[APPELLATE CIVIL JURISDICTION.]

RA'VJI NA'RA'YAN MANDLIK (PLAINTIFF AND APPELLANT) *v.* DA'DA'JI BA'PUJI DESAI, MA'MLATDA'R OF RATNA'GIRI (DEFENDANT AND RESPONDENT.)* 1875. September 5.

Act XXIII. of 1871, *Sections* 3, 4 *and* 6—*Construction of a sanad—Ownership in the soil.*

Though, as stated in *Krishnarav* v. *Rangrav* (4 Bom. H. C. Rep. 1, A. C. J.), "*sanadi* grants in *inam*, *saranjam*, &c., are, *generally speaking*, more properly described as alienations of the royal share in the produce of the land (*i. e.* of land-revenue) than grants of land, although in popular parlance occasionally so called," yet such is not invariably the case.

If words are employed in a grant which expressly, or by necessary implication, indicate that Government intends that, so far as it may have any ownership in the soil, that ownership shall pass to the grantee, neither Government nor any person subsequently to the date of the grant deriving under Government, can be permitted to say that the ownership did not so pass, unless there are in the grant such detailed provisions as show that such words are limited in their operation.

An enactment of a character so arbitrary as Act XXIII. of 1871 ought to be construed strictly, and the Courts should not extend its operation further than the language of the Legislature requires.

The meaning of the expression "grant of money or land revenue" extended by Section 3 of Act XXIII. of 1871 to include "anything payable on the part of Government in respect of any right, privilege, perquisite, or office," is not of so wide a range as to include a grant of the proprietorship of the soil, or any suit involving the rights of a proprietor of the soil.

Krishnarav v. *Rangrav* (4 Bom. H. C. Rep. 1. A. C. J.), *Vaman Janardhan* v. *Collector of Thana* (6 Bom. H. C. Rep. 191 A. C. J.), and *Ruttonji Edulji* v. *Collector of Thana*, (11 Moore I. A. 295) distinguished.

A *sanad* by the State purporting to grant a village in *inam*, "including the waters, the trees, the stones and quarries, the mines, and the hidden treasures, but excluding the *Hakdárs* and *Inamdárs*,"

Held to be a grant by the State of such proprietary right as it had in the soil of the village to the grantee.

It is not open to the grantor to say that such words as the above mean nothing but land revenue.

The saving of the rights of the *Hakdárs* and *Inamdárs* does not prevent the property in the soil, so far as it can be regarded as vested in Government, from passing to the grantee.

THIS was a special appeal from the decision of R. W. Hunter, District Judge at Ratnágiri, reversing the decree of E. T. Candy, Extra Assistant Judge of the same District.

* Special Appeal No. 507 of 1873.

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The plaintiff sued, in the Court of the Assistant Judge, as proprietor of a moiety of the village of Nanej, to recover from the Mámlatdár a moiety of the land rents for 1870-71, which the plaintiff alleged had been wrongfully intercepted and withheld by the Mámlatdár. The Assistant Judge awarded the plaintiff's claim in part, but his decree was reversed by the District Judge, who held, on appeal, that the suit was one relating to a grant of land revenue, and was barred by Section 6 of Act XXIII. of 1871.

The plaintiff based his claim on a *sanad*, granted by the Raja of Satara to an ancestor of the plaintiff, the material portions of which were as follows :—

"In the Sur year 1134 (A. D. 1733-34).

"Whereas you came into the presence of our liege the Maharajah Chatrapati and our venerable father the Rav Pratinidhi at Camp Satara, and made a representation to the effect that you were an old and loyal servant of the State, but were unable to maintain your family, and that if our liege would be pleased graciously to grant a whole village in *inam* and continue the same, you would enjoy the same, and protect your family, and wish well to the State, and remain in peace. Therefore it was ordered that a village should be granted to you in *inam*. Accordingly the whole of the village of Mouze Nanej in Tárple Hat Khambe in Subha and Prant Rájápur is granted in *inam*, including the waters, the trees, the stones (including quarries), the mines, and the hidden treasures therein, but excluding the *Hakdárs* and *Inamdárs*. Do you, therefore, enjoy the same through your sons and grandsons, &c., from generation to generation, and remain in peace.

The 5th Zalkad.

Ordered by the Huzur."

