

The Secretary of State for India in Council - - - *Appellant*

v.

Girjabai - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 26TH JULY, 1927.

Present at the Hearing :

VISCOUNT SUMNER.

LORD SINHA.

LORD BLANESBURGH.

SIR JOHN WALLIS.

SIR LANCELOT SANDERSON.

[*Delivered by* LORD SINHA.]

This is an appeal against a decree of the High Court of Bombay, dated 15th August, 1924, which varied the decree of the District Court of Nasik, dated 28th February, 1920, and made in Civil Suit No. 5 of 1914.

The suit arose under the following circumstances :—

Manmad village, now grown to an important railway junction, was held by the Vinchurkar—one of the lesser Mahratta chiefs—together with many other villages in “Saranjam” grant from the Peishwa, the then ruler of the country. The last holder of the entire saranjam was the late Sardar Raghunathrao Vinchurkar, commonly known as Annasaheb, who held it from 1836 till 1889, when he died. On his deathbed he adopted as a son the plaintiff Shivdevrao, but the Government refused to recognise the adoption, and in 1892 re-granted half of the saranjam to the late Sardar’s brothers and their sons and resumed the other half, which included Manmad village. The adopted son, though thus excluded from any share in the saranjam, would still be entitled to the *private*

as opposed to the *saranjam* property of his adoptive father. Between 1892 and 1913 there were disputes between Government and Shivdevrao Vinchurkar as to certain lands in Manmad (the subject-matter of the present suit) which he claimed as his adoptive father's *mirasi* or private property by virtue of a sale deed of 1755. These are five plots in the village site (described as A to E in the plaint) and six plots of agricultural lands within the village limits but not forming part of the village site, and described as Plots F to K in the plaint.

These disputes led to an order by the Commissioner of Revenue C.D. on the 9th April, 1913, whereby it was held that the lands in dispute were not covered by the sale deed relied upon but "must have passed into the possession of the Vinchurkars by forfeiture of lands through the Khatedar's (*i.e.*, modern occupancy tenant) family being extinct or through default in the payment of land revenue." The Commissioner held that on the lapse of the *saranjam* to Government these lands also became the property of Government, who thereupon became entitled to levy not merely the Government revenue assessed thereupon, but the actual ground rent in respect of the plots included in the village sites, the tenants being liable to pay these rents to Government and not to the Vinchurkars; and, further, that in respect of the other plots, *i.e.*, the agricultural lands, Government as owner was entitled to recover from the Vinchurkars not the assessed Government revenue, but the *market* rent, which was considerably larger, and in default of payment the Vinchurkars were ordered to be evicted.

This order of the Commissioner was in due course given effect to, and Shivdevrao Vinchurkar instituted the present suit for declaring the Commissioner's order illegal and for recovery of possession of the first five plots and an injunction against the threatened eviction in respect of the other six plots, and for mesne profits in respect of both.

In his plaint he based his title *primarily* on the sale deed of 1755 above mentioned, by which the then Patils of the village conveyed half of their rights to the ancestor of the Vinchurkar. He also relied on adverse possession "*for over 150 years,*" and claimed that by virtue of certain admissions at different times on the part of various Government officials, Government was estopped from disputing the *mirasi* or private rights of the Vinchurkar family. But he alleged as an alternative basis of his title, and apparently in view of the Commissioner's finding, that "even if perchance the Court comes to the conclusion that the right of *mirasi* ownership . . . did not pass to the plaintiff's ancestors under the sale deed of 1755 A.D., but that the property in suit *must* have gone into the possession of the plaintiff's ancestors by reason of the extinction of the Khatedar's family or by reason of its resumption for arrears of assessment, still no manner of right whatever has accrued or accrues to the defendant in law over the said

property. The said property is in law of the absolute personal and *mirasi* ownership and *vahiwat* of the plaintiff and his ancestors." (Para. 3 of plaint.)

By his written statement the defendant denied all these allegations of fact and submissions of law by the plaintiff, and contended that the lands in suit were held by the plaintiff's ancestors as Saranjamdars and all saranjam rights, including the right to hold lands that had passed into his possession and enjoyment by the death of the Khatedars without heirs or by forfeiture, had lapsed on the death of Annasaheb and had been resumed by Government (except as to one-half not now in question).

On the question of title by adverse possession and by estoppel, both the District Judge and the High Court held against the plaintiff, and their Lordships see no reason to differ from them.

Of the remaining issues the first was as follows:—Does the plaintiff prove that he (*i.e.*, his ancestors) purchased the suit land by a sale deed of 1755 A.D. ?

The District Judge held that the construction of the deed in question presented some difficulty, for "it is in archaic language, and deals with a state of affairs to which no one now has the key," but on a review of the whole evidence, including village papers and accounts, he came to the conclusion that the lands sold by that deed did not include the lands in suit, and he found the first issue in the negative.

The High Court accepted this.

