

1919.

SADASHIV
RAM-
CHANDRA
v.
TRIMBAK
KESHAV.

Court who would have fully enquired into the circumstances of the arbitration. It seems to me that on this ground we ought to uphold the decree of the first appeal Court.

It is not necessary in these circumstances to consider the other question argued before us, that is to say, whether there was an agreement between the minor's natural guardian, his mother, and the minor's opponents that the award should be filed without objection in Court. If there had been any such formal agreement, then no doubt it would have been necessary to have obtained the formal sanction of the Court. But it is not necessary here to discuss that matter further as upon the other ground it seems to me clear that we ought to uphold the decree of the first appeal Court and dismiss this appeal with costs.

Decree confirmed.

R. R.

APPELLATE CIVIL.

*Before Sir Basil Scott, Kt., Chief Justice and Mr. Justice
Bathelcor.*

1917.

July 11.

HATHISING JEEBHAI BARIA AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS v. KUBER JETHA PATIL AND OTHERS (ORIGINAL PLAINTIFFS) RESPONDENTS.*

Land Revenue Code (Bombay Act V of 1879), section 135 J. — Record-of-Rights, entries in—Presumption of correctness—Retrospective effect.

The provisions of section 135 J of the Bombay Land Revenue Code, 1879, are not retrospective with regard to entries which for the purpose of determining the rights of the parties were until after the year 1913 innocuous.

APPEAL from an order passed by R. S. Broomfield, Joint Judge at Ahmedabad, reversing the decree passed by and remanding the suit to I. D. Munim, Subordinate Judge at Godhra.

* Appeal No. 54 of 1916 from Order.

The plaintiffs sued on the 12th July 1913 to recover a third share in the income of certain lands for Samvat years 1935 and 1937 (1910-1911 A. D.). They proved that they had paid half the assessment on the lands for Samvat years 1951 to 1966 and that they had received a share of the profits of the jungle when trees were cut. They also relied on the entry of their right in the Record of Rights in 1905-06 and repeated in 1912-13.

The Subordinate Judge amended the plaintiffs' claim to a third share in the produce of the jungles but dismissed their claim to recover income of the lands.

On appeal, the Joint Judge varied the decree by holding that the plaintiffs were also entitled to recover income of the lands, on the following grounds :—

"In the Record of Rights, however, the plaintiffs are entered as being in enjoyment of a third share of the lands...The entry was made originally in 1905-06 and repeated in 1912-13. Now it has been enacted by Act IV of 1913, by which section 145-J. was added to the Land Revenue Code, that entries in the Record of Rights shall be presumed to be true until the contrary is shown or until a new entry is lawfully made. It appears to me, therefore, that the lower Court is wrong in holding that plaintiffs have failed to make out their claim to a third share in the lands themselves. I think that these entries in the Record of Rights, read with the evidence abovementioned as to payment of assessment and enjoyment of forest produce are sufficient to prove *prima facie* the plaintiffs' ownership of a third share in the lands themselves, and not merely in the forest profits, and to throw upon defendants the burden of proving the contrary. The defendants' evidence, which consists only of the deposition of one of their number, is completely unconvincing and does not rebut the plaintiffs' claim in the least."

Accordingly, the learned Judge reversed the decree and remanded the suit to the trial Court for ascertaining the plaintiffs' share in the income of the lands.

The defendants appealed to the High Court against the order of remand.

G. N. Thakor, for the appellants.

M. H. Mehta, for the respondents.

1917.

HATHISING
JEEBRAI
vs.
KUDER
JEEBRAI.

1917.

HATHIBING
JEEBHAI
V.
KUNBER
JETHIA.

SCOTT, C. J.:—It appears from the judgment of the learned Joint Judge that he has presumed certain entries in the Record of Rights to be true. Those entries were made originally in 1905-06, and were repeated in 1912-13. The revenue years end on the 31st of March. Therefore, the later entry in the Record of Rights must be taken to have been made prior to the 31st March 1913. Bombay Act IV of 1913, which amended the Land Revenue Code, and superseded the original Record of Rights Act of 1903, enacted that a new section 135J should be added to the Land Revenue Code, providing that "an entry in the Record of Rights and a certified entry in the register of mutations shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor." That Amending Act did not receive the assent of the Governor General in Council until the 28th May 1913, which would be in the revenue year 1913-1914 subsequent to the year in which the last entry relied upon by the learned Judge was made. We do not think that the provisions of section 135J, which have just been read, can be retrospective with regard to entries which for the purpose of determining the rights of the parties were until after the year 1913 innocuous. The appellants' pleader has, therefore, successfully shown that the decree of the learned Judge has been influenced materially by evidence or by a presumption which he ought not to have made. For these reasons we must remand the case to the learned Judge directing him not to give effect to the presumption in section 135J, with regard to entries made prior to the operation of the Amending Act of 1913. If the entries in the Record of Rights are still relied upon as of any probative value, the defendants should be allowed to give rebutting evidence with regard to the facts recorded therein, as the entries themselves appear to have been admitted at a very late stage. The learned Judge should consider the evidence

already recorded, and such further evidence as may be given, in the light of the remarks in this judgment. We set aside the decree and remand the case for disposal to the lower Court. Costs costs in the cause.

Decree set aside.

R. R.

HATHISING
JEEBHAI
v.
KUBER
JETHA.

APPELLATE CIVIL.

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

CHIANBASAYYA BIN PADADAYA AND OTHERS (ORIGINAL DEFENDANTS),
APPELLANTS v. CHIENNAPGAVDA RAMCHANDRAGAVDA (ORIGINAL
PLAINTIFF), RESPONDENT.*

1919.

August 1

*Dekkhan Agriculturists' Relief Act (XVII of 1879), sections 2, 10A—
Agriculturist at the time of the transaction—Sale or mortgage—Oral evidence
to prove that the transaction was a mortgage.*

The defendant conveyed his land to the plaintiff under a document which was in the form of a sale deed. Sometime before the execution of the deed, sections 2 and 20 of the Dekkhan Agriculturists' Relief Act, 1879, were extended to the District in which the defendant lived. The plaintiff having sued to recover possession of the land, the defendant sought to prove by oral evidence that the transaction was a mortgage under section 10A of the Act:—

Held, that the defendant could not take the advantage of section 10 A of the Dekkhan Agriculturists' Relief Act, 1879, since he could not prove that he was an agriculturist at the date of the transaction, as at that time it could not be said that the Act was extended to the District merely because sections 2 and 20 had been extended.

APPEAL from the decision of V. M. Ferrers, Assistant Judge at Dharwar.

Suit to recover possession of land.

The land in dispute was sold by the defendant to the plaintiff in 1903. Sometime before the date of the transaction, sections 2 and 20 of the Dekkhan

* First Appeal No. 254 of 1917.