

## PRIVY COUNCIL.

( 44 )

GULABDAS JUGJIVANDAS AND OTHERS (PLAINTIFFS) v. THE COLLECTOR  
OF SURAT AND ANOTHER (DEFENDANTS).

[On appeal from the High Court of Judicature of Bombay.]

Jaghir—Estate conferred by grant in.

P. C.\*

1878

December 11,  
12 and 13.

A *jaghir* must be taken, *primâ facie*, to be an estate only for life, although it may possibly be granted in such terms as to make it hereditary.

THIS was an appeal from a judgment and decree of a Division Bench of the High Court at Bombay, dated the 19th January, 1873, dismissing an appeal from a judgment and decree of the Judge of Surat, dated the 13th April 1869, passed in a suit brought by the appellant as plaintiffs to recover mortgage debts and interest, and to enforce certain securities for the same.

As will be seen from their Lordships' judgment, the decision of the case rested wholly on the construction of a *sanad* granted in the name of the East India Company.

Mr. *Beniamin*, Q. C., and Mr. *J. Graham* appeared for the appellants.

Mr. *Scoble* Q. C., and Mr. *Doyne*, for the respondents.

Their Lordships' judgment was delivered by Sir Robert P. Collier :—

This case, which has been argued necessarily at considerable length, in their Lordships' opinion resolves itself into the construction of a single document ; but in order to make the question which arises intelligible a short statement of facts is necessary.

In the year 1800, on the cession of Surat to the East India Company, the then Governor of Bombay granted a *sanad* to Najamooddin Khan, who was the *Commander-in-chief* of the forces of the Nawab, and was called the *Buckshee*. Their document was dated the 22nd June, 1800. Their Lordships think they are bound to accept the only translation of it in the Record which appears to be properly authenticated, although a somewhat different version of a passage in it is to be found in the judgment of the Subordinate Judge. After reciting that whereas, by virtue

\* Present :—Sir J. W. Colvile, Sir B. Peacock, Sir M. E. Smith, and Sir R.P. Collier.

of a compact and a convention made between the Government of the East India Company and the then Nawab, dated the 12th May 1800, to which also the seal of Najamooddin Khan had been affixed by way of attestation—Najamooddin being the person above referred to as the *Buckshee*—the management and collection of the land revenue, &c., of Surat, and the administration of the city, has been delivered over to the East India Company, the *sanad* proceeds as follows: “Under these circumstances it has appeared incumbent and proper, in the view of the chief authority (*Huzur*), that some suitable provision should be made as a subsidy for the expenses of the above-named Mir Najamooddin Khan and his descendants; that is to say, by reason of close relationship, and being descended from the same ancestors as those of the Nawabs of the maritime city of Surat; therefore, this has been settled by the instrumentality of the Governor, who is the ruler of the maritime city of Bombay, &c., as follows:—that Mir Najamooddin, with his children or descendants after the deduction of the income of the *jaghir* according to the particular given at the foot hereof, that is now in the possession of the above-mentioned Khan, shall receive from the valiant English Company’s Government the sum of Rs. 24,000 per annum by four equal instalments, commencing from the 15th of the month of may, corresponding with the 21st of Zilhaj in the above-mentioned years. Hereafter should it be necessary for the Government to resume the above-mentioned *jaghir*, given on account of maintenance or otherwise, the amount of the income thereof shall be received by the above-mentioned Khan, and his children or descendants, from the treasury of the valiant English Company.” There is a further provision that, “on account of the merit and laudable qualities of the above-mentioned Khan, he is to receive during his lifetime Rs. 6,000 per annum by four equal instalments;” and then are appended the particulars of the *jaghir* consisting of nine *mehals*, the revenue from which altogether amounts to Rs. 6,264-4. It has been said that another *sanad* or other *sanads* of the same kind were given at the same time relating to other *jaghirs*. That may have been so, but in their Lordships’ view the question to be considered would not thereby be altered.

