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The appellant has also contended that the learned Judge was wrong in holding that defendant No. 1 is an agriculturist. But, as the defendant himself and one of his witnesses gave evidence that he lived by cultivating lands and there was no evidence to the contrary, I think the learned Judge was right in holding that the defendant was personally an agriculturist, and in directing accounts to be taken on the basis on which he did direct them. In my opinion, therefore, the appeal fails and must be dismissed with costs.

N. J. WADIA J. I agree.

Decree confirmed.

J. G. R.

APPELLATE CIVIL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice N. J. Wadia.

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NARBHERAMJI GURU GYANIRAMJI RAMSNEHI SADHU (ORIGINAL DEFENDANT), APPELLANT v. VIVEKRAMJI GURU BHAGATRAMJI RAMSNEHI SADHU (ORIGINAL PLAINTIFF), RESPONDENT.*

Indian Limitation Act (IX of 1908), Sch. I, Art. 14—Land Revenue Code (Bom. Act V of 1879), s. 133—Suit for possession based on title—Sanad issued in favour of defendant—No necessity to set aside Sanad—Sanad not a final determination of title between parties.

In February 1934, the plaintiff sued to recover possession of a temple from the defendant. In the year 1922, there was an inquiry under the Land Revenue Code, 1879, to determine who was entitled to the possession of the temple in suit and on February 2, 1922, a finding was recorded by the inquiry officer, and a Sanad was issued on April 18, 1922, under s. 133 of the Land Revenue Code, 1879, in favour of the defendant. The Subordinate Judge held that the plaintiff had established his title as owner of property as Mahant and that the defendant was only his manager and accordingly ordered the defendant to hand over the possession of the suit property to the plaintiff. On appeal to the High Court, it was contended that the suit must fail under Art. 14 of the Indian Limitation Act, 1908, as any order for possession against the defendant involved setting aside the Sanad on which he relied and

*First Appeal No. 208 of 1927.

the suit having been brought a year after the date of the Sanad was barred by limitation.

Held, that the suit was not barred under Art. 14 of the Indian Limitation Act, 1908, as the plaint did not ask in terms that the order or Sanad be set aside and it was not necessary for the plaintiff claiming possession against the defendant to obtain an order setting aside the Sanad before he could obtain an order for recovery of possession from the Civil Court.

Ulavappa v. Gadigeva,⁽¹⁾ distinguished.

Per Beaumont C. J. A Sanad granted under s. 133 of the Land Revenue Code, 1879, is not strictly speaking in the nature of a document of title between litigating parties. It is a document affecting rights only between the Crown and the person to whom it is granted.

FIRST APPEAL against the decision of J. D. Kapadia, Assistant Judge at Ahmedabad.

Suit to recover possession.

The facts material for the purposes of this report are stated in the judgment of the Chief Justice.

H. C. Coyajee, with *M. R. Vidyanthi*, *R. A. Desai*, *B. Moropant* and *R. P. Cholia*, for the appellant.

Dr. B. R. Ambedkar, with *M. H. Vakeel*, and *P. N. Shinde*, for the respondent.

BEAUMONT C. J. This is an appeal from an order of the Assistant Judge of Ahmedabad. The only point argued on the appeal is one of limitation, and it arises in this way.

The plaintiff is suing to recover the Ramsnehi Sampradaya temple at Ahmedabad, which is in the possession of the defendant. The plaintiff claims as the successor of Snehiramji, who founded the religious institution to which this temple belongs. There are three Ramdwar belonging to the institution,—one at Surat, one at Baroda and one at Ahmedabad. The Ramdwar at Surat is the headquarters, where the plaintiff resides, and, according to the plaintiff's case, the Ramdwar at Ahmedabad is managed by the

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defendant as his agent. On the other hand, the defendant contends that he is the mahant of the Ahmedabad Ramdwar in his own right and the plaintiff has no interest therein. The learned Judge framed issues dealing with the title to the Ahmedabad Ramdwar and held that the plaintiff had established his title as the owner of the property as mahant and that the defendant was only his manager, and accordingly he ordered the defendant to hand over the possession of the suit property to the plaintiff. On this appeal the point is taken that the plaintiff's suit must fail under Art. 14 of the Indian Limitation Act. That point was not raised in the Court below, and is, therefore, not discussed by the learned Judge. But it can undoubtedly be raised in appeal, and indeed any question of limitation must be taken by the Court. The point arises in this way.

In the year 1922 there was an inquiry, under the Bombay Land Revenue Code, to determine who was entitled to the possession of the temple in suit, and on February 2, 1922, a finding was recorded by the inquiry officer, and is entered in the register of the city survey for the city of Ahmedabad in these terms: "Sanad not produced. Holder Ramdwara Mandir, Manager Nurbheramji Guru Gyaniramji by inheritance." That is to say, the holder is the Ramdwar Mandir, the manager is the defendant, and the guru is Gyaniramji, through whom both the plaintiff and the defendant claim. So that that entry seems to me indecisive on the dispute between the plaintiff and the defendant. But following upon that a Sanad was issued under s. 133 of the Bombay Land Revenue Code, on April 18, 1922. That document is addressed to the defendant, manager of the Ramdwar temple, and it recites that the Governor-in-Council, with a view to the settlement of the land revenue and the record and preservation of proprietary and other rights connected with the soil, has under the provisions of the Bombay Land Revenue Code directed the survey of the city site within the limits of Ahmedabad City, and ordered the necessary

inquiries connected therewith to be made. Then the Sanad describes the suit property and provides as follows :

"The said *khata* is confined to you as religious and exempt from all Land Revenue by this Sanad.

