

[APPELLATE CIVIL JURISDICTION.]

Regular Appeal No. 48 of 1873.

VERIBHA'I AND ANOTHER (DEFENDANTS, APPELLANTS) *v.* RAGHA'BHA'I
AND OTHERS (PLAINTIFFS, RESPONDENTS).

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And Regular Appeal No. 53 of 1873.

RAGHA'BHA'I AND OTHERS (PLAINTIFFS, APPELLANTS) *v.* VERIBHA'I
AND ANOTHER (DEFENDANTS, RESPONDENTS).

*Narvádári or Bhágdári village—Partition among Narvádárs or Bhágdárs—
Bombay Act V. of 1862.*

There is nothing in Bombay Act V. of 1862 which debars a Civil Court from making a decree for the partition of *Narvádári* land among the *Bhágdárs*, even though such partition may cause a further division of recognized sub-divisions of *Bhágs*.

THESE were special appeals from the decision of R. B. Bholánáth Sarábhái, 1st Class Subordinate Judge at Kheda, who partially awarded the plaintiffs' claim.

The material facts of the case are as follows :—The parties to the cause are the holders of shares in the village of Nesráyá, which is held on what, in the Kaira and Ahmedabád Collectorates, is called the *Narvádári*, and in the Broach Collectorate the *Bhágdári* or *Bhágvári* system⁽¹⁾, the essential features of which are that the lands of *Narvá* villages are divided into certain large divisions (from 2 to 7), called *Bhágs* or *Patees*; and these are subdivided into smaller parcels (from 10 to 200) called *Rupees*, *Annas*, *Paghrees*, or *Páns*; and these again into fractional parts. The superior *Bhágdárs*, or holders of shares, are collectively responsible for all demands of public revenue; and the inferior *Bhágdárs* are collectively responsible for that portion of the revenue which is assigned to their *Bhágs*. The shares or divisions, both major and minor,

(1) For a full exposition of this system see the case of *Raiji Nurottam v. Purushottam Giridhar* (2 Bom. H. C. Rep., pp. 233 *et seq.* 2nd Ed., 244 1st Ed.) and pages 27 to 35 of E. P. Robertson's Glossary of Guzeráti Revenue and Official Terms.

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are sometimes of equal amount, and sometimes of unequal, but always in a known and recognized proportion, so that the revenue due by the whole village may be exactly apportioned among them. The five plaintiffs and the two defendants are co-owners of five one-anna shares in the Nesráyá village. The former, in their plaint, alleged that in consequence of defendant No. 2, who is the son of defendant No. 1, collecting more rent than was due, they suffered a loss; and they, therefore, prayed for a partition of the lands held between them, and for a share of the profits for 1867-68 and 1868-69. The defendants contended, *inter alia*, that Bombay Act V. of 1862 was enacted with the express object of preventing recognized subdivisions being further divided among the *Bhágdárs* or alienated to strangers.

The Lower Court allowed this objection, and rejected the plaintiffs' claim for partition for the following reasons:—

“The fifth, that is to say, the last section of the aforesaid Act provides that no further division shall be made of the *Bhágs* or recognized subdivisions of the *Bhágs* in *Bhágdári* or *Narvádári* villages. Such is the provision in the said Act. As, by making a further division of the recognized *Bhágs* or subdivision of *Bhágs* in *Narvádári* villages, difficulties are liable to be thrown in the revenue management of the Government and the general management of the *Narvádárs*, the Government has passed a law to prevent a further dismemberment of the recognized *Bhágs* stated above. Therefore, the object of the Act will be frustrated by allowing further partition among the parties of the land in dispute. At first I was of opinion that this Act did not apply to a case of partition as among the *Bhágdárs* themselves, but upon a further consideration of the object of the Act my opinion changed. The law prohibits, that is to say, forbids the making of a further partition into shares of the recognized *Narvá Bhágs* alike, whether by private mode or by a process of the law.”

The Lower Court allowed Rs. 1,643-13-0 for profits as claimed.

