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he signed the endorsement of the deceased's identity before the Sub-Registrar and who had, therefore, presumably seen the testator sign the will in this manner. Then also I think it is legitimate to treat the Sub-Registrar himself, who made the endorsement about the deceased's admitting that the will was his, as an attesting witness to the will, for he had not only seen the testator affix his thumb-mark to it, but had also received from the testator a personal acknowledgment that the will was his. The endorsement on the will made by the Sub-Registrar and his certificate of registration are admissible for the purposes of proving that the document has been duly registered and that the facts mentioned in the endorsement have occurred as therein mentioned by virtue of the provisions of section 60 of the Indian Registration Act.

Decree confirmed.

J. G. R.

APPELLATE CIVIL.

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

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October 5.

SITARAM SADASHIV SAPRE (ORIGINAL PLAINTIFF), APPELLANT *v.* TUKARAM DAJI PATIL, MINOR, BY HIS GUARDIAN BALA MUKUNDA JAGTAP (ORIGINAL DEFENDANT), RESPONDENT*.

Land Revenue Code (Bom. Act V of 1879), section 216†—Unalienated village—Grant of certain lands within unalienated village—Survey settlement—Permanent occupant—Right of grantee to enhance rent—Rent can be enhanced according to usage of district.

* Second Appeal No. 528 of 1917 (with Second Appeals Nos. 529 and 664 of 1917 on review).

† The section runs as follows :—

216. Save as is otherwise provided in section 111 and hereinafter in this section, the provisions of Chapter VIII to X * * * shall not be applied to any alienated village except for the purposes of fixing the boundaries of any such

Chapters VIII to X how far applicable to alienated villages.

In an unalienated village where there has been a grant of certain fields by Government to be held on certain terms either absolutely free from payment of revenue or merely on payment of a portion of the revenue, such lands were not intended to be brought within the purview of section 216 of the Land Revenue Code, 1879. Even though survey might be introduced into the unalienated village, the grantee of lands from Government will be entitled to enhance the rent of the occupants holding the land permanently under him within the limits of the usage or custom of the particular district in which the lands were situate.

SECOND appeal against the decision of G. K. Kale, Assistant Judge at Satara, reversing the decree passed by M.A. Bhave, Joint Subordinate Judge at Karad.

Suit to recover possession.

The lands in dispute were held in Inam by plaintiff's family. They were situate in the village of Atake, which was an unalienated (Khalsa) village, and Revision Survey Settlement was in force in that village. The plaintiff sued to recover possession of the lands from the defendant with Rs. 20 as enhanced rent alleging that they belonged to him both in Inami and Mirasi rights.

The defendant contended that the lands had been held by him under miras rights from ancient times; that the plaintiff was entitled only to the assessment

village, and of determining any disputes relating thereto. But the provisions of the said Chapters shall be applicable to—

(*a*) all unalienated lands situated within the limits of an alienated village;

(*b*) villages of which a definite share is alienated, but of which the remaining share is unalienated;

(*c*) alienated villages the holders of which are entitled to a certain amount of the revenue, but of which the excess, if any, above such amount belongs to Government.

But it shall be lawful for the Commissioner, on an application in writing being made by the holder of any such village to that effect, to authorise the extension of all or any of the provisions of the said Chapters to any such village.

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of the land and that he could not claim enhanced rent.

The Subordinate Judge held that the defendant was a Mirasdar not liable to eviction so long as he paid the rent; that the plaintiff was entitled to enhanced rent at the rate of Rs. 12.

On appeal, the Assistant Judge set aside the decree for enhanced rent on the ground that section 216 (*b*) of the Bombay Land Revenue Code operated as a bar to the plaintiff's claim for enhanced rent, or assessment until next revision survey. He observed "the point was considered by our own High Court in Appeal No. 618 of 1911 (from appellate decree of this District) decided on 19th November 1912, and it was held that a holder of an Inam land in a Khalsa village is not entitled to enhanced rent until next revision. Reading section 216 (*b*) with section 106 of the Bombay Land Revenue Code, I think, the same principle applies to the present case."