Notwithstanding this concurrent finding, some argument was addressed to their Lordships to prove that some, though not all, of the lands in suit are, in fact, covered by the sale deed of 1755. After careful consideration, their Lordships see no reason to differ from the finding of both the Courts in India on this point.

Issue No. 2 was to the following effect:—

Does the plaintiff prove that his ancestors became owners of the suit lands either through forfeiture or through extinction of the Khatedar's line ?

The concurrent finding of both Courts on this issue appears to their Lordships to be that the lands in suit originally belonged to Khatedars or *mirasi* tenants, and on their interests coming to an end in the manner mentioned the Saranjamdar caused his own name to be put in their place in the Khatas or village papers, and assumed possession of those lands.

The only other material issue remaining to be considered is Issue No. 6, viz. :—

Was the suit land included in the half of the saranjam resumed by the Government ?

This is intended to raise the question whether as an effect of the resumption, the Government was entitled to oust plaintiff from the possession of those lands.

The answer depends on the legal effect of the finding on Issue No. 2.

Both the Courts below have answered it in the plaintiff's favour, the District Judge, on the ground that he was bound by the decision of the High Court reported in I.L.R. 41 Bombay, 408 (then under appeal to this Board and subsequently reversed), and the High Court on the ground that the judgment of this Board in L.R. 50 I.A. 49, though it reversed the decision in I.L.R. 41 Bombay, 408, had not decided this particular point, with regard to which the High Court was of opinion that decisions of that Court had established the law in the manner contended for on behalf of the plaintiff. One of the learned Judges, Mr. Justice Fawcett, expressed his personal dissent from that view of the law, but considered himself bound by previous decisions of the High Court.

It is necessary, therefore, to consider what are the incidents of a saranjam grant, and how far the same can be gathered from statutes or judicial decisions, in the absence of the deed of grant.

But before doing so their Lordships think it necessary to deal with two points argued by Mr. De Gruyther on the respondent's behalf:—

1. That the onus of proof has been wrongly placed on the plaintiff, who, having been dispossessed, was entitled to succeed unless the Government affirmatively proved its own title to the lands in question.

The plaintiff accepted the onus on the issues as they were framed. Evidence was gone into on that basis, and the parties proceeded to trial evidently on the assumption that the plaintiff could derive title only in one or other of the ways mentioned in paragraphs 2 and 3 of the plaint. But for that, the procedure might have been different in many respects, and it appears to their Lordships too late to raise any such question at this stage.

Their Lordships would further observe that no basis of title other than those mentioned in paragraphs 2 and 3 of the plaint has up to the last been suggested on behalf of the plaintiff.

2. The second point was that the village papers, kept by the village officials, having entered the name of the Vinchurkar as Khatedar in respect of the lands in suit, this must be taken to have been acquiesced in and accepted by the Collector on behalf of the Government, and it amounted in effect to a new agreement for a permanent tenancy, which remained unaffected by the subsequent resumption of the *saranjam*. This is a new case not suggested till the last moment, and even if their Lordships were inclined to entertain it (which they are not) it seems to have little foundation in fact. The position of the Saranjamdar enabled him to have complete control over the management of the village and the village officials, and there is no reason to assume that these entries, or the papers themselves, were in any way brought to the cognisance of, or acquiesced in, and much less sanctioned by the Collector.

It is no doubt correct to say, as Mr. Justice Shah does, that "the fact that the Saranjamdar is in a sense a life tenant does

not alter the ordinary incidents of a grant by way of saranjam." But what those ordinary incidents are, must be ascertained, when there is no deed of grant forthcoming, from (a) the evidence, if any, in the case ; (b) from legislative enactments ; and (c) from judicial decisions. Failing all these, there would be nothing else but general principles of law to apply.

Now we find from Wilson's Glossary that amongst the Mahrattas the term "Saranjam" was applied specially to a temporary assignment of revenue from villages or lands for the support of troops or for personal military service, usually for the life of the grantee ; also to grants made to persons appointed to civil offices of the State to enable them to maintain their dignity, and to grants for charitable purposes. These were neither transferable nor hereditary, and were held at the pleasure of the Sovereign. They were divided into two classes, viz. (a) grants of revenue only, *i.e.*, of the royal share of the produce of the lands comprised in the grant, and (b) grants of the soil itself. It would seem to follow from the nature of saranjams that whether they were grants of the soil itself or of the revenue only of specified lands, they could not and were not meant to interfere with rights in those lands existing previously to and at the time of the grant. If and so far as there were occupancy tenants on those lands, they would retain their right of possession (whether it can be called ownership or not is immaterial) but subject to paying the assessed land revenue (*i.e.*, the royal share of the produce) payable before the grant to the Government and after the grant to the grantee. On principle, the grantee would not, unless specially authorised, be able to convey a title larger than his own. He could not convey a permanent title to any portion of the land, either by sale or by lease. Such sale or lease might be good as against himself but would be void as against the grantor.

