

APPELLATE CIVIL.

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

1920.
July 27.

BABUSING RAMCHANDRA RAJE SHIRKE (ORIGINAL PLAINTIFF),
APPELLANT v. PANDU, SON AND HEIR OF THE DECEASED TATYA
NAVALU KATE (HEIR OF THE ORIGINAL DEFENDANT), RESPONDENT*.

Landlord and tenant—Tenant setting up permanent rights of tenancy by adverse possession—Specific notice of such rights must be given to the landlord—Limitation.

If a person in occupation of land as a tenant wishes to set up a larger claim of permanent tenancy by adverse possession, the landlord must have a specific notice of such a claim and until that is done time does not begin to run against the landlord.

Budesab v. Hanmantla⁽¹⁾, dismissed.

SECOND appeal against the decision of N. G. Chaphekar, First Class Subordinate Judge, A. P., at Satara, amending the decree passed by P. Shriniwas Rao, Subordinate Judge at Patan.

Suit to recover possession.

The plaintiff sued to recover possession of the plaintiff land alleging that he was the owner of the land and that the defendant was in possession as a tenant-at-will.

The defendant pleaded that he was a Mirasi tenant and therefore he was not liable to be evicted from the land.

The Subordinate Judge found that the right of *miras* tenancy claimed by the defendant was perfected by adverse possession, and for the purpose of finding that the plaintiff had knowledge of the adverse right claimed by defendant, the Judge relied on a deposition of the defendant in Suit No. 43 of 1890 and on the proceedings in Suit No. 51 of 1901 in which an unregistered Miraspatra was produced by the defendant and to

* Second Appeal No. 558 of 1919.

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which plaintiff was a party and also on certain assistance proceedings between the same parties. He passed a decree in favour of plaintiff only for enhanced rent.

On appeal, the First Class Subordinate Judge, A. P., confirmed the lower Court's finding in favour of the defendant regarding the *mirasi* rights claimed by adverse possession; but he amended the decree by disallowing the enhanced rent awarded.

The plaintiff appealed to the High Court.

P. B. Shingne, for the appellant:—A tenant can acquire no permanent rights of tenancy by mere assertion that he is a permanent tenant. The landlord is not bound to refute them. In the previous suits or proceedings before the Mamlatdar, there was nothing which was asserted by way of permanent tenancy. On the contrary, in one of the earlier suits, the respondent was held to be a yearly tenant.

K. N. Koyajee, for the respondent:—The case in *Budesab v. Hanmanta*⁽¹⁾ supports the contention which found favour with the lower Courts and according to that case, it is open to a tenant to claim permanent tenancy by a prescriptive title. The previous cases show a denial of the appellant's right to evict the respondent and the appellant did nothing to assert his right. His suit is, therefore, barred by time.

MACLEOD, C. J. :—This appeal must be allowed.

The plaintiff sued to recover possession of the suit land from the defendant. The trial Court found that the defendant had perfected his claim to *mirasi* rights by adverse possession, but that the plaintiff was entitled to claim enhanced rent. In appeal the finding as regards the *mirasi* tenure was affirmed, but plaintiff's claim for enhanced rent was disallowed, the Judge

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holding that the defendant ought to have been given an opportunity to lead evidence as regards that claim. The plaintiff could only claim enhanced rent by local usage, or prescription or agreement.

We think that the decision of both the Courts that the defendant had succeeded in proving his claim to hold as a permanent tenant by adverse possession cannot be supported. Reference may be made to *Budesab v. Hanmanta*⁽¹⁾, where it was held that where a landlord seeks to recover from his tenant possession of land in his tenant's occupancy, and the latter, alleging a perpetual tenancy, successfully resists on that ground the landlord's attempt to dispossess him, the tenant may, after the statutory period has expired, plead limitation in bar of a subsequent suit in ejectment by the landlord? The question then arises, if the person in occupation of the land as a tenant can assert permanent rights of tenancy and can acquire such rights by adverse possession, when does time begin to run against the landlord? The Judges said (p. 516): "We do not say that a tenant by a false allegation as to the terms of his tenancy though continuously repeated can alter those terms. Such allegations do not necessarily throw upon the landlord the *onus* of refuting them by suit... But where a landlord seeks to recover possession of land in his tenant's occupancy from the tenant, and the latter, on the allegation of a perpetual tenancy, successfully resists the landlord's attempt to dispossess him for the statutory period, the current of authority to which we have referred in our opinion establishes that the law of limitation can be successfully pleaded in bar of a suit in ejectment by the landlord." We do not think that the history of this case is a sufficient indication of the tenant's claim to set up a permanent tenancy against the landlord,

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so that the onus of refuting the claim by suit is necessarily thrown upon the landlord. Neither the suits referred to by the lower Court, which were merely rent suits, nor the suit of 1913 support the defendant's contentions. What is required is that when a tenant wishes to set up a larger claim by adverse possession, the landlord must have specific notice of his doing so. In the last suit which was filed in 1913 it was directly in issue whether the plaintiff could recover the rent claimed or whether the defendant was a Mirasdar and had already paid the fixed rent which she stated was all that she was liable to pay. It was nowhere suggested in that suit that the tenant had acquired a right to remain in possession as a permanent tenant at a fixed rent by adverse possession. It is only when this suit for possession has been filed that it is asserted that the defendant is entitled to resist the claim for possession on the ground that since the time of his ancestors he and his family had been in possession of the land as Mirasdars.

The decree of the lower Court must be set aside and a decree must be passed in favour of the plaintiff for possession of the suit land with rent at Rs. 24-8-0 for one year prior to the suit and after suit until possession.

The defendant must pay the plaintiff's costs throughout.

Appeal allowed.

J. G. R.