On appeal to the High Court the Court (Macleod, C. J. and Heaton J.) confirmed the decree.

The appellant applied for a review of the High Court decree on the 17th January 1920 on the following grounds:—

(1) That the Honourable High Court in S. A. No. 115 of 1918 and other companion appeals has refused to follow the previous unreported decision in S. A. No. 618 of 1911 of this Honourable High Court and has held that the Inamdar's rights to enhance the rents under section 83 of the Land Revenue Code in respect of land situated in Khalsa (unalienated) village is not taken away by section 216 (*b*) of the Land Revenue Code.

(2) That this Honourable High Court has held in S. A. No. 115 of 1918 that a survey number is not a

definite alienated share of a village within the meaning of section 216 (*b*) of the Land Revenue Code.

(3) That this Honourable High Court in deciding S. A. No. 664 of 1917 under review has not considered the fact that the lands in suit which were the portions of a survey number in a Khalsa village were not a definite alienated share of a village within the meaning of section 216 (*b*) of the Land Revenue Code.

D. R. Manerikar, for *S. S. Patkar*, Government Pleader, for the appellant.

No appearance for the respondent.

MACLEOD, C. J. :—This is an appeal in a suit filed by the plaintiff Inamdar to recover possession of the plaint land from the defendant, or in the alternative for a decree for enhancing the rent. The important issues were (1) does plaintiff prove that he is the owner of both Inami and Mirasi rights over land in suit; (2) is defendant an annual tenant; and (5) is plaintiff entitled to enhanced rent and at what rate. The trial Court found that the plaintiff was merely an Inamdar of the land in suit; that the defendant was not an annual tenant, but a Mirasdar not liable to eviction so long as he paid the dues; and that the plaintiff was entitled to enhanced rent at the rate of Rs. 12 annually in respect of plaint land. The question whether the plaintiffs were Inamdars of the soil or merely grantees of the royal share of the revenue does not seem to have been discussed, and it seems to have been taken for granted that they were Inamdars of the soil. Otherwise if they had been grantees only of the royal share of the revenue, then they would only be entitled to the assessment. The learned trial Judge was of opinion that the defendants and their predecessors had been paying dues to the plaintiff which were nearly equal to the assessment or *akar* of the land from ancient

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times. It seems somewhat unfortunate to use the word 'dues' which is a colourless word, the use of which might lead to confusion, and it has done so in this case as appears from the argument of the respondent's pleader. Then the learned Judge having come to the conclusion that the defendants and their ancestors had acquired permanent occupancy rights as Mirasdars by reason of the antiquity of their tenure and by the continuity of possession for a number of years without any break under the tenure the origin of which was not traceable, applied the provisions of section 83 of the Bombay Land Revenue Code and said : "It is a well established principle of law that an Inamdar is entitled to enhance the dues or rent payable by a Mirasdar. It is also a well-established principle that an Inamdar is entitled to get a fair and equitable enhanced rent according to the custom of the country and quality of the land from the defendants. It is a well established custom in this part of the country that the rent leviable on Miras lands may be enhanced up to the limit of half the gross produce of the land. This custom is proved by the judgment, Exhibit 18, wherein other decisions of the Courts of this District on the point are referred to."

In first appeal this decree was set aside on a preliminary objection that section 216 (*b*) of the Bombay Land Revenue Code operated as a bar to the plaintiff's claim for enhanced rent or assessment until the next revision survey, following the decision of this High Court in Second Appeal No. 618 of 1911. That decision was confirmed in appeal on the ground that the previous decision of the High Court covered the case. Afterwards a very similar case came for decision before Sir John Heaton and myself, and it was then decided that the plaintiff in that case, who was in very much the same position as the plaintiff in this case, that is to

say, he was the Inamdar of particular fields in an unalienated village, was not the owner of a definite share of an unalienated village within the meaning of section 216 (*b*) of the Bombay Land Revenue Code, so that when it was pointed out to me that this question had never really been considered in S. A. No. 618 of 1911, I granted the application for review of our decision in this appeal and two companion appeals. The decision in S. A. No. 618 of 1911 was really based on a matter of prejudice, as the learned Judges thought that if an Inamdar, who was merely holding certain fields in an unalienated village was allowed to enhance the rent of the persons occupying those fields, jealousy would arise as between those tenants and the occupants of the unalienated portions who were paying assessment to Government. But it was never considered in that judgment whether the Inamdar of certain fields in an unalienated village was Inamdar of a definite share of the village within the meaning of section 216 (*b*).