Each party appealed against this decision; the defendants against the award of profits, and the plaintiffs against the rejection of their claim for partition.

The appeals were heard by MELVILL and KEMBALL, JJ.

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Khanderao Moroji, for the plaintiffs, contended that there was nothing whatever in the Bombay Act V. of 1862 to prevent a partition of subdivisions of *Bhāgs* for the benefit of the *Bhāgdárs* among themselves; and the Court called on the counsel for the defendants to support the decision of the Lower Court on that point.

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P. M. Mehta (*Nagindás Tulsidás* with him) for the defendants:— The object of passing the Act was to preserve the permanence of the *Bhāgdári* and *Narvādári* tenures, which had existed from time immemorial, and which was endangered by the process of the Court; and it was thought desirable to prevent the alienation, assignment, mortgaging, charging, or encumbering of any *portion* of any *Bhāg* other than a recognized subdivision. The use of the word *portion* in the preamble and in Section 3 of the Act, which declares that it shall not be lawful to alienate, assign, mortgage, or otherwise charge or encumber any *portion* of any *Bhāg* or share in any *Bhāgdári* or *Narvādári* village other than a recognized subdivision, is remarkable as showing that in no case recognized subdivisions were to be further divided. And in Section 5 the Legislature in distinct terms says “the object and intention of this Act being to prevent the dismemberment of *Bhāgs*, or shares, or recognized subdivisions,” the profits might be divided, but the recognized subdivisions of lands were to remain intact. The *Bhāgdárs* might, if they liked, come to any understanding they chose, but the Court could not assist them in dismembering the recognized subdivisions.

MELVILL, J., in delivering the judgment of the Court, said:—We are of opinion that there is nothing in Bombay Act V. of 1862 which debars a Civil Court from making a decree for the partition of *Narvādári* land among the *Narvādárs*. It is possible that the revenue authorities might object to execute such a decree, but the plaintiffs inform the Court that they do not anticipate such objection, and they are content to take a decree for partition. They have proved their right to four and a half out of the five shares held by themselves and the defendants, and also to the

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mesne profits claimed by them, and we, therefore, amend the decree of the Court below, and award the plaintiffs' claim in full, with all costs on the defendants throughout.

Decree accordingly.

[APPELLATE CRIMINAL JURISDICTION.]

Criminal Review.

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REG. v. HANMANT GAVDA.

Cotton—Adulteration—Possession—Bombay Act IX. of 1863, Section 2.

Possession of adulterated cotton, even though accompanied by a knowledge that the cotton is adulterated, is not sufficient to sustain a conviction of fraudulent adulteration or deterioration of cotton under the Cotton Frauds Act (Bombay Act IX. of 1863). No criminality attaches to such possession till the cotton is actually offered for sale or compression.

THIS was an application for a revision.

The accused Hanmant Gavdá was tried and convicted by Ráv Sáheb Bhisto Bhimáji, 2nd Class Magistrate of Gadag, in the Kaládgí District, under Section 2 of Bombay Act IX. of 1863⁽¹⁾ for adulterating cotton, and sentenced to three months' rigorous imprisonment and a fine of Rs. 100, or, in default, to one month's rigorous imprisonment. It was further ordered that the cotton, which formed the subject of the conviction, should be confiscated and sold, and the proceeds credited to Government.

(1) Whoever adulterates or deteriorates cotton by mixing therewith any seed, dirt, stones, or other foreign matter, or who fraudulently or dishonestly mixes cleaned and uncleaned cotton, commonly called cuppas, or cotton of different varieties in one bale, or who fraudulently or dishonestly, by exposing cotton to dew or by any other means, deceptively increases, or attempts to increase, the weight of the same, shall be punishable, on conviction, with imprisonment of either description for a term not exceeding twelve months, and shall also be liable to fine. All cotton so adulterated or deteriorated, or fraudulently mixed or deceptively increased in weight, and which has formed the subject of such a conviction, shall be confiscated.