A letter, of even date with the *sanad*, was at the same time written by the same officer to the present and future *Deshadikaris* and *Deshlekhaks* of Subha and Prant Rájápur, which, after informing them of the grant of the *sanad* to Visaji Rav Mandlik, and of the circumstances under which it had been made, proceeded thus :—

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"Accordingly the whole of the village of Mouze Nanej in Tarple Hat Khambe in Prant aforenamed is granted in *inam*, including the waters, the trees, the stones (including quarries), the mines, and the hidden treasures therein, and present *pattis* and future *pattis*, but excluding the *Hakdárs*. Do you, therefore, continue the same to him and his sons and grandsons, &c., from generation to generation. You should not insist upon having a fresh letter every year. You should take a copy of this letter, and return this original letter to the aforesaid as a document of title. Be this known.

The 5th Zalkad.

Registered."

The special appeal was heard by WESTROPP, C.J., and LARPENT, J.

Shamrav Vithal for the appellant:—The District Judge was wrong in holding the claim barred by Act XXIII. of 1870. That Act does not apply to the present case. The terms of the *sanad* distinctly show that what was granted was not merely land revenue as held by the Courts below, but the absolute ownership of the land. This is clear from the use of the words, "including the waters, trees, stones (or quarries), mines, and hidden treasures." The case of *Vaman* v. *The Collector of Thana*, (1) relied upon by the Lower Court, strongly supports this view, as will appear from pages 199 and 200. Act XXIII. of 1871 bars only suits "relating to any pension or grant of money or land revenue conferred or made by the British or any former Government." The learned pleader also referred to *Shahzadee Hazara Begum* v. *The Collector of Burdwan*.(2)

Dhirájlál Mathurádás (Government Pleader), for the respondent, argued on the wording of Section 4 of the Pensions Act, and relied upon *Krishnarav Ganesh* v. *Rangrav*.(3)

The judgment of the Court was delivered by

WESTROPP, C.J.:—This action was brought by the plaintiff as proprietor of a moiety of the village of Nanej, to recover from the

(1) 6 Bom. H. C. Rep. 191, A. C. J. (2) 23 Calc. W. R. 378, Civ. Rul.
(3) 4 Bom. H. C. Rep. 1 A. C. J.

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Mámlatdár the plaintiff's half of the land rents for the year 1870-71 wrongfully, as the plaintiff alleges, intercepted and withheld by the Mámlatdár.

The Assistant Judge, who tried the suit, awarded a part of the claim; but the District Judge, on appeal, reversed this decision on the ground that the suit related to a grant of land revenue and, as such, was, for want of the certificate required by Act XXIII. of 1871, barred by Section 6 of that Act.

The only question, therefore, before us is, whether Act XXIII. of 1871 operates so as to deprive the Ordinary Civil Courts of jurisdiction in a suit brought under such circumstances as present themselves here.

The *sanad*, whereby the village (or perhaps we should rather say so much of it as belonged to the Satara Government) was granted to Visáji Ráv Mandlik, the ancestor of the plaintiff, (special appellant), has not now for the first time run the gauntlet of the British Civil Courts. Its genuineness appears to have been not very reasonably disputed by the Collector of Ratnágiri upwards of twenty years ago, but to have been completely established in the Zillah Court, whose decision was (A. D. 1853) affirmed in the Sadr Adalat.[1] [His Lordship then, after reading the *sanad* and the portion of the *takid*, or letter, of even date with it set out above, proceeded :—]

The District Judge, while admitting that at first sight the terms of this grant convey an absolute proprietorship in the village, has held that the grant is limited by the rights which are reserved by the words "excluding the *Hakdárs* and *Inamdárs*," or, as he has paraphrased those words, "saving the rights of the *Hakdárs* and *Inamdárs*." From the evidence on the record the learned Judge came to the conclusion that all that the grantee had enjoyed since the date of the grant was a half share in the revenue of the village, and that, notwithstanding the apparently more comprehensive language of the grant, it really was a grant of land revenue and nothing more.

(1) *The Collector of Ratnágiri* v. *Naro Dhondeo* Morr. S. D. A. Rep. 1853, Part III., p. 17

We would observe, with regard to this finding and the additional (the fifth) point raised in the special appeal, viz.: "that the District Judge was in error in not permitting the special appellant to produce evidence in support of the facts stated in his darkhast, Exhibit No. 7," that the question as to what rights the plaintiff and his ancestors had actually enjoyed in the village was raised for the first time in the Lower Appellate Court, and assuming with the learned District Judge that it was necessary to enter into that question, we think that he should, before deciding it, have admitted the application (Exhibit 7) made by the plaintiff to be allowed to give evidence on the point.

We are, however, of opinion that such an inquiry was unnecessary, inasmuch as the determination of the nature of the claim and title of the plaintiff must rest upon the terms of the grant, irrespectively of the use which the plaintiff and his ancestors may have made of the property conveyed by it.