In the case of a grant of the soil itself, it has been decided by this Board that, on the grant coming to an end, the Government representing the original grantor is entitled to resume actual possession. (*Secretary of State for India in Council v. Laxmibai*, L.R. 50 I.A. 49.) But it is urged that in the case of the other kind of grant, Government can take back only what it granted, viz., the royal share of the produce ; in other words assess the land revenue payable in respect of the land, but it cannot interfere with the possession of the grantee. This would be quite consistent with principle, if the grant made the grantee a charge-holder pure and simple. But if the grant also conveys by implication or otherwise the right to take possession of the land itself under certain circumstances, it is difficult to hold that though the charge might come to an end the possession taken under and by virtue of that charge should still continue, or, as Mr. Justice Fawcett put it, that the incident should survive the grant.

There is no legislative enactment which is applicable in the circumstances of this case. The Saranjam Rules of 1898 do not

apply *proprio vigore* as this saranjam was resumed in 1892, and even if they can be held to be merely declaratory of the previous law, they do not throw any light on the question under consideration.

As regards judicial decisions, those with regard to *in'ams* do not seem to be necessarily applicable. The word *in'am* is sometimes vaguely applied to all grants of revenue-free land, without reference to perpetuity or any specified conditions. But it would be unsafe to apply to a peculiar grant like the Mahratta saranjam rules which were held applicable to grants in perpetuity.

Mr. Justice Shah refers to what he calls a "long course of decisions" in Bombay as establishing two propositions. The first is admittedly overruled by the decision of this Board in *Secretary of State v. Lazmibai*, L.R. 50 I.A. 49). His second is that in the case of a saranjam grant of the royal share of the revenue, it is open to the grantee to make the best use of the grant for his own benefit, *i.e.*, to appropriate the lands to his own use, subject to the payment of the royal share of the revenue and to create rights of occupancy in his own favour or in favour of third parties.

On examination it appears that there are only three decisions which directly bear on the point, *viz.*, *Ram Chandra Mantri v. Vinkatrao*, I.L.R. 6 Bombay, 598 (1882); *Ganpatrav Trimbak Patwardhan v. Ganesb Bajibhat*, I.L.R. 10 Bombay, 112 (1885); and *Hari Sadashiv v. Shaik Ajmudin*, I.L.R. 11 Bombay, 235 (1886).

In the first of these cases Mr. Justice Melvill said at p. 598:—

"The Saranjamdar may deal with all unoccupied lands as may be best for the purposes of revenue, and may either cultivate them himself or through tenants."

And it was observed by Batchelor, J., in *Balvant Ramchandra v. Secretary of State*, I.L.R. 32 Bombay, 432 (1908), that since Mr. Justice Melvill's judgment in 1882 the law in Bombay has always been that a grantee of the revenue is entitled to make such profit as he can out of the unoccupied lands.

But this is very far from holding that the right to make such profit survives the grant and continues after the grant has been resumed.

This construction was, however, placed on Mr. Justice Melvill's words quoted above in I.L.R. 10 Bombay, 112, where Sargent C.J., after quoting the passage from Mr. Justice Melvill's judgment in I.L.R. 6 Bombay, 598, paraphrased it as follows:—
"or, in other words, that the Saranjamdar may acquire occupancy rights which . . . remain unaffected by the resumption of the saranjam, except as to the assessment thenceforth payable to Government."

These observations were not necessary for the decision of that case, and their Lordships are unable to agree that the language of Mr. Justice Melvill in I.L.R. 6 Bombay, 598 bears the meaning or has the effect attributed to it by Sargent, C.J.

The same observations would apply to the case in I.L.R. 11 Bombay, 235. The Government was not a party to either of these cases, and the lands in dispute were held on the evidence in both cases to be the private property (*sheri* lands in the one case and *mirasi* lands in the other) of the grantee. Their Lordships are therefore unable to hold that there is any long course of decisions in the High Court of Bombay laying down with regard to saranjams of this nature the broad rule enunciated by Mr. Justice Shah—that the grantee would be entitled to create *in his own favour* occupancy rights in lands unoccupied at the time the grant was made or held by others then but forfeited on one ground or another during the subsistence of the grant.

The question whether he could create such rights in favour of third persons by virtue of the powers of management above referred to does not arise in this case, and their Lordships refrain from expressing any opinion upon the point. But their Lordships hold that he could not create such rights *in his own favour*, and that when the saranjam was resumed, the Government became entitled to resume not only the land revenue, but also all the rights and benefits that the grantee had secured by virtue of his grant.

Their Lordships will humbly advise His Majesty that this appeal should be decreed with costs and the plaintiff's suit dismissed with costs in both the Courts in India.

In the Privy Council.

THE SECRETARY OF STATE FOR INDIA IN
COUNCIL

2.

GIRJABAI.

DELIVERED BY LORD SINHA.

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