

APPELLATE CIVIL.

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

925.

July 30.

GIRIAPPA BEN SABANNA BISALDINNI (ORIGINAL DEFENDANT), APPELLANT *v.* GOVINDRAO GANRAO DESAI (ORIGINAL PLAINTIFF), RESPONDENT^a.

Land Revenue Code (Bom. Act V of 1879), section 83—Permanent tenancy—Enhancement of rent—Ours of proof—Extent of enhancement.

If a tenant proves that he has fixity of tenure, he is entitled to fixity of rent, unless the landlord can prove that he has, either by virtue of agreement, usage or otherwise, a right to enhance the rent. When it has been proved that the landlord has such a right, then the question of the extent of the enhancement must be left to the Court.

SECOND appeal against the decision of G. Davis, Assistant Judge of Bijapur, remanding the case to B. D. Sabnis, Subordinate Judge at Bagalkot.

. Suit to recover possession.

The plaintiff was the owner and Inamdar of the village of Manikeri in Bagalkot Taluka. He alleged that the defendant was in possession of the land as an annual tenant paying Rs. 19-10-0 as rent per annum; that on November 16, 1919, a notice was served on the defendant demanding enhanced rent of Rs. 100 per year from 1920-21 or, otherwise, possession of the land, that, the defendant having failed to pass a rent note for increased rent, the suit was filed to recover possession together with Rs. 19-10-0 as arrears of rent for the year 1919-20.

The defendant pleaded that he was a permanent tenant and not a yearly tenant; that the plaintiff had no right to eject him, and no right to enhance the rent; and that in any event the rent enhanced was excessive.

The Subordinate Judge held that the defendant was a permanent tenant; that the plaintiff had a right to enhance the rent and that the enhancement claimed was reasonable. He, therefore, ordered that the

^a Second Appeal No. 628 of 1923.

plaintiff do recover Rs. 19-10-0 as arrears of rent and further declared that Rs. 100 per year was a reasonable enhancement by the Mamlatdar.

On appeal, the Assistant Judge, in view of the terms of the saving clause of section 83 of the Land Revenue Code, remanded the case to the Subordinate Judge for a finding on the following issues:—

1. " Does the plaintiff prove that there exists no usage or custom in the locality in respect of the enhancement of the rent of land of the like description and tenure as the land in suit ?

2. If not, having regard to any such usage or custom as aforesaid, to what extent can an enhancement of rent be made ? "

The defendant appealed to the High Court.

R. A. Jahagirdar, for the appellant.

Bahadurji with *H. B. Gumaste*, for the respondent.

MACLEOD, C. J. :— The plaintiff sued to recover from the defendant possession of the plaint land together with Rs. 19-10-0 as arrears of rent. The defendant pleaded that he was a permanent tenant, and not a yearly tenant, and that the plaintiff had no right to enhance the rent. The trial Judge found that the defendant was a permanent tenant. He was entitled to the presumption under the 2nd paragraph of section 83 of the Land Revenue Code.

Then the question arose as to the landlord's right to enhance. The Subordinate Judge relying on a passage of Dandekar's " Law of Land Tenures ", held that he was entitled to fix a reasonable enhancement, which he declared to be Rs. 100 a year.

On appeal the Assistant Judge remanded the case to the lower Court for findings on two issues : (1) whether the plaintiff proved that there existed no usage or custom in the locality in respect of the enhancement of the rent of the land of the like description and tenure as the land in suit. (2) If not, having regard to any such usage or custom as aforesaid to what extent could an enhancement of rent be made ?

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It seems to me that, apart from the frame of those issues which does not err on the side of lucidity, the Assistant Judge had fallen into the same mistake as the Subordinate Judge with regard to the proper meaning of the last paragraph of section 83 of the Land Revenue Code. He seemed to think that an agreement or usage with regard to enhancement of rent must be proved, not in respect of the right to enhance, but in respect of the exact percentage of increase or number of times by which the assessment could be enhanced, and if no such usage could be proved, he assumed that there was a right inherent in the Inamdar to increase the rent, and that the only question for the Judge to decide was what was a reasonable enhancement. That is not the proper construction to be placed on the last paragraph of section 83. If a tenant proves that he has fixity of tenure, then he is entitled to fixity of rent, unless the landlord can prove either by agreement, usage or otherwise that he has a right to enhance the rent. When it has been proved that he has such a right, then the question of the extent of the enhancement must be left to the Court as the final arbiter. In Districts where the usage exists it is common knowledge that Inamdars get what they can from their tenants and there is no fixed rate of enhancement. In any event the evidence in the case amply bears out that statement. I take it from the evidence led before the Subordinate Judge on remand that it was proved that the usage or custom to enhance existed in this District, but the measure of enhancement was not fixed, it varied very largely. It was, therefore, for the Court to decide what should be a reasonable enhancement of the original rent. The appellate Court thought that five times the assessment should be paid by the tenant. We have had a number of these cases from Satara, and I do not know of any case in which the Court has allowed a higher rent than three times the assessment, unless it had

been proved that a very much higher rate of enhancement was customary in the District. In this case the evidence is by no means decisive with regard to the number of times of the assessment by which rent has been enhanced. Witness Guranath Venkatesh Kulkarni of Rampur in his cross-examination cited an instance in which the rent was raised from Rs. 1-8-0 to as much as Rs. 15, but the Inamdar said he took as rent twice or thrice the assessment. From the Khatas produced by the Kulkarni of Simikeri the same rate appeared to be a generous average. In the village of Ganjihah belonging to another Inamdar four times the assessment was the highest rate of enhancement. It is not apparent therefore why on a consideration of the evidence the Judge enhanced the rent to five times the assessment.

I think, therefore, that the rent in the case should not be increased to more than three times the assessment. To that extent the decree of the lower appellate Court will be amended. The appellant is entitled to his costs of the suit throughout as the plaintiff sued for possession.

MADGAVKAR, J.:—I entirely agree. The view of both the lower Courts based on a quotation from Mr. Dandekar's "Law of Land Tenures" was apparently that the onus was on the tenant to prove the extent of limitation of the right of enhancement. As I understand the section, once the permanent tenancy is proved, the concluding clause of section 83 of the Land Revenue Code clearly places the onus on the landlord of proving his right to enhance the rent. In the present case he has tried to prove the right by usage in the case of other Inam villages and other permanent tenants in the same village. I therefore concur in the order proposed by my Lord the Chief Justice.

Decree amended.

J. G. R.

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