupancy right respecting the plaint property was extinguished or forfeited, and that

(1) (1905) 30 Bom. 290.

1919.

DAMODAR
RAGHUNATH
v.
VASUDEO
PARASHRAM.

the property had become the absolute property of the Khots and for possession and future mesne profits. The facts shortly are that defendants Nos. 2 to 6 were the occupancy tenants of the plaintiff-Khot. On the 12th January 1912, the 2nd defendant for himself and defendants Nos. 3 and 4 purported to sell their occupancy rights to the 1st defendant giving him possession. It is claimed by the plaintiff that the defendants thereby forfeited their occupancy rights, and that therefore he was entitled to possession of the plaint property. The trial Court dismissed the suit with costs. The lower appellate Court declared that the occupancy tenancy in the plaint as amended was determined, and the appellants were entitled to recover possession. In our opinion the order of the lower appellate Court was wrong. The case is covered by authority. In *Yesa bin Rama v. Sakharam Gopal*^(a) the head note runs :—

“There is no authority for saying that an occupancy tenant, whose tenancy is not determined, forfeits his tenancy by parting temporarily with the possession of his land to another without resigning the land as completely as would be necessary, in the case of privileged occupants of another sub-class, to place the land at the disposal of the Khot. And so long as his tenancy is not determined the land is not at the disposal of the Khot. And the Khot cannot claim to treat the person in possession, under a right derived from the occupancy tenant, either as a trespasser or even as a yearly tenant, so long as the privileged occupant's rights remain undetermined by resignation, lapse or duly certified forfeiture.”

It is admitted that this case arose before the Khoti Settlement Act of 1880 was amended. Section 10 of that Act provides for the resignation, lapse or forfeiture of privileged occupants' lands, although the occupancy tenants' rights under section 9 are said to be heritable, but not otherwise transferable. There was no provision in the Act before it was amended whereby the transfer by an occupancy tenant of all his rights to the third parties brought about the termination of

1919.

DAMODAR
RAGHUNATH
?.
VASUDEO
PARASURAM

his rights. That was provided for in the amended Act. Under section 2 of the Amending Act VIII of 1912, sections 9 and 10 of the Act of 1880 were repealed and new sections were enacted. Under now section 10: "If any occupancy tenant...does any act purporting to transfer such land or any portion thereof or any interest therein without the consent of Khot...such land shall be at the disposal of the Khot as Khoti land free of all encumbrances..." It is quite clear, therefore,

at under the Act of 1880 as stated by Mr. Justice Batty in his judgment in *Yesa bin Rama v. Sakharam Gopal*⁽¹⁾: "the Act attaches no consequence to a prohibited transfer but merely renders it abortive, null and void. It does not annihilate the occupancy-tenants' rights. And unless they are otherwise determined...the land is not at the disposal of the Khot, and he has no right under sections 7, 9 and 10 to maintain any objection except this, that the transferee cannot claim for himself any permanent tenure on the fixed statutory rent." The result must be, that although defendants Nos. 2 to 4 transferred their occupancy rights in 1912 to the 1st defendant, and that transfer is null and void as against the Khot, defendants Nos. 2 to 4 still remain his occupancy tenants. We are not concerned with what may have happened since the transfer, as all the rights of the Khot against his occupancy-tenants are preserved in spite of the transfer. In our opinion the decision of the lower appellate Court was wrong and the suit must be dismissed with costs throughout.

Decree reversed.

J. G. R.

⁽¹⁾ (1905) 30 Bom. 290 at pp. 300, 301.