the lease to the exclusion of his heirs. However that question need not be considered. Taking a general view of the lease, and in the absence of any claim by the wife, we are entitled to come to the conclusion that it was a lease to Pemraj for forty years without any limitation. Therefore the appeal should be allowed and the plaintiff's suit dismissed with costs throughout. The direction that the plaintiff should get possession should be struck out. The direction with regard to payment of rent should stand.

Appeal allowed.

R. R.

APPELLATE CIVIL.

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

JAYANT BAPSHA SAVANT (ORIGINAL DEFENDANT), APPELLANT *v.* ABDUL RAHIMAN VALAD MAHOMED IBRAHIM HARJUK (ORIGINAL PLAINTIFF), RESPONDENT*.

1922. *January 9.*

Khot—Payment of Faida to the Khot—Khoti Khasgi lands—Khoti Nisbat lands—Liability to pay.

The Faida payable to a Khot is leviable both on Khoti Khasgi lands in the hands of a Khot and on Khoti Nisbat lands in the hands of his alienee.

SECOND appeal from the decision of N. V. Desai, Assistant Judge of Thana, confirming the decree passed by B. N. Hublikar, Subordinate Judge at Murbad.

The plaintiff who was a managing Khot of the village of Bhandivli, sued to recover Khoti Faida from the defendant who held Khoti Nisbat lands which were alienated to him by a co-sharer Khot.

The lower Courts decreed the claim.

* Second Appeal No. 676 of 1920.

1922

JAYANT BAPSHA v. ABDUL RAHIMAN.

The defendant appealed to the High Court.

N. V. Gokhale, for the appellant.

V. B. Virkar, for the respondent.

MACLEOD, C. J.:—The plaintiff alleged that he was a co-sharer Khot of the suit village of Bhandivli; that he managed the suit village in the years 1914-15, 1915-16 1916-17 and 1917-18; that a Khoti Khata stood in the defendant's name; and that the defendant did not pay Dhara and Faida for those lands. The defendant *inter alia* contended that for some lands in suit he was liable to pay only Dhara and local cess; and the main issue in the suit was whether for those lands he was liable to pay the Faida.

In the trial Court the learned Judge points out that a Khot in respect of his Khasgi lands is a tenant to himself so far as his liability to the body of Khots is concerned. With regard to Khasgi lands, I understand, the position is that the holder is still liable to pay Faida to the general body of the Khots, and that this payment of Faida for various Khasgi lands held by various co-sharers in the ordinary course would be adjusted when the division of profits is made among the joint body of the Khots.

The defendant, as a purchaser of Khoti Khasgi lands from one of the co-sharers Khots, would be liable to pay Faida, unless he was able to show that by virtue of some custom or agreement amongst the Khots the Faida was not payable. That was a matter to be proved by evidence, and as the learned Judge points out no evidence whatever was adduced. The fact that the defendant produced four sale-deeds, under which the defendant bought Khoti Khasgi lands, which were alleged to be immune from the payment of Faida, would not be relevant unless it could be shown that

the general body of Khots had agreed to those terms. The plaintiff's claim was, therefore, decreed in the trial Court, and this decision was confirmed in appeal.

The learned appellate Judge relied upon the decision in *Raghunathrao* v. *Vasudev*[1], that a Khoti sharer, if he sold his Khoti Khasgi lands, lost his rights thereto as against the general body of the Khots, and if after the sale he remained in possession of such lands, he was a tenant-at-will and could be ejected; and the head-note also says that if a Khoti sharer parts with his Khoti Khasgi lands, then those lands, in the hands of an outside purchaser become Khoti Nisbat, that is to say, the purchaser not being a member of the body of Khots cannot hold any lands as "Khoti Khasgi" as that expression refers only to lands in the occupation of a Khot and cultivated by him or by his hired labourers. It is clear, therefore, that these lands in the possession of the purchaser are liable to pay Faida under the arrangement which was made in Exhibit 29, whereby it was arranged that the tenants of Khoti Nisbat lands were to pay Re. 1 assessment and As. 8 Faida. Therefore the decision of the Court below is correct and the appeal must be dismissed with costs.

COYAJEE, J.:—I concur. The defendant's plea, so far as it appears on the evidence, seems to be that he is not liable to pay Faida in respect of the Khoti Khasgi lands now in his possession. This plea was disallowed by both the lower Courts, and in my opinion, for sufficient reasons. The lands in question are not Dhara lands. They are Khoti Khasgi lands which are thus explained by Mr. Justice Ranade in *Secretary of State for India* v. *Sitaram Shivram*[2]:

"Khoti Khasgi lands have been thus defined in Mr. Justice Candy's book on Khoti Tenure. 'All land in a Khoti village, which is not *dhara*, must be

[1] (1899) 23 Bom. 769. [2] (1899) 23 Bom. 518 at p. 523.

1922.

JAYANT BAPSHA v. ABDUL RAHIMAN.

Khoti.' The Khoti lands, which are cultivated by the Khot himself, or by means of hired labourers, are called 'Khoti Khasgi,' and the rest is 'Khoti *nisbat*,' which may be sub-let to permanent tenants or to recent cultivators."

Now all Khoti lands are liable to pay Faida, that is, the Khot's profits. It constitutes his remuneration for the trouble and risk of collecting the revenue of the village, and managing the village. Khoti Khasgi lands are not exempt from such imposition. When the Khoti Vatan is held by one single individual, he is so to say his own tenant as regards the Khoti Khasgi lands in his private occupation. The position as regards the payment of this Faida becomes clearer when such Khoti Vatan is held by a body of sharers. In that case each sharer holding Khoti Khasgi lands becomes a tenant of the coparcenery and pays Faida to the whole body of Khots including himself; and when a Khoti village is taken under attachment by Government, the Khot is liable to be assessed for Khoti Faida in respect of lands in his private occupation: *Ramchandra Narsinha Mahajan* v. *The Collector of Ratnagiri*[1] and *Ramchandra Daji Joshi* v. *Visaji Bapuji Kanhere*[2].

It was no doubt open to the defendant in this case to prove that this particular Khoti land had been the subject of a special agreement between his vendor Khot and his co-sharers. The burden of proving it lay on him. No such agreement, however, has been either alleged or proved in this case. The learned trial Judge pointed this out when he said "defendant has not adduced any evidence to show that he is not liable to pay Faida to plaintiff in virtue of any custom or agreement."

In these circumstances, in my opinion, the decree of the lower Court is right.

Decree affirmed.

R. R.

(1) (1870) 7 B. H. C. R., (A.C.J.) 41. (2) (1880) P. J. 297.