

1870.
 MATHURADA'S
 RANCHODDA'S
 v.
 KA'LIA'
 KHUSHA'L.

title and interest of the debtor in the property, are sold burdened with any liens created by him before the date of the sale. The plaintiff's mortgage is thus valid against the purchaser.

Dhirajlal Mathurádas for the respondent.

PER CURIAM :—The Court reverses the decree of the lower appellate court. There is an essential difference between a sale by auction in execution of a decree against the judgment-debtor and a private sale by the judgment-debtor. The purchaser at an auction-sale in execution of a decree buys the right, title, and interest of the debtor, whatever that may be, burdened with all valid liens created by him. The precedent followed by the District Judge, therefore, does not apply, as it refers to private sales. This is a Gujarát mortgage, where it is usual for the mortgagor to remain in possession of property hypothecated; such mortgages are called *san*, and are allowed in Gujarát. The question of registration does not arise in this case, as neither the mortgage nor the instrument of sale is registered.

Decree reversed with costs.

Special Appeal No. 529 of 1869.

March 31.

RA'MCHANDRA VA'SUDEV *Appellant.*
 NA'NA'JI TIMA'JI..... *Respondent.*

Hindú Law—Adoption—Government Sanction—Watan.

A formal adoption is not invalid because it has not received the sanction of the ruling power, and (where the ruling power does not interfere) an adoption without such sanction entitles the adopted son to succeed to property of the nature of a service *watan*.

THIS was a special appeal from the decision of J. R. Naylor, Acting Senior Assistant Judge, at Kaládgi, in Appeal Suit No. 92 of 1869, reversing the decree of Bábáji Lakshuman, Munsif of Mudebihál.

The plaintiff, Rámchandra, alleged that he was the adopted son of one Vásudev Devji, and, as such, sued to obtain a declaration of his title to a one-anna share in certain *kul-*

harni watans; further, to obtain an injunction restraining the first defendant from obstructing him in the enjoyment of a field.

The first defendant stated in his written statement that the adoption had been disallowed by the Government; that the plaintiff, not being a member of the family, could not legally be adopted; and that he never had any enjoyment of the property now claimed.

The Munsif of Mudebihál, finding the fact of adoption proved, awarded the claim; but the appellate court, though concurring with the Munsif in that respect, reversed his decree, on the ground that the approval and sanction of Government were necessary to give validity to the adoption, so as to entitle the adopted person to claim a share in a service *watan*. He recorded the following reasons for arriving at this conclusion:—

“With regard to the third issue, I hold that the approval and sanction of Government were necessary, and that the adoption merely, without such sanction, does not entitle the plaintiff to a share in the *watan*. The land in question is service land, and, therefore, the right of the second defendant as a sharer is not *primá facie* an absolute one; and although Government may allow his rights to descend to the heirs of his body, it does not follow that it need recognise any right in an adopted son whose adoption it has not sanctioned. Service land is specially exempted from the operation of Bombay Act II. of 1863 by Sec. I., cl. 2, the reason of course being that the tenure of such lands is subject to the pleasure of Government. The nature of this tenure is more particularly declared in para. 3 of cl. 3 of Sec. II. of Bombay Act VII. of 1863, which enacts that ‘lands held for service shall be resumable or continuable under such general rules as Government may think proper from time to time to lay down.’ This Act does not apply to this part of the Presidency, it is true, but this and Act II. are analogous Acts, and service lands are the same everywhere.

“In *Bhásker Buchájee v. Nárró Ragoonáth* (*vide* Reports of Selected Cases of the Šadr Diváni Adálat, Bombay, 1820-40,

1870.
RA'MCHANDRA
VA'SUDEV
v.
NA'NA'JI
TIMA'JI.

1870.
 RA'MCHANDRA
 VA'SUDEV
 v.
 NA'NA'JI
 TIMAJI.

p. 25) the Shástris stated that for dependants of Government holding *saranjams* &c. the permission of Government was necessary under the Peshwá's government to the validity of an adoption—by which is meant, not that an adoption made with due forms and ceremonies can be set aside, but that, as regards property held in dependence on Government, the adoption is invalid unless made with the permission of Government;* and the rule printed at p. 31 of the Revenue Circular Orders of the Bombay Presidency (edn. of 1860) shows that our own Government has not abandoned its rights in this respect.

“ I think, therefore, it is quite evident that the plaintiff's adoption by the second defendant without the sanction of Government does not necessarily give the plaintiff a right to a share in the *watan*, and the necessity for Government sanction has been in a measure acknowledged in this case by the second defendant's petitioning Government for its sanction to his adoption of the plaintiff.