It is no doubt true that "*sanadi* grants in *inam, saranjam*, &c., are, *generally speaking*, more properly described as alienations of the royal share in the produce of the land, *i. e.*, of land revenue, than grants of land, although in popular parlance so called," [1] but it is not true that such is invariably the case. If words are employed in the grant, which expressly or by necessary implication indicate that Government intends that, so far as it may have any ownership in the soil, that ownership shall pass to the grantee, neither Government, nor any person subsequently to the date of the grant deriving under Government, can be permitted to say that the ownership did not so pass. Now in the *sanad* in evidence here, whosoever framed it was apparently determined that no ambiguity should exist as to what the force of the term "village" might be, and, in order to be explicit, he added to the grant of the village in *inam* the words "including the waters, the trees, the stones (including quarries), the mines, and the hidden treasures therein." The Assistant Judge has relied upon the case of *Vaman Janardhan Joshi* v. *The Collector of Thana and the Conservator of Forests* [2] as supporting his opinion that the *sanad* did not grant the soil. But a more careful perusal of

(1) 4 Bom. H. C. Rep. 7, A. C. J. (2) 6 Bom. H. C. Rep. 191, A. C. J.

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that case would have shown to him that the actual decision in that case was wholly inapplicable to the present case, inasmuch as there were not any such words employed there as "the waters, the trees, the stones, the mines," &c., which we have here, and which, if they do not mean that the Government of the years 1733-34 did intend that the soil, so far as it could be regarded as vested in that Government, should pass, it is impossible to say what they do mean, and he would also have found on perusing pages 199 and 200 of the judgment of Mr. Justice Melvill in that case, that the result of it would have been the opposite of what it was, if the *sanad* there had contained such words.

There may, of course, be, as there were in the *kaul* in the case of *Ruttonji Edulji* v. *The Collector of Thana and the Conservator of Forests*,[1] such detailed provisions as may show that words, such as we have here, may be limited in their operation. The description of the lands, there actually demised and which did pass under the terms of the *kaul* or lease, was so clear and detailed that it was held not to include forest lands.

Whatsoever rights (if any) in the village of Nanej *Hakdárs* or *Inamdárs* (it is unnecessary for us to give any opinion now as to whether the *Khote* could come within either of those denominations) may have had, as against the State, at the date of the *sanad*, have, no doubt, been saved to them, and even, if they had not been expressly named in the *sanad*, would have remained intact, inasmuch as Government could not have granted away the rights of third parties. This is in accordance with the opinion lately expressed in giving the judgment in the Kanara Land Revenue Case[2] with respect to the rights of *rayuts* holding a proprietary interest in lands. But it is not for the State itself to say that, when, beside granting "a village," which may possibly mean only the land revenue thereof, it also purports to grant the waters, trees, stones (or quarries), mines, and the concealed treasures, all of these words mean nothing but land revenue. Could it be for a moment contended that the British Government, which, so far as the plaintiff's moiety of the village is concerned,

(1) 11 Moore's Ind. App. 295; S. C. 10 Calc. W. R. 13 P. C.

(2) *Vyakunta Bapuji* v. *The Government of Bombay*, 12 Bom. H. C. Rep., Appendix 1.

has succeeded only to the territorial sovereign rights of the Raja of Satara through the Peishwa, could establish as against the plaintiff that the right to mines in the plaintiff's moiety of the village still remains vested in the Crown? Such a contention could not be maintained. The same remark would apply to each of the other items expressly named in the *sanad* as conferred upon the plaintiff's ancestor, and those items are all indicative of an intention that the soil should pass.

An enactment of a character so arbitrary as Act XXIII. of 1871, which purports to deprive the subject of his right to resort to the Ordinary Courts of Justice for relief in certain cases, ought to be construed strictly, and the Courts should not extend its operation further than the language of the Legislature requires. An instance of a recent refusal by the High Court of Calcutta to give it any such extended construction is the case of *Shahzadee Hazara Begum* v. *The Collector of Burdwan*.(1) We do not mention that case as similar in its facts to those of the present case, but merely as showing that the Court was careful to keep the operation of the Act within its proper limits. The present suit is substantially one in which the plaintiff, in respect of his ancient ancestral estate in land, and not in respect of any mere grant of land revenue, complains of an interference with his rights as proprietor of half of the village of Nanej by the officer of the British Government which, as representing the Vishálgarh, claims the other moiety of the same village, and in pursuance of which interference the Mámlatdár has collected rents which belong to and issue forth from the estate of the plaintiff as proprietor, and which rents in the Mámlatdár's hands, the plaintiff alleges, are moneys had and received to his use, which he contends the Mámlatdár had not any right either to receive or detain.

