

1920.

IN THE
MATTER
OF THE
EXCESS
PROFITS
DUTY ACT.

reasonable grounds for being satisfied that it was unnecessary to make the reference to the High Court, which the petitioners asked for.

Solicitors for the plaintiff: Messrs. *Crawford, Bayley & Co.*

Solicitor for the defendant: Mr. *J. C. G. Bowen.*

Rule discharged.

G. G. N.

APPELLATE CIVIL.

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

[1920.

September
13.

BHAVAN MORAR, BY HIMSELF AND AN SURVIVING CO-PARCENER OF THE DECEASED VALLABH PEMA (ORIGINAL PLAINTIFF), APPELLANT *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL (ORIGINAL DEFENDANT), RESPONDENT^a.

Resumption—Pasaita Inam land—Patelki service—Exemption from payment of land revenue in return for service as Patel—Service ceasing claim for exemption from paying land revenue ceases—Government not entitled to resume possession of land—Land Revenue Code (Bom. Act V of 1879), section 202.

The land in suit was held as a *Pasaita Inam* land by one Vallabh Pema. It was entered as *Chakariat* at the time of the settlement in 1868 and in consideration of rendering services as a Patel, Vallabh Pema was excused from paying revenue to Government. In 1916 Vallabh Pema was removed from the Patelship and a stranger to the family was selected to officiate in his place. The Collector then purporting to act under section 202 of the Land Revenue Code made an order that Vallabh Pema should vacate the land and hand over possession to the new Patel. The plaintiff, grandson of Vallabh Pema, thereupon sued for a declaration that the plaintiff had a right to hold and occupy the suit land so long as he paid the full assessment to the Government and that the Government had no right to evict the plaintiff,

Held, that the plaintiff was entitled to succeed as his right to possession of land was not lost though his family ceased to hold the Patelkship and their claim for exemption from paying the land revenue came to an end.

FIRST appeal against the decision of W. Baker, District Judge of Surat, in Suit No. 7 of 1917.

^a First Appeal No. 226 of 1918.

Facts material for the purposes of this report are sufficiently stated in the judgment.

Tyabji with *K. H. Kellcar*, for the appellant.

Government Pleader, for the respondent.

MACLEOD, C. J. :—The plaintiff was the grandson of one Vallabh Pema who admittedly at one time held the suit lands and was excused from paying revenue to the Government owing to his rendering service as Patil. Exhibit 46 is the register of the Pateli Tharav with respect to the land in suit. That recites that “the land was continued as *pasaita* land from the time of the late Government. It was entered as *chakariat* at the time of the settlement. At present, order dated the 21st of January 1868 of the Collector requiring it to be entered as Pateli having been received, it is so entered. Taking that into consideration and entering one time the assessment [*sic*] it has been entered for maintenance of inactive sitting partners.” Then there is the Land Alienation Register for 1886-87 which clearly shows that the land revenue was alienated in favour of Vallabh Pema under the class of alienations to village servants and alienations were continued so long as services were rendered to Government. In 1916 Vallabh Pema was removed from the Patelship owing to his age, but the plaintiff was not selected to officiate as Patil in his place. One Mahadev Bhana, a stranger to the family, was appointed. As a result of that an order was passed by the executive Authorities that Vallabh Pema should vacate the suit land and hand over possession to the new Patil. Appeals against that direction were of no avail and hence the plaintiff filed this suit praying for a declaration that the plaintiff had a right to hold and occupy the suit land so long as he paid the full assessment to the Government and that the Government had no right

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to evict the plaintiff. In the defendant's written statement paragraph 4 gives the gist of the defence: "as regards para. 5 of the plaint as plaintiff No. 1 was not the hereditary Patil of the village of Orgaum and as he was found too old and incapable to perform his duties, one Mahadev Bhana was appointed in his stead and the lands in dispute which were assigned for Patilki remuneration were ordered to be given over to him. Plaintiff No. 2 had no right to be appointed in plaintiff No. 1's place. The orders of the Revenue Authorities were proper and legal." Therefore the whole question depends on whether the lands were assigned to the plaintiff's family for the services to be rendered as Patil, or whether these lands being in possession of the plaintiff's family, exemption from payment of land revenue was allowed in return for services rendered. The learned District Judge has dismissed the suit on the ground that the lands had been assigned for the remuneration of the Patil, and that being so, Government could resume them and grant them to the officiating Patil even if he belonged to another family. That is entirely begging the question. The learned Judge has not considered what was assigned as remuneration for the Patilkiship, the land or the land revenue. It seems to me that the documents in the case were entirely in favour of the plaintiff. His family were in possession of the land, certainly before the settlement in 1868, and it is admitted by the Government records that the land was *pasaita* land. The settlement would be a settlement under Act VII of 1863 the object of which was to deal with unsettled claims to exemption from the payment of Government land revenue, and to regulate the the succession, wholly or partially, to the exemption from payment of such revenue in certain parts of the Bombay Presidency, and the result of the settlement as shown by the Government Registers was that the claim

to hold these lands free of land revenue was allowed so long as the services of the Patilkiship were rendered. The result must be that when the plaintiff's family ceased to hold the Patilkiship—and we are not concerned in any way with that—their claim to exemption from paying the land revenue for the suit lands came to an end. But it by no means follows that their right to possession was at an end, and they cannot be said to be in wrongful possession now of the land so that an order under section 202 of the Land Revenue Code could be made. Apart from that we have not been referred to any finding of the executive Authority that the plaintiff is in wrongful possession. There is merely the order that the plaintiff could not succeed his grandfather as Patil, but another person, a stranger to the family, one Mahadev Bhana, was to be appointed. It seems to me that it was not a necessary consequence of that order that the plaintiff thereafter was in wrongful possession of the land. That in my opinion was an entirely wrong conclusion. Therefore any order professing to be made under section 202 would also be wrong.

I think, therefore, that the decision of the learned District Judge cannot be upheld and that the plaintiff is entitled to the declaration and injunction he sought for, that the notice under section 202 was wrongly made and that the plaintiff has a right to hold and occupy the land in suit so long as he pays the full annual assessment to the Government and that the Government have no right to evict the plaintiff.

The plaintiff must get his costs throughout.

SHAH, J. :—I agree.

Decree reversed.

J. G. R.

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