“ If the plaintiff is prepared to show that the Government could not withhold its sanction, or that he is entitled to a share in the *watan*, notwithstanding that Government refuses its sanction, he should sue Government. He cannot be allowed to bring a suit in a court, in which Government could not be joined as a party, against his own adoptive father and another sharer, and thereby obtain a declaratory decree establishing his right to property which is held only in dependence on Government, and in the disposal of which, of course, Government must be consulted in the first place.”

The special appeal was argued on the 23rd of March 1870, before WARDEN and LLOYD, JJ.

* NOTE BY THE REPORTER.—Mr. Naylor seems to have misunderstood this case: see the conclusion: where the Sadr Diváni Adálat found it established on the evidence, and also on the exposition of its law officers, that neither length of time after the decease of the adoptive widow's husband, nor the adoption having taken place at other than the place of residence of the parties, nor want of the permission of the ruling authorities, were sufficient grounds for setting aside an adoption once made with sufficient ceremonies.

The Honorable *A. R. Scoble* (Acting Advocate General) (with him *Dhirajlal Mathuradas*), cited the following authorities to show that the sanction of Government was not necessary to the validity of an adoption, even where by virtue of such adoption the adopted person succeeded to lands held on service tenure:—*Bhasker Buchajee v. Narro Ragoonath* (a); *Virbudru Hurrybudru v. Bhee Rancee* (b); *Timbak Baji Joshi v. Narayan Vinayak Joshi* (c); *Vishram Baboorow v. Narainrow Kasee* (d); *Chenbasawa v. Pampangowda* (e); *Rahmabai v. Radhabai* (f). Act XI. of 1843 and Bombay Acts II. and VII. of 1863 were also referred to.

1870.
 RAMCHANDRA
 VASUDEV
 v.
 NANAJI
 TIMAJI.

Anstey (with him *Shantaram Narayan*), for the respondent:—The *Shadr Adalat* reports quoted are vague and unsatisfactory, and the cases cited therefrom do not apply. Under the Hindú law where the consent of the supreme authority is wanting, an adoption was not held good. The Hindú jurisprudence and the custom of Government coincide. It has been frequently held by the Civil Courts that the office of a service-watan-holder is a life-interest only, and that the Government has an option to select a proper person to whom to continue it; and it is, therefore, impossible to conceive how a successor could be appointed without consulting the Government. The consent of Government is necessary to render an adoption valid in the case of *saranjamdars* and of *pargana watan-dars*; and the same rule applies to this case. The interests of Government demand that Government should be made a party to the suit.

PER CURIAM:—This is an action brought by *Rámchandra Vásudev* to obtain a declaration of his title as the adopted son of *Vásudev Devji* to a one-anna share in a *kulkarni watan*, and also an injunction to prevent *Nánaji Timáji* from obstructing him in the possession of a field which, he alleged, he held by virtue of his share in the said *watan*.

(a) Cases Decided by S. D. A. 1820-1840, p. 25.

(b) *Morris's Selected Decisions*, Part II., p. 1.

(c) 3 *Morris's S. D. A. Rep.*, p. 19. (d) 4 *Ibid.* 26.

(e) S. A. No. 655 of 1864, decided by *Westropp* and *Tucker, JJ.*, in 1866.

(f) 5 *Bom. H. C. Rep.*, A. C. J. 181.

1870.
 RA' MCHANDRA
 VA'SUDEVA
 v.
 NA'NA'JI
 TIMA'JI.

The Munsif of Mudebihál, who tried the case, awarded in favour of the plaintiff, on the ground that the adoption was fully proved.

On appeal, the Senior Assistant Judge of Kaládgi, though finding that the adoption was satisfactorily proved to have been performed with all the forms and ceremonies requisite to make it valid, reversed the decree of the Munsif, because the sanction of Government, which had not been accorded, was, he considered, necessary to entitle the plaintiff to a share in the *watan*; and the case comes before us to decide this question only, namely, whether the fact of the adoption not having been made under the sanction of Government is a bar to the admission of the plaintiff's claim; for the objection filed by the respondent regarding the adoption itself has been withdrawn in the course of the argument.

After consulting the authorities that have been quoted by the learned counsel on both sides, we are of opinion that a formal adoption should not be set aside because it has not received the sanction of the ruling power, and that there are no good grounds for the argument that a distinction should be made when the property to be inherited is of the nature of a *watan*; and, as an adopted son inherits all the rights to which a son would be entitled, the decree of the Munsif must be upheld.

It has been urged that Government should be made a defendant; but we consider that the result of the suit will not affect the interests of Government, and that we should, therefore, confine ourselves to the point at issue between the parties who are before the court.

Decree of Appellate Court reversed, and the decree of the Munsif confirmed.