

*Special Appeal No. 728 of 1864.*1864.
Nov. 28.

RA'VJI RAGHUNA'TH and others*Appellants.*
 MAHA'DEVRA'V VISHVANA'TH*Respondent.*

Service Watan—Gumastá—Hereditary Deputy.

The holder of an hereditary office, such as a Deshpánde watan, cannot create an hereditary deputy. The appointment of a deputy made by a particular incumbent cannot extend beyond the life of such incumbent.

THIS was a special appeal from the decision of A. B. T. Warden, District Judge of Puná, in Appeal Suit No. 1063 of 1862.

The special appellants brought the original suit in the Court of the Munsif of Vadgám, on the 30th of September 1861, to recover the management, as Mulkí Gumastás, of the Deshpánde watan of certain villages in the Puná District; alleging that the watan belonged to the defendant; but that its management had been conferred upon the plaintiffs' family, Shake 1695, and subsequently, Shake 1712, by deed of grant confirmed hereditarily by the defendant's father, Vishvanáth Bahiráv; and that the management continued in the plaintiff's family up to Shake 1755 (A.D. 1833).

The defendant, Mahádevráv, answered that the plaintiffs never were his wataní deputies; and that no satisfactory explanation could be given, until the alleged documents conferring and confirming the deputyship, Shake 1695 and Shake 1712 respectively, were inspected.

The Munsif found that the suit was not barred by the law of limitation; and that the plaintiffs were entitled to the management of the watan.

The Judge held that the plaintiffs failed to prove enjoyment of the Mulkí Gumástegirí within thirty years, and also their right to the same. The sanad upon which they based their claim was not produced; and the remainder of their documentary evidence was either inadmissible or unsatisfactory.

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Pándurang Balibhadra, for the appellant :—Certain documents were illegally rejected by the District Judge, which would have proved that the right claimed by the appellants had been admitted by the respondent.

Vishvanáth Náráyan Mandlik, contra :—The grant sought to be enforced is opposed to law, as well as to public policy. The office of Deshpánde had been created with a view to the proper management of the affairs of villages and districts, by persons possessed of local experience, and having a permanent interest in their work; and the object of the institution was liable to be defeated by the appointment of hereditary deputies. (a) The sole proprietor of a watan is considered an “officiating” officer, within the meaning of Act XI. of 1843. (b) Existing incumbents cannot create a lien against such watan beyond their lives. (c)

Pándurang in reply :—The point that the contract is opposed to public policy, not having been taken in the courts below, cannot be taken here.

PER CURIAM (FORBES AND TUCKER, JJ.) :—The plaintiffs in this suit claim the management of a certain Deshpánde watan, on the ground that they were created hereditary deputies, by a grant from a previous incumbent. The holder of an hereditary office being simply a tenant for life, as has been fre-

(a) “His Honour in Council has observed, that in a vast number of instances, particularly among the Deshmúk and Deshpánde, the duties of the offices are performed by Gumastás, and not by members of the family holding the watan. He considers this practice should be discouraged. The institution of such watans must have had in view to provide a body of public servants of a permanent character, who, from their constant residence and employment in their villages or districts, would acquire and perpetuate a knowledge of the minutest details. The very object of the institution is lost by their being allowed to sit at home at ease, doing all their duties by employing deputies, men removeable at their pleasure, and who can take no permanent interest in their work. It is only in cases of nonage, or mental or bodily infirmity, that the regulations recognise the right to employ deputies by other than females :”—Government letter to the Revenue Commissioner S. D., dated the 26th of April 1848, No. 2400: Circ. Orders of the Revenue Department (Bombay), 1860, pp. 271, 272.

(b) “An Act for regulating the service of Hereditary Officers under the Presidency of Bombay.”

(c) Interpretations, dated 23rd February 1831 and 5th December 1834 Special Appeal No. 4137, 7 S. D. A. Dec. 124.

quently decided, the nomination of an hereditary substitute to his successors in the office is an act clearly beyond his competency. No appointment of a deputy made by any particular incumbent can have effect beyond the incumbent's life.

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The present action, therefore, was clearly not maintainable; and under this view it is not necessary that we should discuss the objections which have been taken to the District Judge's rejection of certain portions of the plaintiffs' evidence, as, if any errors in law have been thereby committed, they are immaterial.

Decree affirmed with costs.

Special Appeal No. 4041.

1865.
March 2.

The COLLECTOR OF SU'RAT *Appellant.*

The Heiresses of KU'AVARBA'I, deceased. *Respondents.*

Torá garás hak—Alienation—Act VII. of 1863, Bombay.

Held, in the absence of proof on the part of Government to the contrary, that there is nothing in the nature of a torá garás payment which makes it incapable of alienation; and that, without such proof, Government, receiving such sums, cannot withhold payment of them from the alienee of the person, to whom, but for the alienation, they would be paid.

Held, also, that a torá garás hak does not come within the meaning of the word "lands" as defined by Sec. XXXII. (B) of Act VII. of 1863, Bombay; and that a suit having reference to the recovery of sums due out of such hak, is not affected by Sec. XXVII. of that Act.

THIS was a special appeal from the decision of H. Hebbert, Judge of Súrat, reversing the decree of W. Sandwith, Assistant Judge.

Dhirájlal Mathurádás for the appellant..

Dádábhái Frámji and *Kivamuddin Miyánji* for the respondents.

The facts sufficiently appear in the judgment.

FORBES, J. :—Kúvarbái, the plaintiff in this suit, sued the Collector of Súrat for a torá garás hak, due, for the year A.D. 1855-56, from the public treasury, to the Rájá of Dharampúr,