

(1912) 11 BOM CK 0020**Bombay High Court****Case No:** Second Appeal No. 408 of 1912

The Talukdari Settlement Officer

APPELLANT

Vs

Rikhavdas Parshottamdas

RESPONDENT

Date of Decision: Nov. 21, 1912**Acts Referred:**

- Bombay Land Revenue Code, 1879 - Section 202
- Gujarat Taluqdars Act, 1888 - Section 31

Citation: (1913) 15 BOMLR 378**Hon'ble Judges:** Chandavarkar, J; Basil Scott, J**Bench:** Division Bench**Final Decision:** Dismissed**Judgement**

Basil Scott, Kt., C.J.

This is a suit by an alleged mortgagee against the Talukdari Settlement Officer and the Talukdar whose estate is in his charge, for a declaration that the first defendant had no right on behalf of the second defendant to take possession of the field alleged to be mortgaged to the plaintiff, and for an order for possession of the field. The field was originally part of the Talukdari estate owned by Jethusangji, the uncle of the second defendant. In 1862 Jethusangji granted this field together with other lands to Gobarsangji, father of the second defendant, as a cadet of the Talukdar family for jiwai or maintenance according to the custom in vogue among Talukdars. Estates so granted in jiwai according to custom descend by inheritance to the descendants of the grantee but revert to the grantor on failure of the grantee's line. On the 19th of April 1889 Gobarsangji mortgaged the field in question with possession to the plaintiff's father. In 1894 the mortgagor died and in 1895 the mortgagee died. But after the death of the mortgagor the mortgagee and subsequently his son remained in possession of the field claiming to hold as mortgagees. In November 1907 the Talukdari Settlement Officer sent a notice to the plaintiff u/s 202 of the Land Revenue Code calling upon him to vacate the land in

question. The plaintiff then filed this suit, and after the suit the Talukdari Settlement Officer purporting to act under the provisions of. 79A of the Land Revenue Code as amended by Section 33 of the Gujarat-Talukdars Act summarily evicted the plaintiff.

2. The case came first before the Assistant Judge of Ahmedabad who decided it in favour of the defendants holding that the plaintiff was an incumbrancer of a Talukdar's estate under an incumbrance made by a Talukdar and that therefore his title was invalid after 1894, the year of the death of Gobarsangji, and that the claim by the plaintiff to hold by virtue of adverse possession since 1894 could not be supported in that the Talukdari Settlement Officer, exercising the powers of a Collector lawfully conferred upon him, had evicted the plaintiff u/s 79A of the Land Revenue Code.

3. The plaintiff appealed to the District Judge who-held that Gobarsangji was not a Talukdar creating an incumbrance on a Talukdar's estate within the meaning of Section 31 of the Gujarat-Talukdars Act of 1888, and that therefore the plaintiff was entitled to succeed.

4. From his decision this appeal has been .preferred and the two points decided by the Assistant Judge have been argued before us. We are of opinion that the--respondent is entitled to succeed on the ground that he has been in adverse possession claiming title as an incumbrancer for more than twelve years since the death of Gobarsangji. It is not therefore necessary for us to consider and decide the difficult question whether a jiwaidar is a Talukdar within the meaning of the Gujarat-Talukdars Act of 1888. Section 31 provides that no incumbrance on a Talukdar's estate made by a Talukdar after the Act comes in force shall be valid as to any time beyond such Talukdar's natural life. Assuming that the mortgage of the plaintiff's father was an incumbrance made by the Talukdar, the incumbrance which is claimed by virtue of adverse possession since the death of the Talukdar would not fall within the section, but would be an incumbrance arising " from the operation of the law of limitation. It is not therefore an incumbrance within the purview of. 31, and the possession of the incumbrancer claiming by virtue of adverse possession would not be an occupation in contravention of any of the provisions of the Gujarat-Talukdars Act of 1888 referred to in Section 33 (2), class. (cc), for the purpose of supplementing the provisions of Section 79A of the Land Revenue Code.

5. It was, however, held by the learned Assistant Judge that, because it has been held that under the Bhagdari Act V of 1862 adverse possession by virtue of the law of limitation cannot avail against the Collector taking possession u/s 3 of the Act, the same principle must apply in the case of a Collector taking possession u/s 79A of the Land Revenue Code. A reference to the provisions of Section 3 of the Bhagdari Act makes it clear that it confers upon the Collector very different powers. Under the Bhagdari Act it is lawful for the Collector whenever he shall upon due inquiry find that any person is in possession of any Bhag in violation of any of the provisions of Section 3, summarily to remove him from and to restore possession to the person

whom the Collector shall deem to be entitled thereto; that is to say, the notwithstanding the provisions of Section 28 of the Limitation Act, although the right of a previous proprietor of a Bhag or a share of the Bhag has become extinguished, it is lawful for the Collector, if he deems fit, to restore possession to that person. There is, however, no such provision in Section 79A. of the Land Revenue Code. The Collector cannot take property from one person and give it to another whom he may consider to be entitled. He can only interfere where the occupation is wrongful or in contravention of the terms of the Act in the case of Gujarat-Talukdars, and here, as we have pointed out, the occupation of the plaintiff is legalised by the law of limitation and is not in contravention of the terms of the Talukdars Act.

6. For these reasons we affirm the decree of the lower Court and dismiss the appeal with costs.