Special Appeal No. 394 *of* 1863.

1863. Aug. 3.

VISHNU TRIMBAK .....*Appellant.*

TA'TIA' *alias* VA'SUDEV PANT, deceased, by his son and heir RA'MKRISHNA .....*Respondent.*

Inámdár *in Possession—Mortgage—Resumption of* Inám *by Government—Effect of Resumption of* Inám *on Title to Lands.*

An *inamdár* having granted several mortgages upon his *inám* lands died. The right to hold the lands rent-free was ruled by Government to have ceased upon his death, but the lands were continued to his representatives subject to the payment of assessment, under the Government Circular of 1854.

Held—that the original estate in the lands was not destroyed; that no new title in the *inámdár's* representatives was created, and that the lands continued chargeable in their hands with any valid specific liens created upon them by the *inámdár*.

THE previous proceedings in this case, and the judgment of the late Ṣadr Court remanding the case for further investigation, are reported in Vol. IX., Part I., p. 107, of Harrington's Reports.

The District Judge of Puṇá, T. A. Compton, who tried the case on remand, rejected the claim of the appellant, Vishṇu, who had filed the original suit to raise an attachment placed by the respondent, Tátiá, on certain lands formerly held in *inám* by one Bháskar Joshi, against whose representatives Tátiá had obtained a decree.

Vishṇu appealed against this decision, and the Court ordered that the District Court should try the following issues :—

1. Was the land formerly held in *inám* by Bháskar Joshi.

2. If so, has it since been determined by competent authority that it has lapsed to Government.

3. If so, has it been since granted by Government to another on a different tenure, as alleged, and has it been lawfully derived by Vishṇu Trimbak from that other.

The Acting District Judge, Baron De H. Larpent, found in the affirmative with regard to the first and second issues; and with regard to the third, that the land was granted by Government to Janárdhan Bháskar under the Revenue Survey tenure, and that it was so granted in accordance with Rule 6, laid down in Revenue Circular No. 2449 of 1854, by which

preference is given to a dispossessed *inámdár* to take up lands which have lapsed to Government. He was further of opinion that the sale to Vishṇu Trimbak was not lawful, because when the land was sold, one of the claims on it was for the amount of a decree held by the respondent, Rámkrishṇa Vásudev, whose claim was not affected by the land lapsing to Government, and changing from *inám* to *khálsat*. He held that the claim was good at the time the deed of sale was executed.

The Appeal was argued before SAUSSE, C. J., and FORBES and WARDEN, JJ.

Westropp and *Dhirajlál Mathurádás* for the appellant.

Dallas, LL.D., and *Ganesh Hari* for the respondent.

SAUSSE, C. J., delivered judgment:—This case involves a question of some importance, as the point for decision is, whether *inám* lands, mortgaged by an *inámdár*, whilst in the actual occupation of himself or of his creditors, continue liable to such charges after the grant in *inám* shall have been resumed by Government.

The facts are shortly these.

One Bháskar Jóshi granted several mortgages upon his lands held in *inám*, and died in 1829, leaving no heir of his body, but only a son by adoption, called Janárdhan. The respondent was the puisne mortgage creditor, and having filed a suit against the widow of Bháskar and Janárdhan as his heirs, he in 1833 obtained a decree, but upon applying for execution under it in 1834, an order was pronounced that the several unsatisfied decrées against these *inám* lands should be paid according to their priorities. The profits of the lands appear to have been so received until 1855, when Lakshmibái, the mother of Janárdhan, prior to August in that year, paid off a balance due to one Bhikáji, a prior decree-holder, who was in possession of the lands.

Very shortly after (on the 7th of August), the Inám Commissioner declared the *inám* lapsed for want of heirs of the body of Bháskar, and it was "resumed" by Government. The necessary information and directions were given to the revenue authorities to carry out that order, and upon the 18th of August the Collector made a grant of these lands to Janárdhan, the heir of Bháskar, under the Revenue Survey tenure, and in accordance with Rule 6 of the Government Circular No. 2449 of 1854, which directs that if the claim of an *inámdár*, who is in occupation of land, be disallowed, he is never-

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theless to be permitted to continue in possession so long as he shall pay the full assessment imposable on the land as *khálsat* land.

