

APPELLATE CIVIL.

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

1920.
July 19.

MANEKLAL VAMANRAO AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS v. BAI AMBA (ORIGINAL DEFENDANT), RESPONDENT*.

Bombay Land Revenue Code (Bombay Act V of 1879), section 83—Presumption of permanent tenancy—Burden of proof—Ejectment suit.

In a suit by a landlord for ejectment the presumption ordinarily is that the tenancy is annual. If the tenant alleges permanent tenancy, the burden of proving it lies on him. If he has not got a document of permanent tenancy, he has to show the antiquity of his tenure. If he shows it, it is for the landlord to prove under section 83 of the Land Revenue Code that there is evidence of the intended duration of the tenancy either by agreement or by usage. In absence of the proof, the presumption arises that the tenancy is co-extensive with the duration of the tenure of the landlord.

SECOND appeal from the decision of M. M. Bhatt, Assistant Judge of Surat, reversing the decree passed by D. R. Dalal, Subordinate Judge at Olpad.

Suit in ejectment.

The plaintiffs sued to recover possession of land and arrears of rent from the defendant, who claimed that she was a permanent tenant on a fixed rent.

The trial Court was of opinion that the tenancy in question was an annual one, for reasons which were expressed as follows :—

To claim the benefit of the presumption of permanent tenancy under section 83 it is not sufficient that there should be no satisfactory evidence of the commencement of the tenancy, but the absence of that satisfactory evidence must be by reason of the antiquity of the tenancy. In order to raise the presumption of permanency of tenancy it is not necessary that the tenancy should have existed for a stated number of years, as it is not possible to lay down any one rule, and each case is to be decided according to the facts found to exist. The law apart from the presumption laid down in

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section 106 of the Transfer of Property Act that a tenancy for agricultural purposes shall, in the absence of a contract or local law, or usage to the contrary, be deemed to be a tenancy from year to year is that excepting the cases where duration is fixed by agreements, in all ordinary cases the presumption of law is that a tenant is a tenant from year to year, unless a longer right is shown by evidence, or ought to be presumed from circumstances.

The presumption, that in the absence of evidence a tenancy is ordinarily from year to year continuable until legally determined, remains unaffected even after the introduction of the Land Revenue Code, *vide* I. L. R. 20 Bom. 78 and I. L. R. 9 Bom. 419.... In connection with an annual tenancy it has been held that such a tenancy may continue for a century or even longer if neither the landlord nor the tenant chooses to put an end to it, I. L. R. 9 Bom. 419. So also the mere circumstance that for many years the fixed rental was alone levied is not sufficient to create a permanent tenancy.... There appears to be a general consensus of opinions that a mere long continuous possession, say for upwards of 60 years, is by itself insufficient to raise a presumption of permanency (I. L. R. 15 Bom. 647 and I. L. R. 25 Cal. 896). Mere long possession at an unvarying rate of rent does not support the inference that the tenure was permanent. There are no other circumstances to support the inference. Had the tenant from time to time transferred the property to the knowledge of the landlord without any objection on his part and had he erected substantial buildings or made permanent improvements to the knowledge of the landlord and without objection on his part, those circumstances would have justified the inference of permanency.

The plaintiff's claim was therefore decreed.

On appeal this decree was reversed and the Assistant Judge held on a consideration of the evidence, that the tenancy in dispute was permanent. The plaintiff's claim for possession was negatived; but they were awarded arrears of rent. The learned Judge was also of opinion that the trial Court had misplaced the burden of proof, on the following grounds:—

In an ejectment suit the plaintiff must prove his title to the land as also the right to eject the person in possession. If he alleged that the person in possession was an annual tenant he must prove that he was really an annual tenant and that such tenancy had legally terminated by proper notice or otherwise. The 1st issue, as at first framed, threw the onus on the defendant to prove that she was a permanent tenant. In doing so the lower Court

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overlooked section 83 of the Land Revenue Code, which said that the possession was with the defendant's family for over 100 years and that it was not possible to find out when the tenant's possession commenced. It also overlooked the fact that section 106 of the Transfer of Property Act did not at all apply to an agricultural lease like the present, as it was not made applicable by a special notification in that behalf as required by section 117 of the Act.

The plaintiffs appealed to the High Court.

G. N. Thakor, for the appellants.

J. G. Rele, for *R. W. Desai*, for the respondent.

MACLEOD, C. J.:—The plaintiffs filed this suit in ejectment. The defendant pleaded that she was a permanent tenant. The trial Court gave the plaintiffs a decree which was reversed in appeal. It is curious that a Judge of the experience of Mr. Bhat should have considered that the onus lay on the plaintiffs in an ejectment suit to prove that the tenancy was an annual one. The presumption is that the tenant is an annual tenant and the onus lies upon him to prove he is something more. But it is perfectly clear that that initial error of the learned Judge had no effect on the final decision. If we strike out the whole of that paragraph where he considers the case from the point of view of the plaintiffs, and begin with the paragraph where he deals with the defendant's evidence, the decision still remains correct. A defendant who wishes to prove he is a permanent tenant must prove, first of all, if he has not got a document of permanent tenancy, the antiquity of his tenure. The Judge on the evidence of the witnesses came to the conclusion that the antiquity of the tenancy at a uniform rent could not be doubted. Then the second paragraph of section 83 of the Bombay Land Revenue Code comes into operation. The landlord has to prove that there is evidence of the intended duration of the tenancy either by agreement or by usage. If he cannot do that, then

it is presumed that the tenancy is co-extensive with the duration of the tenure of the landlord. So we think the decision of the lower Court is right.

The appeal must be dismissed with costs.

Appeal dismissed.

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APPELLATE CIVIL.

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

BALKRISHNA BHIMAJI MOKASHI AND ANOTHER (ORIGINAL DEFENDANTS NOS. 3 AND 4), APPELLANTS v. RAMKRISHNA GANGADHAR DIXIT INAMDAR AND OTHERS (ORIGINAL PLAINTIFF AND DEFENDANTS NOS. 1 AND 2), RESPONDENTS^o.

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Hindu Law—Mitakshara—Succession—Bandhus—Male Bandhu entitled to preference over a female Bandhu though the latter be nearer in degree.

Under the Mitakshara Hindu law a male Bandhu is entitled to preference over a female Bandhu even though the latter is nearer in degree.

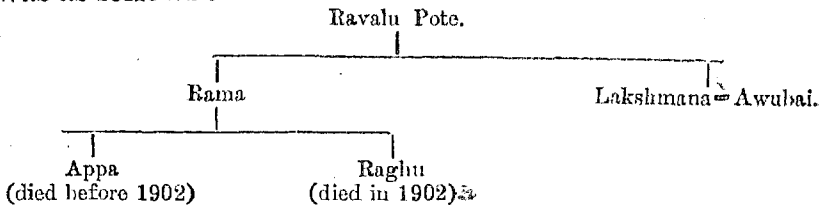
Held, accordingly, a mother's sister's son is entitled to succeed in preference to a brother's daughter.

Rajah Venkata Narasimha v. Raja Surenani⁽¹⁾, followed.

SECOND appeal against the decision of A. Montgomerie, Assistant Judge at Belgaum, modifying the decree passed by A. K. Asundi, Subordinate Judge at Gokak.

Suit to recover possession.

The lands in suit were originally held by the family of one Ravalu Pote. The relationship of that family was as follows :—



Janki, Defendant No. 1.

^o Second Appeal No. 893 of 1918.

⁽¹⁾ (1908) 31 Mad. 321.