1937

HARIDAS VALLABHDAS v. THE BOMBAY MUNICIPALITY

BROOMFIELD J. I agree and have only to add this that section 14 (*1*) of the Act applies to any certificate of a public analyst and not only to a certificate on which the prosecution is based. There is no necessary connection between it and section 16. The rebuttable presumption under section 14 (*1*) will equally apply to a certificate of a public analyst produced by the accused himself. That seems to be a further indication that the provision merely lays down a rule of evidence and has nothing to do with the order of proceedings at the trial.

Rule made absolute.

Y. V. D.

PRIVY COUNCIL.

J. C.*
1937
June 17

GOSWAMINI SHRI KAMALA MAHARAJ OF KUTCH MANDVI, APPELLANT *v.* THE COLLECTOR OF BOMBAY, RESPONDENT.

[On Appeal from the High Court at Bombay]

Bombay City Land Revenue Act (Bom. II of 1876), section 8—Assessment of lands in the Fort—Limitation of right to assess—Regulation XVII of 1827—Exemptions—Prescription—Presumption as to lost grants.

Land within the Fort of Bombay dedicated to charitable purposes was held rent-free for 100 years prior to 1926 when it was assessed to revenue under the Bombay City Land Revenue Act, 1876.

In a suit for a declaration that there was a right, in limitation of the right of Government, to hold the land free from assessment to land revenue or alternatively that the land should be assessed as land of Pension and Tax or Quit and Ground Rent tenure :—

Held, that the onus was on the plaintiff to show that as superior owner of the property she had a right in limitation of the right of Government in consequence of a specific limit to assessment having been established or preserved.

Regulation XVII of 1827 (Bombay) was not applicable to the lands in question. Regulation XIX of 1827 which does apply contains no provision for recognising a prescriptive right to exemption from land revenue. The plaintiff, therefore, could not rely on any statutory prescriptive title to exemption. The plaintiff was unable to produce any deed or grant conferring the exemption claimed.

**Present :* Lord Macmillan, Sir Shadi Lal and Sir George Rankin.

In the absence of a deed or grant, the law may presume the existence of a grant which has been lost where it is sought to disturb a person in the enjoyment of a right which he and his predecessors have immemorially enjoyed, but it is a different thing to seek to presume that the Crown has by some lost grant deprived itself of the prerogative power to tax the property of its subjects.

The Collector was, therefore, entitled to fix an assessment at his discretion, subject to the control of Government.

Decree of the High Court affirmed.

APPEAL (No. 48 of 1936) from a decree of the High Court (August 3, 1933) which reversed a decree of the Revenue Judge of Bombay (October 20, 1927).

The material facts and contentions are stated in the judgment of the Judicial Committee.

Dunne, K. C., and *Wallach*, for the appellant.

Sir Thomas Strangman, for the respondent.

1934
May 3 *and* 4

The judgment of the Judicial Committee was delivered by Lord MACMILLAN. On October 26, 1926, the Collector of Bombay addressed to the appellant a notification that the Government had been pleased to sanction, under section 8 of the Bombay City Land Revenue Act of 1876, the assessment of certain property in Bombay belonging to her described as "Land at Bora Bazar Street, bearing N. S. [New Survey] No. 8841 and C. S. [Cadastral Survey] No. 1356". The notification indicated the scale on which the property had been assessed and stated that the assessment would come into force from November 1, 1926, and would be guaranteed for 99 years from that date.

Availing herself of the provisions of section 14 of the Act of 1876, the appellant instituted a suit against the respondent contesting the legality of the assessment. She prayed for a declaration "that there is a right on the part of the plaintiff in limitation of the right of Government to possess and hold her said land free from assessment and that the defendant has no right to levy any assessment".

1937

GOSWAMINI v. THE COLLECTOR OF BOMBAY

Lord Macmillan

The learned Revenue Judge on October 20, 1927, gave judgment for the plaintiff and granted her a declaration as craved. On August 3, 1933, the High Court of Judicature at Bombay reversed the decree of the Revenue Judge and dismissed the suit. Hence the present appeal.

The only question before their Lordships is whether the appellant is entitled to total exemption from assessment to land revenue in respect of the property mentioned. Section 8 of the statute of 1876 under which the assessment purports to be made reads as follows :—

"8. It shall be the duty of the Collector, subject to the orders of Government, to fix and to levy the assessment for land-revenue.

When there is no right on the part of the superior holder in limitation of the right of Government to assess, the assessment shall be fixed at the discretion of the Collector subject to the control of Government.

When there is a right on the part of the superior holder in limitation of the right of Government, in consequence of a specific limit to assessment having been established and preserved, the assessment shall not exceed such specific limit."