Now it is common knowledge that in unalienated villages there may be many cases of grants of certain fields by Government to be held on certain terms either absolutely free from payment of revenue or merely on payment of a portion of the revenue, and I do not think that such lands were intended to be brought within the purview of section 216 of the Bombay Land Revenue Code. Clearly this is an unalienated village to which the survey has been extended. It has not been found in this case whether the plaintiff was paying a portion of the assessment or none at all to Government. But with regard to the relationship of the plaintiff to the occupants of his lands, that must be proved by evidence, and so far the evidence shows that the defendants and their ancestors had been in occupation for so long that the origin of their tenure was lost in antiquity. They are, therefore, permanent tenants owing to the presumption which arises under section 83 of the Bombay

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Land Revenue Code and the only question is whether the plaintiff is able to prove his right to enhance what has previously been paid by the defendant for the privilege of holding those lands. If the defendants can prove that they have been paying in past years a sum exactly equivalent to the assessment, then it would be open to the Court to hold that the defendants were paying assessment only, and must, therefore, be in the same position as occupants of unalienated lands. If, on the other hand, the amount paid by the defendants was only approximately close to the amount which was paid for assessment by such occupants, then it would be open to the Court to hold that the defendants had not indefeasible rights to continue to hold on paying what they had previously paid. Then would arise the question, plaintiffs having a right to enhance, to what extent the enhancement of the rent can be made? That would depend entirely on evidence with regard to the usage or otherwise of this particular District. Therefore in all these three appeals the decrees of this Court will be set aside, and also the decrees of the lower appellate Court, and the cases will be sent back to be dealt with on their merits by the lower appellate Court. Costs costs in the appeal.

FAWCETT, J. :—I certainly think the application for review should be granted. I do not suppose that there is a single unalienated village in this Presidency which does not contain some alienated lands, and it would be absurd to suppose that the Legislature intended the provisions of section 216 (*b*) of the Bombay Land Revenue Code to apply in such cases. The ordinary case to which that clause is applicable is one where there is an Inamdar who has been granted a definite share (say $\frac{1}{2}$ or $\frac{1}{4}$) of a particular village, and who is accordingly entitled to a corresponding proportion of the revenue of the village, Government having the remainder. I agree, therefore, that the case must be remanded

to the lower appellate Court. I would only add my personal opinion that, in considering what is the limit of enhancement permissible to the landlord under section 83 of the Bombay Land Revenue Code, the Court is entitled to take into consideration not only the general usage of the District, but also what has been the particular usage in regard to the lands in suit. If, for instance, it is proved that the permanent tenant has only paid a very little more than the assessment of the land for a very large number of years, then, although there may be a general custom allowing an Inamdar to enhance up to the limit of half the gross produce of the land, I should be inclined to say that that usage did not apply to the particular lands in suit. These, however, are questions which the lower Court will have to consider, and on which it is not necessary to come to any definite conclusion at present.

Decree reversed.

J. G. R.

APPELLATE CIVIL.

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

VISHNU BHIKAJI ADHIKARI AND OTHERS (ORIGINAL PLAINTIFFS) APPELLANTS *v.* BABLA LAKHA JATHAR AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS*.

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AND VICE VERSA.

Khoti Settlement Act (Bom. Act I of 1880), sections 8, 10†—Khot—Privileged occupant—Resignation of occupancy in favour of Khot—Adverse possession of land against the occupant—Effect of adverse possession against

* Cross Appeals Nos. 992 of 1917 and No. 55 of 1918.

† These sections run as follows :—

8. Tenants other than occupancy tenants shall continue to hold their lands subject to such terms and conditions as may have been, or may hereafter be, agreed upon between the Khot and themselves, and in the absence of any such