

Special Appeal No. 642 of 1866:

1867.
May 1.

NASARVA'NJI HORMASJI *et al.* *Appellants.*

NA'RA'YAN TRIMBAK PA'TI'L *et al.* ... *Respondents.*

INA'MDA'R—"Suti" tenure—*Sálset*—Agent.

AN INA'MDA'R to whom a village has been granted by Government, though bound to respect all existing tenant rights, is under no obligation to grant unoccupied lands in "Suti" or other permanent tenure, or to regrant on the same tenure lapsed suti lands; nor does the mere taking up of lands in such a village constitute the occupiers suti tenants.

AN inámdár's agent cannot, without express authority from his principal, grant lands on suti or other permanent tenure.

THIS was a special appeal from the decision of R. H. Pinhey, Judge of the Konkan District, reversing, in Appeal Suit No. 71 of 1866, the decree of the Principal Sadr Amín at Tháná.

The case was argued before TUCKER and GIBBS, JJ.

Dhirajlál Mathurádás for the appellant.

Vishvanáth Náráyan Mandlik for the respondent.

The facts of the case, so far as material, appear from the judgment of the Court, which was delivered this day by

TUCKER, J.:—This suit was instituted by the plaintiffs as inámdárs of the villages of Valvai and Vadván, Táluká Sálset, District Konkan, against their agent, the defendant Náráyan Trimbak Pátíl, to recover from him—1st, certain sums which, it was alleged, he had embezzled during his management; 2ndly, damages for loss occasioned by his not having accounted for certain sums which had passed through his hands; 3rdly, certain account books, which he had improperly detained; 4thly, to recover from him and the other defendants, Parbhudás Bhavánidás and Lakhmidás Ambaidás, certain lands in each of the villages above named, which, it was alleged, he had fraudulently appropriated, or had fraudulently alienated to the other defendants.

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The principal defendant, Náráyaṇ, admitted that he had been the plaintiff's agent in the management of the said villages from A.D. 1846 to A.D. 1862; but denied that he had committed any embezzlement, or occasioned any loss, by neglect or otherwise, or that he had kept back any books, or taken up lands for himself, or alienated lands to any other persons, in any illegitimate manner. He also pleaded that the claim with respect to several of the items was barred by the law of limitation.

The defendants Nos. 2 and 3 pleaded that the lands which the plaintiffs sought to recover from them had been assigned to them by the defendant No. 1, who had a good title; and that the plaintiffs were aware of the assignment, and could not now demand to have it set aside.

The Principal Šadr Amín of Tháná, who tried the original suit, gave a decree in the plaintiff's favour, on the first three branches of the claim, and also ordered the restoration of all the land sued for, with the exception of 10 *mude*, 10½ *phare*, and 3½ *páyaliá* in Vadván, as he held it established that the defendant No. 1 had committed the fraudulent acts alleged, and had improperly appropriated and alienated the lands in dispute.

On appeal, the District Judge of Tháná reversed the above decree, and rejected the entire claim of the plaintiffs with costs: as he held that no fraudulent acts on the part of the defendant Náráyaṇ had been established; and that it was competent to him to take up lands on the *sutí* tenure, and to assign them to the other defendants.

In special appeal, it has been contended that the District Judge has misconstrued the Commissioner's Report, on which the Principal Šadr Amín's judgment was based, which clearly held fraud on the agent's part to have been established; that he has also misinterpreted the plaintiff's rights under the grant of the villages made to him by Government, and has committed an error in law in holding that appropriation of lands by the defendant No. 1, or alienation to the other de-

defendants, to the detriment of his employers, would be binding upon them under any circumstances.

We are of opinion that the objections taken to the District Judge's finding with respect to the first three items of the claim, *i.e.*, the demand on account of money embezzled, loss occasioned by neglect, and the alleged retention of account books, have not been made out; but we consider that the District Judge has ruled erroneously in holding that the defendant Náráyaṇ could, without the express assent of his employers, take up lands himself on the *sutí* tenure, or re-grant on the *sutí* tenure to other persons lands which had been relinquished by the *sutídárs* to the *inámdárs* or their agents. On examining the sanad or deed under which the villages were granted by Government to the plaintiffs, it would seem that all the rights of Government in the lands, which were waste or unoccupied at the time of the grant, were conveyed to the plaintiffs: that is to say, that the plaintiffs became absolute proprietors of the said lands, and that they were under no obligation to let the said lands to tenants on the *sutí* or other permanent tenure, though they were bound to respect all existing tenant-rights. It follows, then, that the defendant Náráyaṇ, as agent of the plaintiffs, could not, without their express authority, create any new tenancies of a permanent character, nor, in the case of lands held on the *sutí* tenure at the time of the grant which might have intermediately lapsed, owing to the default or surrender of the holders, had he any power to re-grant the said lands on any tenure which would be detrimental to the proprietary rights of the *inámdárs*. Government, in the neighbouring villages, may have granted a perpetual tenant-right to the occupants of land under them; but no *inámdár* is bound to follow the practice of Government in this respect, nor can it be held that the mere taking up of lands in an *inám* village confers such rights, without an express grant or concession from the *inámdárs*. It is clear, then, that the new tenants, who may have been admitted by the defendant Náráyaṇ, hold only as tenants from year to year, and that they may be ejected by the

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superior landlord, *i.e.*, the plaintiffs, after six months' notice. In the present case the institution of the present suit, which has lasted for more than two years, may be held to be sufficient notice; and as it is not alleged that any of the present occupants hold under grants made by the plaintiffs personally, or by their express authority, the plaintiffs will be entitled to recover any of the lands mentioned in the plaint, which may be in the possession of any of the defendants: unless the defendants can establish that any of these lands were held by them on the *sutí* tenure prior to the grant of the villages to the plaintiffs; or that they (the defendants) have acquired, in some legitimate manner, the rights of the ancient *sutídárs*, prior to any lapse or surrender of the estates of the said ancient *sutídárs* to the *inámdárs*.

We must, therefore, reverse the decree of the District Judge with respect to the lands, and remand the suit to the lower appellate court, that the rights of the defendants in each parcel of land specified in the plaint may be inquired into, and that a decree may be passed in favour of the plaintiffs for all such pieces of land which the defendants may not be able to show to have been held by them on the *sutí* tenure prior to the grant of the villages of Valvai and Vadván to the plaintiffs, or to have been acquired by them (the defendants) in some legitimate manner from the ancient *sutídárs* prior to any lapse or surrender of the said *sutí* estates to the *inámdárs*.

Decree reversed and suit remanded.