"The words 'land revenue' signify any sum of money legally claimable by Government from any person on account of any land, . . . held by or vested in him, . . ." and the words 'superior holder' signify the person having the highest title under Government to the land in respect of which land revenue is payable [section 3 (*2*) and (*4*)].

It is remarkable that the statute contains no provisions relating to exemption from payment of land revenue (although their Lordships are given to understand that cases of total exemption exist and are recognised) other than the words of section 8 just quoted which appear to apply rather to the case of a limitation on the right to assess than to the case of a complete exemption from assessment. Learned counsel for the Crown, however, informed their Lordships that it was in virtue of these words in section 8 that total exemption where established was in practice recognised.

The burden is plainly on the appellant to show that as the superior holder of the property in question she has "a right in limitation of the right of Government in consequence of a specific limit to assessment having been established or preserved", and that that specific limit is nil. However awkward and inartistic, that is the only way, as parties are agreed, in which the issue between them can be fitted into the statute.

The property is owned by the appellant as spiritual head of a Hindu Vaishnava temple situated at Cutch Mandvi. The earliest title deed is dated 1788 and is a conveyance to two persons. The property appears to have descended to the daughter of one of them who in 1828 devised it to her spiritual guru and the appellant claims under that guru. It is not necessary for the present purpose to explore the early history of land tenure in the Island of Bombay of which the learned Revenue Judge gives an interesting summary. It suffices to note that the plaintiff alleges and the Crown admits that "no land revenue has ever been charged in respect of the said property"; that the property has not been entered in the Rent Rolls of the Collector, and that in the Survey Register of 1813 the entry against it in the rent column is "no ground rent" and in the Survey Register of 1869 the entry against it in the tenure column is "O". It further appears that the question of the assessibility of the property was raised in 1913 when, after inquiry, the Department minuted in the following year that "the land cannot be assessed since it is held without assessment for more than 60 years under G. R. No. 1976, dated March 12, 1904. A note to this effect may be made in this Register". The Government Resolution of March 12, 1904, was to the effect that no assessment should be imposed where lands had remained unassessed for 60 years. The entry made in the Register recorded that the "land is charitable and is held free of rent and cannot now be

1937

GOSWAMINI v. THE COLLECTOR OF BOMBAY

Lord Macmillan

assessed"; but this entry is deleted and there is added: "This note has been struck off in view of" two opinions of the Advocate-General. All this amounts, however, to no more than a revelation of the vacillation of the Crown's advisers as to the assessibility of the property, for their Lordships agree with both the Courts below that there is nothing in the nature of an estoppel or bar to prevent the present assessment if it is otherwise justified, and indeed no argument to a contrary effect was submitted.

The appellant has not been able to produce any deed or grant conferring the exemption which she claims. But she maintains that she has a prescriptive right of exemption and that in virtue of its long enjoyment a lost grant conferring it must be presumed. If so, her right in order to be effectual must, in terms of section 8 of the 1876 Act, have been "established and preserved". Without pausing to consider the meaning of these words, their Lordships proceed to examine the claim as founded on prescription or lost grant.

Counsel for the appellant referred first to Bombay Regulation I of 1823 which in its preamble recites *inter alia* that "it is expedient, that the enjoyment of exemption from Revenue for a period of sixty years should, in certain cases, be held as proof of sufficient title to the exemption" and proceeds in section 4 to provide that "Whenever land has been enjoyed without payment of the public revenue for more than sixty years in succession, by any person, his heirs or others deriving right from him, such enjoyment shall be considered as sufficient title to the exemption". Counsel for the Crown maintained that this Regulation had no application to the City of Bombay but was applicable only to the mofussil. It is not necessary to consider the point for the Regulation was repealed by Regulation I of 1827. In the latter year a number of Regulations were made of which Regulations XVII and XIX are material. Regulation XVII,