The Act (XXIII. of 1871) is intituled "An Act to consolidate and amend the law relating to pensions and grants by Government of money and land revenue." Section 4 lays down that, "except as hereinafter provided, no Civil Court shall entertain any suit relating to a pension or grant of money or land revenue conferred or made by the British or any former Government."

(1) 23 Calc. W. R. 378, Civ. Rul.

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And, besides its ordinary meaning, the expression "grant of money or land revenue," is declared by Section 3 to include "anything payable on the part of Government in respect of any right, privilege, perquisite, or office."

The meaning of the expression "grant of money or land revenue," although thus expressly extended by the glossary of the Act, is not of so wide a range as to include a grant of the proprietorship of the soil or any suit involving the rights of a proprietor of the soil.[1] The existence of this class of grants was known to the Legislature, and suits relating to such proprietary rights would, we doubt not, have been expressly mentioned had it been intended that the Act should apply to them. We cannot suppose that the Indian Legislature contemplated the enactment of a measure of a scope so wide as, on behalf of the Mámlatdár, it has been contended belongs to this Act.

With respect to the saving, in the *sanad*, of the rights of *Hakdárs* and *Inamdárs*, we would refer to *Vasudev Pandit* v. *The Collector of Poona*[2] where such an exception was held not to prevent the property in the soil, so far as it could be regarded as having been vested in Government, from passing to the *Inamdár*. The judgment of the Court there rested not directly upon the *sanad* granting the *inam*, but upon the construction of a decision of the *Inam* Commissioner (under Act XI. of 1852 and especially Rule I. of Schedule B. of that Act) upon the *sanad*. He had ruled that "the whole of the village of Vadgaum, excepting only the rights and privileges of ancient *Hakdárs* and *Inamdárs*, should be continued in *inam* to the male descendants of Bhau Maharaz," and his order purported to be made under Schedule B. Rule I. of Act XI. of 1852, which is conversant of the continuance to subjects of "lands" hereditary or in perpetuity exempt, wholly or partially, from the payment of revenue; and under that decision of the *Inam* Commissioner, West and Nánábhái Haridas, JJ., held that the proprietorship in the soil must be regarded as vested in the *Inam-*

(1) As to the restriction of the word "right" in Sec. 3, see *Parbhudas* v. *Motiram*, I. L. R. 1 Bom, 203.

(2) 10 Bom. H. C. Rep. 471.

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dár, and that the Collector had no right to open a quarry in, and take stone and sand from, the lands.

We reverse the decree of the District Judge, and remand this cause for a new trial on the merits by the District Judge. We refrain from expressing any opinion on the question as to the right of Government to introduce the Revenue Survey into the village of Nanej, or to attach the plaintiff's half of that village, or, in short, upon any point in the cause, except the question whether Act XXIII. of 1871 is applicable to this suit, the District Judge not having dealt with any other question. The objection founded on Act XXIII. of 1871 to the jurisdiction of the Civil Court was not made on behalf of the Mámlatdár in the Court of the Assistant Judge, and, as we think, ought never to have been made. We accordingly direct the defendant to pay to the plaintiff the costs of both appeals. The costs of the suit must be disposed of, as may be just, on the re-trial now ordered.

[APPELLATE CIVIL JURISDICTION.]

1877. February 7.

GURUSHIDGAVDA' BIN RUDRAGAVDA' (PLAINTIFF AND APPELLANT) *v.* RUDRAGAVDA'TI KOM DYAMANGAVDA' AND OTHERS (DEFENDANTS AND RESPONDENTS*).

Act No. XXIII. of 1871, *Sections* 3, 4 *and* 6—*Suit for a declaration of plaintiff's right to officiate as patil.*

A suit for a declaration of the plaintiff's eligibility to officiate as patil of a village is not prohibited by Act XXIII. of 1871. That Act should receive a strict construction, as being in derogation of the right of the subject to resort to the ordinary Civil Courts.

Babaji v. *Rajaram* (I. L. R. 1 Bom. 75) distinguished.

THIS was a special appeal from the decision of G. Druitt, Assistant Judge at Dharwar, reversing the decree of A. M. Cantem, 1st Class Subordinate Judge at the same place.

The plaintiff Gurushidgavdá brought this suit to obtain a declaration of his right to officiate by rotation as patil of the village of Lokur in the district of Dharwar. The defendants denied his

* Special Appeal No. 362 of 1876.