APPELLATE CIVIL.

Before Mr. Justice Broomfield and Mr. Justice Sen.

KRISHNA BHIMA HUJARE (ORIGINAL DEFENDANT NO. 2), APPELLANT *v.* LAXMIBAISAHEB BHRATAR NARSINGRAO DESAI AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS.*

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The Bombay Land Revenue Code (Bom. Act V of 1879), s. 83—Permanent tenancy—Watan lands—Commencement of tenancy—Notice to quit by one of two lessors—Manager of estate—Validity of notice.

The principle of the decision in *Madhavrao Waman Saundalgekar* v. *Raghunath Venkatesh Deshpande*[1] is that the alienation of *watan* lands is prohibited by law and a permanent tenancy amounts to an alienation. This principle applies as much to the case when a permanent tenancy is claimed on the strength of s. 83 of the Bombay Land Revenue Code, 1879, as in the case where it is claimed on the strength of adverse possession. In each case it is equally an alienation prohibited by statute.

A person who is in possession of *watan* lands as a tenant of the *watandar* cannot acquire by adverse possession, either a right to fixity of tenure or a right to fixity of rent.

Vishnu Ramchandra v. *Tukaram Ganu*,[2] relied on.

Section 83 of the Bombay Land Revenue Code, 1879, will apply in the case of *watan* lands if the tenancy can be shown to have commenced before the *watan* lands were rendered inalienable by the operation of Regulation No. 16 of 1827.

Govind v. *Vithal*[3] and *Ramchandra* v. *Adiveppa*,[4] referred to.

Where the commencement of a tenancy has been ascertained with reasonable definiteness, s. 83 of the Bombay Land Revenue Code, 1879, cannot in terms apply.

A tenancy created by joint landlords can only be put an end to by all the lessors acting together. There is an exception to this principle in cases where one of the joint landlords is acting as manager of the estate with the consent of the other or others.

Balaji Bhikaji Pinge v. *Gopal bin Raghu Kuli*,[5] applied.

FIRST APPEAL from the decision of K. G. Kulkarni, First Class Subordinate Judge, Belgaum, in Civil Suit No. 111 of 1931.

Suit for possession.

*First Appeal No. 206 of 1934.

(1) (1923) L. R. 50 I. A. 255, s. c. 47 Bom. 798.
(2) (1924) 49 Bom. 526.
(3) (1930) 33 Bom. L. R. 210.
(4) (1932) 34 Bom. L. R. 1131.
(5) (1878) 3 Bom. 23.

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The material facts appear from the judgment of the Court.

B. S. Panisuff, for *R. G. Naik*, for the appellant.

S. G. Chitale, for the respondent.

BROOMFIELD J. This appeal is brought by the second defendant in a suit brought by respondents Nos. 1 and 2 for possession of two fields in the village of Nidsosi in the Belgaum District. They are *inam* lands (*mutalki desgat*) and the plaintiffs are co-widows of the last *inamdar* who appears to have died about 1923.

It is alleged that the defendants of whom the present appellant is one are annual tenants of the *inamdar*, and that in spite of valid notices to quit in the years 1923 and 1924, they have held over without paying rent. The defence is that the defendants are *mirashi* permanent tenants. In the written statement they claimed this status both by adverse possession and by reason of the presumption under s. 83 of the Land Revenue Code. It is also contended that the notices are illegal and invalid.

The trial Court decreed the suit, directing that the plaintiffs should recover immediate possession of the lands from the defendants together with past and future mesne profits the amount of which is to be determined by an inquiry. In this appeal by defendant No. 2 the defence based on adverse possession has been given up, but it is contended that defendant No. 2 and the other defendants have established that they are permanent tenants under the terms of s. 83 of the Bombay Land Revenue Code, that the notices to quit are invalid because they were given by only one of the joint landlords, and that the plaintiffs are not, in any case, entitled to enhance the rent to the extent claimed in the notices. In the notices to quit which the

plaintiffs gave to the defendants they were given an option of continuing as tenants on payment of rent of Rs. 325 for the two fields instead of Rs. 225 as previously. The details of the two fields are as follows:—The first is revision survey No. 267 which was old survey No. 243. The area of this is four and a half acres and its vernacular name is *hargya purya babat.* The other land is revision survey No. 262, old survey No. 238, area seven and a half acres and its vernacular name is *pattam kudya babat.*

The first question that arises in connection with the defendants' claim to be permanent tenants is whether s. 83 of the Bombay Land Revenue Code has any application in the case of lands, which like those in suit are watan lands. It has been held by the Privy Council in *Madhavrao Waman Saundalgekar* v. *Raghunath Venkatesh Deshpande*[1] that persons in the position of the present defendants, that is to say, persons who, and whose predecessors-in-title have claimed to be, and were, tenants of watan lands cannot acquire title to a permanent tenancy of the lands by adverse possession as against the watandars from whom they hold. The principle of the decision is that the alienation of watan lands is prohibited by law and a permanent tenancy amounts to an alienation. This principle, in my opinion, applies as much to the case where a permanent tenancy is claimed on the strength of s. 83 as in the case where it is claimed on the strength of adverse possession. In each case it is equally an alienation prohibited by the statute.

In *Vishnu Ramchandra* v. *Tukaram Ganu*[2] this Court relied on *Madhavrao Waman Saundalgekar* v. *Raghunath Venkatesh Deshpande*[1] as authority for the proposition that a person who is in possession of watan lands as a tenant

[1] (1923) L. R. 50 I. A. 255, s. c. 47 Bom. 798. [2] (1924) 49 Bom. 526.