1878  
 GULABDAS  
 JUGJIVAN-  
 DAS  
 THE COLLECTOR  
 OF  
 SURAT.

1878  
 GULABDAS  
 JUGJIVANDAS  
 v.  
 THE COLLEC-  
 TOR OF  
 SURAT

Najamooddin on his death was succeeded by his son Sudrood-  
 din. Sudrooddin on his death, in the year 1826, was succeeded  
 by his son Moinooddin, at that time 16 years of age. Fatima,  
 one of the sisters of Noinooddin, was 7 years old. There were  
 also other minor children, and sisters and a widow of Sudrooddin.  
 In 1821, Moinooddin executed a mortgage to a banking firm—  
 whose representative is the plaintiff in the present action—of  
 some of the *mehals* in the schedule to the *sanaul*, on behalf not  
 only of himself but of his brother Ameenooddin, a minor aged 11  
 years (who died soon after), “and on behalf of his minor sisters  
 on his father’s side” (including Fatima), “and as agent having  
 full power in respect of all matters below-mentioned on behalf  
 of his step-mother and step-sisters, and other heirs” of Sudrood-  
 din. The mortgage was to secure repayment of an advance of  
 Rs. 39,000. There is a power of redemption at the end of five  
 years, and other stipulation customary in mortgages of this kind ;  
 and a provision that the banking firm shall receive the proceeds  
 of the *mehals* either through the Sircar or by collecting them  
 themselves. In the year 1845, Moinooddin executed another  
 mortgage, professing to act on his own behalf only, confirming  
 the previous mortgage of 1828, and further charging the property  
 mortgaged for the repayment of another sum of Rs. 1,000, which  
 he then borrowed. It would appear that the banking firm up to  
 the year 1840 themselves collected the rents of the villages ; but  
 in 1840 the Government made an order whereby they took the  
 collection into their own hands, paying over the rents—with some  
 interruptions which it is not now material to consider—to the  
 banking firm under a *mooktearnamah* so directing, executed by  
 Moinooddin until the year 1857, when they ceased making the  
 payments upon receiving a letter from Moinooddin stating that  
 the mortgage had been satisfied, and prohibiting any further  
 payments being made. In the year 1860 Moinooddin died, and  
 was succeeded by his sister Fatima, who received the income of  
 the *jaghir*, and was recognized as *Buckshee* by the Government.

In the year 1866 the present action was brought by the then  
 representative of the banking firm against the Collector of Surat.  
 Fatima, and three other persons, descendants of the sisters of  
 Moinooddin, of whom one has died and two have disclaimed, and

with regard to whom, therefore, no question arises. The claim is in substance for an order against the Collector, that he do pay the revenue of the villages to the plaintiff as mortgagee, the contention being that the mortgage bound the property in the hands of Fatima : and against Fatima for the payment of a lac of rupees minus one, alleged to be due for interest and principal upon the mortgage. The answer of the Collector is that he has a sum in his possession which he pays into Court, and that this is all which he had in the lifetime of Moinooddin, after satisfying certain other creditors, and he denies his liability to make any payments to the plaintiffs after the death of Moinooddin.

1874  
GULABDAS  
JUGSIVANDAS  
v.  
THE COLLECTOR  
OF SURAT.

Fatima answers, among other things, that Moinooddin had only a life estate in the property, and, therefore, could not charge it beyond the term of that estate, and it is upon that answer of Fatima that the question in the cause arises. Both of the Courts in Bombay have found in favour of the defendant, that Moinooddin had only a life estate. The same finding has also been come to in another suit brought by other creditors against Fatima, in the High Court of Bombay, decided in 1874, in which the same question arose, and which has not been appealed against. The appellants now contend that all these decisions are wrong, and that Moinooddin took an absolute estate.

