

The land was originally cultivated by Bhulki's first husband merely as tenant of the jágirdár; and Bhulki was allowed, after Moriá's death, to continue in possession on consenting to the conditions specified in the kabuláyat of the 13th of May 1860.

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It is clear from the terms of the kabuláyat that there was no intention in continuing the holding to Bhulki, to extend the tenancy beyond her life. She had no such interest in the land as would descend to any person as her heir.

We, therefore, reverse the decrees of both the lower courts, and throw out the claim.

Appeal allowed.

Special Appeal No. 567 of 1866.

Feb. 26.

M. S. SINDE and others..... *Appellants.*
G. P. SINDE *Respondent.*

Patilki vatan—limitation—Act XI. of 1843.

Plaintiff—being entitled by an arrangement between the members of a family of pátils, of whom he was one, to a third of the emoluments of the office of managing revenue and police pátil—sued the defendant in possession to recover a third of a portion of the hereditary fields set apart as remuneration for the performance of the duties of the office; and the District Judge, in appeal, found his claim barred, on the ground solely that he had not for twelve years been in possession of the one-third which he claimed of the service land:—

Held that the suit must be remanded for retrial; as it did not appear—having regard to Sec. 4 of Act XI. of 1843—whether the plaintiff's turn to officiate as pátil, and his right to enjoy the land in dispute, and consequently the cause of action, arose more than twelve years before the suit was brought.

THIS was a special appeal from the decision of A. St. J. Richardson, District Judge of Ahmednagar, in Appeal Suit No. 280 of 1866, amending the decree of the Munsif of Násik, in Original Suit No 1519 of 1863.

The several parties to this suit held a pátilki vatan in Vanjarvádi, near Násik. A portion of the whole vatan was set aside in 1854, to compensate the person on whom would devolve the duties of managing police and revenue Pátíl, for

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his services. The whole watan paid no assessment to Government then, but subsequently the watan was assessed (*i.e.*, *judi* was laid on it) by Government, and the managing *pátíl* was paid in cash by Government for his services as *pátíl*. Plaintiff Múlji alleged that the portion so set aside was in the defendant Govind's possession as managing *pátíl*, and claimed one-third of it as his share, which reverted to him in consequence of the separate allowance Government had undertaken to pay the managing village *pátíls*.

The Munsif allowed the plaintiff's claim; but on appeal the District Judge remanded the case, and ordered that "other parties interested in the partition of the service land divided off" from the entire watan, be made parties to the suit. The other plaintiffs then joined; and the case was tried a second time by the Munsif of Násik, who decreed in favour of the plaintiffs.

On appeal, the District Judge laid down the following issues: (1) Is there evidence to show that plaintiff Mulji valad Shivji Sinda is one of the hereditary sharers in the emoluments of the office of *pátíl* of Vanjarvádi; (2) are the fields at issue, Nos. 145, 146, 147, and 149, those allotted for the remuneration of the services of *pátíl*, and should the plaintiffs be allowed to obtain one-third of each of these fields."

The following judgment was recorded:—

"It appears from the Registers of cultivated land, that previous to the introduction of the Survey Register, the fields now known as Nos. 145, 146, 147, 149, and another, 133, not at issue, were formerly one field, known as 'Pasore,' containing 106 bighás. The Survey was introduced in 1858, and the Pasore of 106 bighás became four fields containing an aggregate area of 51 acres 25 chains. The plaintiff has admitted before this court that he cultivated, in A.D. 1850, 20 bighás, and has that number now. It appears from the Register of the cultivated lands shown year by year that the same persons who were in possession of the whole of that portion of land known as Pasore, said to contain 106 bighás, are, to the present day, in uninterrupted occupancy; and that

occupancy cannot be disturbed, the plaintiff's claim having clearly passed the period of limitation allowed under Act XIV. of 1859. It appears further that until 1859 the said land Pasore was rent-free, but that from 1860 a sum of Rs. 40, rent on 51 acres 25 chains, was imposed, [in respect] of which appellant Govind valad Pándoji's name is on the receipt book, to which all the persons examined this day have referred. Appellant, Govind valad Pándu, pays Rs. 17-4. The plaintiff Múlji valad Shívji has paid rent, Rs. 2-14. So that plaintiff Múlji neither pays one-third of the tax, nor ever has done so. He has not in his possession one-third of the land assigned for service land, nor has he, at any period from 1850 to the present time, possessed one-third. He has had 20 bighás (whatever that may now represent). It clearly was less than one-third of the entire service land allotted to the pátíls in 1850.

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“ My finding on the issue is that the fields Nos. 145, 146, 147, and 149 are those allotted for the remuneration of the services of pátíl; but there is no evidence to show that plaintiff ever has cultivated or held one-third of the aggregate area of these four fields at any time, more especially from 1850 to the institution of the present action in 1863.

“ Those who cultivated in 1850 have proved the same proportion of holding from that time to the present day, and pay a proportionate rate of the rent of Rs. 40, which was in 1860 imposed on the service land, namely, the appellant paid yearly Rs. 17-4, and the plaintiff (respondent) Rs. 2-14.

“ With regard to the first issue, there is evidence to show that, under an agreement dated Shake 1769, Ashvin Shudha 5, corresponding with 14th October 1847, the mother of defendant Govind, who was then a minor, Múlji valad Kámji, the father of the defendant Krishná valad Múlji, another defendant introduced by the Court under the provisions of Sec. 73 of Act VIII. of 1859 and Múlji valad Shívji, the plaintiff, agreed that each sharer should hold 20 bighás, leaving 40 bighás for the remuneration of the pátíls doing duty as revenue and as police pátíls; and that there is evidence, not only against Govind valad Pándu, but good against

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Krishná, the son of Múlji valad Rámji, to show that plaintiff Múlji valad Shívji Sinde is one of the hereditary sharers in all the emoluments of the office of páñil at Vanjarvádi.

“But this Court finds that the present occupants having held the land carried to their names from 1850 to the present day, their occupancy, with regard to the fields at issue, Nos. 145, 146, 147, 149, cannot be disturbed.

“The decree of the lower court is amended to this, that the existing occupancy, being of a longer period than twelve years prior to the institution of this action, cannot be disturbed with regard to the fields at issue.

“The litigation having arisen from the opposition caused by the defendant Govind valad Pándu, whose mother entered into an agreement in his name, as far ago as A. D. 1847, admitting the claim of plaintiff to one-third of the office of páñil, I determine that each party shall pay his own costs.”

The case was heard before COUCH, C.J., and NEWTON, J.

Vishvanáth Náráyan Mandlik for the appellant.

Shántárám Náráyan for the respondent.

PER CURIAM:—Although it is found by the Judge that the present occupants have held the fields in the same proportion from 1850 to the present time, it does not appear—having regard to Sec. 4 of Act XI. of 1843—whether the plaintiff's turn to perform the duties of the office, as a representative of the family, and his right to enjoy a corresponding share of the hereditary emoluments under the agreement—and consequently the cause of action, arose more than twelve years before the suit was brought.

The Court reverses the decree of the District Judge; and remands the case for re-trial, with reference to the above remark.

Case remanded.