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of the watandar cannot acquire by adverse possession either a right to fixity of tenure or a right to fixity of rent. It is to be noticed that in that case the claim to permanent tenancy and fixity of rent was based upon s. 83 of the Bombay Land Revenue Code. The learned advocate, who appears for the appellant in this case, has relied on *Govind* v. *Vithal*[1] and *Ramchandra* v. *Adiveppa*.[2] What was held in those cases was that s. 83 will apply in the case of watan lands if the tenancy has been shown to have commenced before watan lands were rendered inalienable by the operation of Regulation No. 16 of 1827. The finding of the trial Judge in the present case is that in the case of survey No. 267 the tenancy of the defendants' ancestors commenced between the years 1825 and 1834, and in the case of No. 262 that it commenced in the year 1854. The defendants, therefore, may be entitled to rely upon s. 83 in the case of the first survey number since it is just possible that the tenancy of that commenced before 1827. In the case of No. 262, however, if the finding of the trial Court is right the tenancy commenced after these lands became inalienable and a permanent tenancy could not be acquired under s. 83. The point is not really very material because, in our opinion, the evidence justifies the finding of the trial Court as to the time at which the defendants' tenancy commenced, and since the commencement of the tenancy has been ascertained with reasonable definiteness, s. 83 of the Bombay Land Revenue Code cannot in terms apply to assist the defendants.

[After discussing the evidence the judgment proceeded.] This is the whole of the evidence bearing on this particular point and it supports the finding that No. 267 came into the possession of the defendants' ancestors probably in the year 1834 and certainly in the period between 1825 and 1834,

[1] (1930) 33 Bom. L. R. 210.

[2] (1932) 34 Bom. L. R. 1131.

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the land having been in 1825 in the possession of a person who had no connection with the defendants' family. No. 262 must be held to have come into the possession of the defendants' ancestors in the year 1854.

That being so, the commencement of the tenancy has been traced either to a particular year or to a reasonably short and definite period of time. There is evidence which can be regarded as satisfactory as to the commencement of the tenancy, and that being so, s. 83 of the Land Revenue Code has no application. [See the cases collected in *Dhondu* v. *Damodar*,[1] especially *Chikko Bhagwant* v. *Shidnath*,[2] and *Narayan* v. *Pandurang*[3].]

Then there is the point about the notices. As I have mentioned, the plaintiffs are the co-widows of the last inamdar. The notices of eviction were sent by one of the co-widows, plaintiff No. 1. The learned trial Judge has held the notices to be sufficient, relying on the case of *Ebrahim Pir Mahomed* v. *Cursetji Sorabji De Vitre*[4]. Then there were two co-owners, one of whom was a Hindu, the other a Mahomedan. Jardine J., therefore, applied the English law and held that the notice by one co-owner was sufficient. Where, however, the principles of Hindu law apply, as they do in the present case, the rule is as laid down in *Balaji Bhikaji Pinge* v. *Gopal bin Raghu Kuli*[5] and other cases, viz. that a tenancy created by joint landlords can only be put an end to by all the lessors acting together. But as pointed out in *Balaji Bhikaji Pinge* v. *Gopal bin Raghu Kuli*,[5] there is an exception when one of the joint landlords is acting as manager of the estate with the consent of the other or others. The plaintiffs' clerk who has been conversant with the affairs of the estate since 1890 has deposed that plaintiff No. 1 is managing the property in accordance with the direction given in her husband's will. The witness was not cross-examined on this point. It seems, therefore, that this case comes

[1] (1934) 37 Bom. L. R. 209.
[2] (1921) 46 Bom. 687.
[3] (1922) 24 Bom. L. R. 831.
[4] (1887) 11 Bom. 644.
[5] (1878) 3 Bom. 23.

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within the exception and that the trial Court's finding that the notices are valid is correct.

The question whether the plaintiffs are entitled to enhance the rent and, if so, to what extent would only arise if we had held that the defendants had been permanent tenants, if indeed it can be said to arise at all on the pleadings. The learned advocate for the appellant has cited *Raghunath* v. *Lakshuman*,[1] *Vyasacharya Madhavacharya* v. *Vishnu Vithal*[2] and *Giriappa* v. *Govindrao*[3] as authority for the proposition that in such cases enhancement should never be allowed beyond three times the assessment. I do not think any such rule has been laid down. A fair rate of enhancement is to be allowed, assuming that the inamdar is entitled to enhance at all, and the rate is to be fixed in accordance with the custom of the locality. Three times the assessment is a rule of thumb which it would seem is appropriate only in the case of those permanent tenancies where the land is held on payment of assessment only or on a rent only slightly in excess of it. Obviously this is not a case of that kind. The assessment of the two fields is Rs. 18-8-0 and Rs. 14-2-0, i.e., Rs. 32-10-0 in all. But the defendants have been paying Rs. 225 as rent without objection. If we had to determine whether the enhancement to Rs. 325 is reasonable, we might have required further evidence as to local conditions. As it is, the point does not arise. All that has to be determined now is the rate at which mesne profits should be awarded and that must be left to the inquiry which the trial Judge has ordered.

The appeal is dismissed with costs.

SEN J. I agree.

Appeal dismissed.

Y. V. D.

[1] (1899) 2 Bom. L. R. 93. [2] (1919) 44 Bom. 566.
[3] (1925) 27 Bom. L. R. 1336.