The respondent, having found that the decrees prior to his own had been thus paid off by Lakshmibái in 1855, applied in November 1856 to attach the lands under his decree; but, not having the original decree in his possession, his application was refused until 1859, when he produced it, and obtained an attachment against these lands.

The Judge below has found that, owing to the existence of prior claims, the respondent's decree could not be enforced prior to the 28th of July 1860.

It appears, however, that upon the 24th of June 1857 Janárdhan had presented to the authorities a petition, according to the Survey rules, praying for permission to resign the lands in favour of the appellant (Vishnu Trimbak), to whom, he stated, he had previously mortgaged them. Vishnu presented a *kabuláyat* to the Revenue Officer, and was allowed into possession in accordance with the Rule of Government No. 5593 of 1848.

On the 23rd of July 1858, Janárdhan assigned all his interest in the lands to Vishnu (the appellant) by a deed of sale. The appellant, relying upon the title so obtained through Janárdhan, filed a suit to raise the attachment, under which the respondent had seized and got into possession of the lands. The Judge at Puná nonsuited the plaintiff, who now appeals against that decree, and has contended before us that the legal effect of the "resumption of the lands" in 1855 as a lapsed *inám* was to destroy altogether the estate in them which had been vested in Bháskar Joshi; and consequently to render inoperative, from that date at least, any specific incumbrances created by him upon these lands; and, secondly, that by the Collector's grant to Janárdhan in 1855, after "resumption" a wholly new interest in the lands was given to him by the paramount owner, and that the interest so acquired was not liable in his hands to satisfy the specific charges created by Bháskar Joshi.

On the part of the respondent, it was, on the other hand, insisted, that the estate which vested in Janárdhan, as recognised by Rule 6 of the Government Circular No. 2449 of 1854, was a continuation of the estate of Bháskar Joshi, although in a modified and less valuable form; and that the grant by the Collector operated only as a confirmation of that estate.

It will be necessary to examine what estate Bháskar Joshi had in those lands, available to satisfy the charges created by him upon them, and, next, what estate Janárdhan obtained, under the grant from the Collector in 1855, after the *inám* was "resumed."

The nature of the estate which Bháskar Joshi had must be ascertained by a consideration of the title recognised in such grantees by the existing Government, and the extent of that recognition is to be deduced from Reg. XVII. of 1827, viewed by the light thrown upon it by Act XI. of 1852, and the Legislative interpretation placed upon the provisions of both by the Resolution of the Governor in Council of Bombay No. 2449 of 13th January 1854, which was framed under the authority of Sec. XI. of the Act of 1852.

Reg. XVII. defines "the relative rights in the land and its produce, of the Government and the subject, and of the superior holder and the tenant," and the Act of 1852 declares the rules under which titles of claimants under *inám* grants to exemption from land revenue are to be adjudicated upon.

In addition to the above must be borne in mind the Government interpretation of the rules regulating "the rights of occupants of land and sub-tenants," as published in No. 968 of 1855, wherein it is expressly stated, in Rule 1, that "the object of the rules of the Revenue Survey is to constitute all occupied land saleable and heritable property," and in Rule 3 that, as a consequence, "mortgages and leases must be respected, otherwise land would not be saleable."

It is obvious, from a consideration of those Regulations, Acts, and Rules, that the expression "resumption of the lands" is an extremely inaccurate designation of the effect of "resumption" of a grant in *inám* by the Government authorities, because the lands themselves, if in occupation of the *inámdár* (whose claim to exemption from payment of land revenue has been disallowed) are not resumed by Government at all; but the exemption from payment of land revenue which they formerly enjoyed is alone done away with.