This question depends upon the construction of the *sanad* ; but that construction may be aided by a consideration of the surrounding circumstances, and of the occasion on which it was granted. The circumstances under which it was granted appear to be clearly and sufficiently set out in a minute of the then Governor of Bombay, which is referred to in the judgment of Mr. Kemball, the Judge, and is in these terms:—"Besides these official advantages, the *Buckshee* had for many years past been in the possession of various *jaghirs* ; that his relations, the Nawabs of Surat, at different times (but all above 20 years ago), alienated in his favour from various parts of the *Mogullae* or assigned revenues on the neighbouring *parganas* for the support of the Nawabship, in like manner as they have (as far as depended on them) done to various other individuals. These estates or assignments, which the *Buckshee* appeared to be

B. 25.

1878  
 GULABDAS  
 JUGJI ANDAS  
 v.  
 THE COLLEC-  
 TOR OF SURAT,

very desirous of retaining, amount yearly, according to the valuations expressed in the *parganas* or grants, Rs. 16,810, respecting which the present Nawab declared, on being separately consulted, that he considered them as having from the original grants and the length of possession become the *Buckshee's* property; on all which grounds I have settled that, including the said *jaghirs*, the *Buckshee* shall receive from the Company an annual stipend of Rs. 90,900, to be continued to his children and family after his decease at the reduced rate of Rs. 24,000, with a clause inserted in the grant in conformity to the instructions to that effect from the most noble the Governor General in Council; that in event of its becoming expedient Government to resume the *jaghirs* the parties shall be satisfied to receive their value of produce from the Treasury in like manner with the residue of their pension."

The terms of the *sanad* are in accordance with this minute. It appears to their Lordships that it was the intention of the East India Company not merely to give a reward to the *Buckshee* for any personal services which he had rendered (a reward which he would be able to dispose of as he thought fit), but to make a permanent provision for the maintenance of an important family in Surat. This object is indicated by the expression "by reason of close relationship and being descended from the same ancestors as those of the Nawabs of the maritime city of Surat." The specific benefit given to the individual for his own services is subsequently stated as Rs. 6,000 per annum, in addition to that which was intended for the permanent maintenance of the family.

It has been argued on the part of the appellants that this *sanad* was not a grant of a *jaghir*, but merely a confirmation to the *Buckshee* of a *jaghir* which he before held by hereditary tenure, and had power to alienate; and that this grant ought not to be construed as cutting down his rights. But it appears to their Lordships that the foundation of this argument fails the appellants. They agree with the High Court that a *jaghir* must be taken, *prima facie*, to be an estate only for life, although it may possibly be grant in such terms as to make it hereditary. There is no evidence that the *jaghirs* held by the *Buckshee*

had come to him from his ancestors or were hereditary. On the contrary, they appear to have been granted to himself, although more than 20 years before the date of the *sanad*, and there is no statement that they were granted on terms which would make them hereditary. It is true that the Nawab speaks of them having belonged to the *Buckshee* so long that they might be considered as his property, but their Lordships cannot regard this statement as anything more than a recognition that in all probability upon his death the *jaghirs* might, as no doubt was often the custom, have been continued to his heirs or to some of his successors by the Native Government, possibly on the payment of a fine ; and they agree with the High Court, that, so far from the presumption being that the *Buckshee* had an hereditary and alienable estate, the presumption is the opposite.

That being so, their Lordships do not regard the grant as cutting down his right, but as extending it so that his successors would be necessarily treated as the owners of the *jaghirs* unless and until resumed ; but having regard to the object and terms of the grant, they have come to the conclusion that each of the descendants of the *Buckshee*, who took the *jaghir*, took it for life only.

It should be observed that the main object of the grant is to secure a pension (that is the proper term for it) of Rs. 24,000 per annum to this family. A portion of that pension is to be paid out of the revenues of certain *mehals* constituting the *jaghir* stated in the schedule ; the proceeds of the *jaghir* are thus in effect but a part of the pension. It has been scarcely contended on the part of the appellants that the pension was alienable. But if the pension was unalienable, and the *jaghir* was alienable, this conclusion would appear to follow. If the *jaghir* had been sold, and the Government had at any time chosen to resume it, as they expressly reserve to power themselves to do, they would have been obliged to pay to each of the purchasers of the *mehals* constituting the *jaghir*, who would be strangers, and to their successors in perpetuity, a portion of the pension of Rs. 34,000 per annum granted especially for support of the family of Najamooddin. It appears to their Lordships that this result cannot reasonably be supposed to have been contemplated at the time the *sanad*

1878  
GULABDAS  
JUGJIVANDAS  
v.  
THE COLLECTOR  
OF SURAT.

1878  
 GULABDAS  
 JUGJIVANDAS  
 v.  
 THE COLLECTOR  
 OF SUKAT.

was entered into, unless it was contemplated that the whole of the Rs. 24,000 by way of pension could be alienated, a supposition wholly inadmissible.