which is entitled " A Regulation for the Territories subordinate to Bombay ", in chapter IX, section 36, repeated in terms section 4 of the repealed Regulation of 1823 above quoted. The period of 60 years therein mentioned was reduced to 30 years by Regulation VI of 1833. In 1863 chapters IX and X of Regulation XVII of 1827 and Regulation VI of 1833 were repealed by section 1 of the Bombay Act VII of that year which substituted in section 21 a similar provision requiring claims to exemption from payment of land revenue in virtue of prescription to be admitted, in the case of lands in certain districts, if proved to have been held exempt from payment of land revenue under a tenure recognized by the custom of the country for 60 years prior to the date of the Act and in the case of other lands if proved to have been held in like manner for 30 years. All that was left of Regulation XVII of 1827 was finally repealed by the Bombay Land Revenue Code, 1879, section 2 and schedule A. The learned Revenue Judge was of opinion that under the provisions of chapter IX, section 36 of Regulation XVII of 1827, there was acquired a vested right of exemption from land revenue as regards the property in question inasmuch as for at least 60 years exemption had in fact been enjoyed. But the Crown submits that Regulation XVII of 1827 did not apply to the City of Bombay and the High Court has so held. Apart from intrinsic indications in the Regulation itself, which are elaborated by Beaumont C. J., a conclusive argument against the applicability of Regulation XVII to the City of Bombay is to be found in the fact that on the same day another Regulation, namely Regulation XIX of 1827, was made which is entitled " A Regulation for the Presidency, prescribing rules for the assessment and collection of the land revenue ". " The Presidency " clearly means the Island of Bombay. The 3rd section of Regulation XIX provides that " the land revenue of the Presidency

1937

GOSWAMINI v. THE COLLECTOR OF BOMBAY

Lord Macmillan

shall be assessed and levied by the Collector and his assistants accordingly to the principles laid down in Regulation XVII, A.D., 1827, section III, the three first clauses of section IV, section V and the first clause of section VI." If Regulation XVII were applicable to the Presidency it would be quite inappropriate in Regulation XIX, which applies to the Presidency, to adopt and apply to the Presidency selected provisions of Regulation XVII. It would clearly appear that at any rate from 1827 onwards the land revenue legislation for the Presidency and for the mofussil ran on separate lines. Their Lordships therefore agree with the High Court in holding that Regulation XVII does not apply to the property in question. But Regulation XIX, which does apply, contains no provision for recognising a prescriptive right to exemption from land revenue such as is contained in chapter IX, section 36, of the Regulation XVII, and while adopting some of the provisions of Regulation XVII has not adopted chapter IX, section 36. The appellant therefore cannot rely on any statutory prescriptive title to exemption.

But the appellant submits that in the circumstances a lost grant should be presumed and that this lost grant should be presumed to have contained an exemption from land revenue or a " right in limitation of the right of Government " to assess the property. The law may presume the existence of a grant which has been lost where it is sought to disturb a person in the enjoyment of a right which he and his predecessors have immemorially enjoyed, but it is a different thing to seek to presume that the Crown has by some lost grant deprived itself of the prerogative power to tax the property of its subjects, and their Lordships are of opinion that this plea is untenable.

The appellant having thus failed to discharge the burden of proving the existence of an " established and preserved " right on her part in limitation of the right of Government

1937

GOSWAMINI v. THE COLLECTOR OF BOMBAY

Lord Macmillan.

to assess her property, the Collector was entitled to fix an assessment at his discretion, subject to the control of Government, as he has done.

Their Lordships will accordingly humbly advise His Majesty that the appeal should be dismissed and the decree of the High Court of Judicature at Bombay of August 3, 1933, affirmed. The appellant will pay the respondent's costs in the appeal.

Solicitors for the appellant: Messrs. *T. L. Wilson & Co.*

Solicitor for the respondent: *The Solicitor, India Office.*

C. S. S.

ORIGINAL CIVIL.

Before Mr. Justice Kanie.

1936

February 11

THE INDIAN COTTON COMPANY LTD. (PLAINTIFFS), *v.* HARI POONJOO AND OTHERS (DEFENDANTS).*

Transfer of Property Act (IV of 1882), section 58 (f)—Mortgage by deposit of title deeds—Debtor outside city of Bombay—Delivery of deeds by debtor or his agent—Delivery of deeds to creditor or his agent—Deeds sent by post to Bombay at request of creditor—Post-office authorised agent of creditor—Transaction complete when debtor posts title deeds—Indian Contract Act (IX of 1872), section 7—Construction of Statute—Punctuation.

In order to create a mortgage by deposit of title deeds, the deeds must be delivered, with intent to create a security thereon, in one of the towns mentioned in the section to the creditor or his agent by the debtor or his agent. It is not necessary that the debtor giving the security should be in one of those towns personally.

The agreement to deposit title deeds of property by way of security for a debt, must ordinarily precede the actual transfer of interest in immoveable property under section 58 (*f*) of the Transfer of Property Act, 1882.

The creditor in Bombay requested the debtor who was in Khandesh to send to him by post title deeds of his property by way of security for moneys due to the creditor. In pursuance of this request when the debtor sent the title deeds of his property by post from Khandesh to Bombay the creditor made the Post-office his authorised agent to receive those deeds on his behalf. Under section 7 of the Indian Contract Act the transaction is complete as soon as the debtor posted the title deeds to the creditor.

*O. C. J. Suit No. 1404 of 1935.