Rule 7 of the Government Resolution of 1854 is very express upon this point, as it declares that the effect of "resumption" of an *inám* by Government is simply an authoritative

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declaration "that the exemption from payment of public revenue has been discontinued."

The estate, then, which an *inámdár* in occupation, by himself or his creditors, has in the lands, is a right to hold them exempt from payment of land revenue during the period or upon the conditions mentioned in the grant, and upon failure of either, a right to hold the lands to him and to his heirs so long as he or they shall pay the land revenue.

This latter right is in the nature of a lease for ever rendering rent, and is clearly a valuable interest, which can be made the subject of mortgage or sale by the party in possession.

When the grant is not forthcoming, and a Regulation or statutable prescriptive title to the *inám* is shown, the exemption will apparently (under Rules 3 and 4 in Sch. B of Act XI. of 1852) never be presumed to have been longer than to the original grantee for life and to the heirs male of his body, and when there shall be no such heir male existing, the "exemption" lapses to, or is resumable by, Government; but the title to the lands themselves, subject to payment of the land revenue or Government rent, vests in the heirs general of the original grantee, and becomes, like all other immoveable property, chargeable in the hands of the heir with any valid specific liens created upon them by the ancestor.

The sole effect of such a "resumption" upon the security of mortgagees and such incumbrancers is to lessen their security to the extent of the diminution in value of the estate caused by the new liability to payment of the Government rents or assessment.

Bháskar Joshi's right to create this mortgage is not disputed; the mortgagee's security is co-extensive with the estate which Bháskar Joshi had, as above defined, and that estate so charged descended upon his heir, Janárdhan, and is liable *primâ facie* to satisfy the amount of the respondent's decree.

It only remains to consider what was the effect of the grant by the Collector to Janárdhan in 1855.

It is clear, from Rule 7 of the Government circular of 1854, that by the act of "resumption" the Government did not in the present case acquire any right to the land itself, but only the right to levy the public assessment or land revenue from it. Consequently, the Collector, as representing the Government, had no power to deal with the land or the right to

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possession otherwise than the law had provided; and Rule 6 of that circular had enacted, that, upon resumption of an *inám* in occupation, the possession might be continued to the *inámdár*, whose claim to exemption was disallowed. In the present case Jánárdhan was the person so designated, and the Collector's grant could only have the effect of declaring that Janárdhan, as the heir of Bháskar, was the person indicated by that rule to be entitled to remain in possession, so long as he paid the assessment. It granted no new title; it was merely declaratory of the legal right which by law vested in the heir for the benefit of his ancestors' creditors.

Then the appellant, claiming title under Janárdhan, can have no better title than the latter had; and as Janárdhan's title was subject to all valid incumbrances created by his ancestor Bháskar Joshi, the appellant can claim no benefit under his alleged deed of sale in 1858 until the respondent's charge shall have been first satisfied.

Our decision has reference solely to the case of an *inám* in occupation, which this was.

We confirm the decree with costs.

Decree affirmed.

Special Appeal No. 286 *of* 1862.

Aug. 3.

TRIMBAK A'NANT .....*Appellant.*

GOPA'LSHET bin MAHA'DSHET MAHA'DU, a minor, by his guardian SATYABHA'MA'BA'I. *Respondent.*

Hindú Law—Manager—Purchase from Manager of an Undivided Family—Onus Probandi.

If a person, dealing with a Hindú representing himself to be the representative and manager of an undivided family comprising infant members, can show that after reasonable inquiry he believed in good faith that the person so representing himself was entitled to act and was acting for the family, and that the transaction entered into with him by such manager was entered into for some common family necessity, or for the benefit of the infants, such act of the manager is valid and binding on the minor members of the family.

THE appellant originally brought his suit in the Court of the Munsif of Puṇá, to recover possession of a house which he alleged the defendant, Gopál, who was the uncle of the minor defendant, and manager of the family, which was undivided, had mortgaged to him, in the Shálivábán year 1779, to secure payment of Rs. 90 which he had advanced to him.