On the whole, therefore, their Lordships, having regard to the peculiar character of this grant from the Government under the circumstances, which have been related, and with the objects which it expresses, have come to the conclusion that the Court of Bombay was right in treating it as conferring upon the descendants of Najamooddin, who would be entitled under it, an estate for life and for life only.

Their Lordships having come to this opinion on the grounds above stated, do not think it necessary to refer at length to some cases which have been quoted, having little bearing upon the present. They may observe that the case which was referred of *Rajah Nursing Deb v. Roy Koylasnath Roy*(1) decided no more than that where a zemindar had made a grant vesting property in the grantee and his descendants from generation to generation,— terms well known in India as conferring an hereditary estate, that hereditary estate was not cut down and made unalienable merely by a direction that certain persons should be maintained. Their Lordships may observe that this was a grant from a private individual and they are not prepared to affirm that all the considerations applicable to grants from private persons apply to grants from the State. It should be borne in mind that the present is not the case of the State merely granting a *jaghir*, and declaring that that grant shall be hereditary, but it is a grant of a *jaghir* accompanied with the grant of a pension, under circumstances which indicate that the intention was that the grant of the *jaghir* and the grant of the pension should be subject to the same conditions.

A case has also been referred to, decided in the North-West Provinces, of *Bithul Bhut v. Lalla Raj Kishore and others*(1) with reference to which their Lordships think it enough to say that the decision there turned upon the construction of regulations which had force in the North-West Provinces, but have no

(1) 9 Moore's L. A. 55,

(2) 2 Agra H. C. Rep. A. C. 284.

application to Bombay, and, further, that the grant in that case was the grant of a private person.

The only further question which has been argued is whether Fatima ratified the execution of the mortgage by her brother Moinooddin after she became of age, and if so, what is the effect of that ratification. Upon this subject their Lordships think it enough to say that they see no reason for differing from the conclusion which the High Court have come to, upon what is in a great measure a question of fact, viz., that she did not ratify that execution with knowledge of her rights, and that, therefore, she cannot be bound thereby.

For these reasons their Lordships will humbly advise Her Majesty that the judgment of the High Court should be affirmed and this appeal dismissed with costs, such costs to include the costs of both respondents.

*Appeal dismissed.*

Agents for the appellants.—Messrs. *Ashurst, Morris and Crisp.*

Agents for the respondents.—Messrs. *West, King, Adams and Collier.*

### APPELLATE CIVIL.

( 45 )

*Before Mr. Justice West and Mr. Justice Pinhey.*

SAKHARAM DIKSHIT (ORIGINAL DEFENDANT) APPELLANT, v. GANESH SATHE (ORIGINAL PLAINTIFF), RESPONDENT.\*

*Limitation Act (IX of 1871), Act. 121, Sch. II—Decree against Sirdar—Execution against a Sirdar's heir who is not himself a Sirdar—Decree directing gradual payment—Limitation in case of decrees payable by instalments.*

The plaintiff's father obtained a decree in the Court of the Agent for Sirdars in 1848 against the defendant's grandfather, a third class Sirdar. The decree gave an option to the Sirdar to pay up the debt at once, or year by year, out of the revenues of a village. The Sirdar chose the latter alternative, and execution proceeded accordingly on that footing till his death in 1862. His son survived him and died in 1867, when the defendant, who was not himself a Sirdar, succeeded.

The Subordinate Judge of Khed—to whom, on the cessation of the Sirdarship in the defendant's family, the Agent referred the decree for further execution—proceeded with the execution up to the year 1876, when these proceedings were pronounced to be irregular. The plaintiff thereupon in the year 1877 filed the present suit based on the decree of 1848 ;

Second Appeal. No. 373 of 1876,

1878  
GULABDAS  
JUGJIVANDAS  
v.  
THE COLLECTOR  
OF SURAT.

1879  
February 10.