

1864.
KONER MANO-
HAR *et al.*
v.
NA'RO HARI
DASPUTRE.

re-imposition of the attachment, which it is stated has been removed in consequence of the temporary reversal of the execution-creditor's decree. All costs to be borne by the plaintiff. We consider that the mortgagor should have been made a party to the suit.

Decree reversed.

Special Appeal No. 720 of 1863.

March 17.

PUJU' bin KA'DAN and another..... *Appellants.*

MALHA'RI bin RA'MA'..... *Respondent.*

Sanads—Settlement Officers—Act (Bombay) II. of 1863.

Sanads granted by Settlement Officers, under the Bombay Act II. of 1863, do not prejudice the rights of third persons.

THIS was a Special Appeal against a decree of the District Judge of Khándesh. The plaintiffs' case was that they and the defendant Malhári held in common certain *inám* land alienated for the remuneration of the office of "Gurav" at Chálisgám, of which the defendant, Malhári, had one half for his share, and they the other half; but that since 1861-62, the period when the land was entered in the name of Malhári under the Summary Settlement, he refused to give them (plaintiffs) their share of the *inám* land.

The defence was a total denial of the plaintiffs' right to the land, and an allegation that it had descended to the defendant as ancestral property.

The Munsif found that both the parties had been doing service as *guravs*, and holding the land in common for some time, and gave a decree in the plaintiffs' favour. Against this decision an appeal was made to the District Judge of Khándesh, who reversed the Munsif's decree. The following is an extract from his judgment, showing the grounds for the reversal:—

"It is not proved that either party is an original *watandár*, and the *inám* land attached to the office appears to have been entered at times in the joint names of the parties.

This entry of the names in the revenue books in former years is not usually a very reliable ground for going on, inasmuch as such entries are frequently made at the whim of the Kulkarni or intrigue of claimants; but still, had there been nothing else, the Court could have found no fault with the Munsif's award, which decreed their common right. But Malhári has received a *sanad*, dated 15th May 1863, recorded in appeal, confirming his right to the said *inám* land, and the Court holds that he stands firm on this, unless some one proving himself to be *watandár* in his place can displace him. There is no pretence that the present plaintiffs are such. They only ground their right upon the fact of their serving one temple. It is to be presumed that the *sanad* has not been granted without some investigation; at all events such a formal document is a far more reliable ground for decision than loose entries in books, and the Court, acting upon it, reverses the decree, with costs."

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 et al.
 v.
 MALHÁRI
 RA'MA'.

The appeal was argued before FORBES and TUCKER, JJ.

Mádhavráv Krishná Khárkar for the appellants.

Vishvanáth Náráyan Mandlik, for the respondent, was called upon by the Court to support the judgment of the District Judge, based as it was on a *sanad* which on its face declared that the statements therein made did not affect or prejudice the rights of third persons. He contended that the respondent, being in possession of the *inám* land, should not be dispossessed, unless a better title could be established by the appellants, which they had failed to do.

PER CURIAM:—The Court considers that the Judge erred in giving a decision which, as he himself states, he would not otherwise have given in reversal of the decision of the Munsif, solely on the ground that Malhári has received the *sanad* recorded as exhibit No. 9 in the appellate court. The Court considers that that *sanad* could not deprive the plaintiffs of any rights in the land, or the profits arising therefrom, which they may have possessed at the time it was granted.

The Court, therefore, reverses the Judge's decree, and remands the suit, in order that the Judge may pass a fresh decision on the merits with reference to the above remarks, awarding costs.

Decree reversed.