"The terms of your tenure are such that your *khata* is transferable and heritable and will be continued by the British Government, without raising any objection or question as to right (Hak), to whosoever shall from time to time be the lawful holder of that *khata* (occupancy)."

Subsequently the plaintiff applied to the revenue authorities, and an appeal was lodged against the order of the inquiry officer, and that appeal was dismissed on June 28, 1923, by the District Deputy Collector, whose order is exhibit 96.

Article 14 of the Indian Limitation Act provides that an application to set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for, shall be brought within one year from the date of the act or order. It is contended that the decision of the inquiry officer is an order of a Government officer and the Sanad is an act of such officer in his official capacity, and I think those two points may be conceded. But the question is whether this is a suit to set aside an act or an order of a Government officer within Art. 14. Certainly the plaint does not ask in terms that the order or Sanad be set aside. It does ask for possession, and the contention put forward by the appellant is that the Court could not make an order for possession in face of this Sanad but must set aside the Sanad first, and that any order for possession as against the appellant involves setting aside the Sanad on which he relies. That argument, I think, might prevail, if the Sanad were an ordinary document of title. If a plaintiff is suing for possession, and the defendant relies on a conveyance from the plaintiff or his predecessor, it may be necessary to set that conveyance aside before the plaintiff can get an order for possession, and in these circumstances the suit for possession would be in

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substance a suit to set aside a document within the Indian Limitation Act, though that relief be not expressly asked for. To my mind the real question on this appeal is, whether the Sanad, which is much more precise than the order of the inquiry officer, amounts to something in the nature of a document of title, which must be set aside before the plaintiff can get an order for possession. Mr. Coyajee for the appellants relies on a dictum of Sir Norman Macleod in *Ulawappa v. Gadigewa*⁽¹⁾ in which he refers to a Sanad granted under s. 133 of the Bombay Land Revenue Code as in the nature of a document of title, but in that case the learned Chief Justice was not considering the question which we have to deal with. To my mind a Sanad granted under s. 133 is not strictly speaking in the nature of a document of title between litigating parties. It is a document affecting rights only between the Crown and the person to whom it is granted. The object of an inquiry under the Land Revenue Code is to determine the right of Government to revenue, and for that purpose to survey the land and to determine who is the holder and, therefore, liable to assessment. But an order made under the Land Revenue Code is not, in my opinion, intended to operate, and does not operate, finally as a determination of title between subjects of Government. No doubt an order made under the Land Revenue Code is *prima facie* evidence of title, but it is not conclusive and may be over-ridden as other evidence may be over-ridden. It is not, in my opinion, essential for a person in the position of the plaintiff in this case claiming possession against the defendant, who has been granted a Sanad under s. 133, to obtain an order setting aside that Sanad before he can obtain an order for recovery of possession from a civil Court. It is always open to the revenue authorities to correct their record, and if the plaintiff, having obtained

⁽¹⁾ (1925) 27 Bom. L. R. 948.

an order for possession or an order declaring his title from a competent Civil Court, goes to the revenue authorities, I have no doubt that the necessary corrections will be made in the revenue records. But the revenue records, in my opinion, are not conclusive in favour of the defendant as against the plaintiff, and it is not, therefore, essential that the Court should make an order setting aside the Sanad before granting an order for possession to the plaintiff.

The appeal, therefore, fails and must be dismissed with costs.

N. J. WADIA J. I agree. The only question before us is whether the order of the revenue authorities granting the defendant a Sanad in respect of the suit property was an order within the meaning of Art. 14 of the Indian Limitation Act, which the plaintiff would have to set aside before he could succeed in his suit for possession of the property. The Sanad was granted under s. 133 of the Land Revenue Code. The inquiry, which was made under the provisions of s. 131 of that Code, was an inquiry of the kind provided by s. 95, that is a survey with a view to the settlement of the land revenue and to the record and preservation of rights connected therewith. Such an inquiry is not intended, and could not from its very nature have been intended, to settle disputes between private persons with regard to titles to property. All that the inquiry officer would be concerned with would be the fact of actual possession. If, at the time of the city survey inquiry with regard to the suit property in 1922, the plaintiff had contended that, although the defendant happened to be in possession, the real title to the property lay in the plaintiff, it would have been beyond the powers of the inquiry officer to go into the question and to decide in whom the real title lay. Still less would it have been in

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his power to deprive the defendant of the possession which he actually had, even though that possession might be found to be illegal. All that he would be concerned with would be to ascertain who was actually in possession. If, therefore, the question of the plaintiff's title could not have been gone into by the inquiry officer and decided, it is not possible to hold that any decision with regard to actual possession, which might be given by the inquiry officer, could deprive the plaintiff of his right to get the question of title decided by a Civil Court. The inquiry, which is held under s. 131 of the Land Revenue Code for the purposes of the city survey settlement, is similar in its nature to the inquiry which is held under s. 95 of the Bombay Land Revenue Code with regard to agricultural lands, and is merely concerned with settling who is actually in possession and liable to pay the assessment. The decision in such an inquiry would undoubtedly be a piece of evidence in favour of the person whose name is entered and to whom the Sanad is given as a result of the decision, but it could not be considered as deciding the rights to title between the holder for the time being and others who may or may not have been represented in the inquiry and whose title to the property could not have been gone into by the inquiry officer. It would not be necessary for the plaintiff to get the order of the inquiry officer, or the Sanad, which was granted as the result of that order, set aside before he could sue for possession, and Art. 14 of the Indian Limitation Act would not be any bar to the suit.

I agree, therefore, that the appeal should be dismissed with costs.

Decree confirmed.

J. G. R.