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There not being any special provision in either of these two treatises of authority in this Presidency in respect of persons of the half-blood other than brothers and their sons, and there not being any allegation or proof of a special custom in the locality whence this case comes, or any precedents cited to show that further distinction is taken between the whole-blood and half-blood than the two classes already mentioned, we think that we must fall back on the general rule that the nearest gotraja sapinda succeeds(1). That being so, and the plaintiffs having shown themselves to be one degree nearer to the common ancestor Shelar than some of the defendants and two degrees nearer than the other defendants, we think that the plaintiffs are the heirs of Lakha Lunvir; but, as the plaintiffs have only sued for one-third of the produce of his share, we must limit our decree in their favour to that amount, as the Subordinate Judge also seems to have done. The objection, made in his Court by the defendants, that Vishaman Samla was not a party, has not been repeated in the District Court or here. We reverse the decree of the Acting Assistant Judge Mr. Larken, restore the decree of the Subordinate Judge, and direct such of the defendants as have resisted the claim of the plaintiffs to pay the costs of the suit and of both appeals.

Decree reversed.

(1) Mitak., Ch. II, s. v, pl. 1; Mayukha, Ch. IV, s. viii, pl. 21; Manu, Ch. IX, pl. 167; Colebrooke Dig., Bk. V, Ch. VIII, pl. 434.

APPELLATE CIVIL.

March 15.

Before Mr. Justice Melvill and Mr. Justice Kemball.

ARDESIR JEHANGIR FRAMJI BANAJI, ELDEST SON AND MANAGER OF THE LATE JEHANGIR FRAMJI BANAJI (ORIGINAL PLAINTIFF), APPELLANT, *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL (ORIGINAL DEFENDANT).*

Bombay Abkari Act V *of* 1878, *Sections* 14, 20, 64, 65, 66 *and* 67—*Tree—Toddy-producing tree.*

The words "any tree" in section 14 and "every toddy-producing tree" in section 20 of the Bombay Abkari Act V of 1878 mean all trees in the Bombay Presidency to which the Act applies, from which toddy is drawn or produced.

* Regular Appeal, No. 83 of 1881.

and not merely those in regard to which no special rights of drawing toddy previously existed.

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THIS was a regular appeal from the decree of J. W. Walker, Judge of Thana.

The plaintiff sued on 3rd January, 1881, to establish his right to draw toddy from the date-trees in his gardens in the village of Uran in the Panvel Taluka of the Thana District, and to make vinegar therefrom, on payment of a fixed sum merely, and to remove the defendant's obstruction to the enjoyment of his right. The plaint set forth that the cause of action arose on the 28th of August, 1880, when the Bombay Government gave its second and final answer rejecting the plaintiff's application to compensation or a continuance of his right.

The defendant contended that the Government of Bombay rejected the plaintiff's petition on the 24th of March, 1880; that, under section 67 of the Abkari Act, an action against the Government should be instituted within four months from this date, and that, consequently, this suit was brought too late. The defendant also contended that the rates leviable under the Abkari Act superseded those agreed upon before its enactment.

The Judge raised two issues: 1*st*, is the suit barred by limitation? 2*nd*, is the suit maintainable under the provisions of the Abkari Act? and decided both of them in the negative and rejected the plaintiff's claim. The plaintiff appealed to the High Court.

Manekshah Jehangirshah for the appellant.—The claim of the plaintiff is founded on a lease, dated 24th of June, 1802, granted to Balaji Dadaji, through whom he claims, by the East India Company, which in consideration of a sum of money agreed not to tax his trees to an extent greater than that fixed in that lease. The District Judge having decided the case on preliminary issues, this lease has not been produced, and the case must be argued on the basis that it is genuine and contains provisions as above. [MELVILL, J.—Granting that to be so, what is there to show that the plaintiff is exempted from the operation of the Abkari Act?] There is no provision which authorizes Government to put an end to existing rights, which should not be extinguished by mere implication. Sections 14 and 20 of the Abkari Act should be so

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construed as to mean that Government could tax toddy trees where special rights did not exist. The plaintiff has, under the lease, the right of drawing toddy without a license, and the Government could not force him to take out a license.

As to limitation; the prohibitions enacted in clause 1 of section 67 does not apply, for it contemplates suits to which the Act applies. That clause relates to actions for damages; whereas the plaintiff's claim here is for a declaration of his right and for nominal damages merely. The principle ruled in *Asmal Saleman* v. *The Collector of Broach*(1) in regard to the Broach Talukdars' Relief Act is analogous to this.

Hon. *F. L. Latham*, Acting Advocate General, with Hon. *V. N. Mandlik*, Government Pleader, for the respondent.

Assuming the alleged rights to have existed, they were taken away by the Abkari Act. The preamble of the Act shows that it is intended to apply to liquor. The plaintiff can scarcely manufacture vinegar from toddy without manufacturing liquor in the sense of the Act. The definitions of the words 'toddy' and 'liquor' in section 3 seem to point to that conclusion. Section 14 is clear and peremptory. It peremptorily enacts "no toddy shall be drawn from any tree" without a license. This distinctly means any tree whatever. Section 20 authorizes the levy of a duty on "every toddy-producing tree". There is in this or in section 14 no reservation of special rights, which, if they existed, must be taken to have been extinguished by the Act. Special rights and immunities in the Poway Estate and certain villages are dealt with in sections 64 and 65. The Legislature puts an end to them on payment of compensation. In sections 66 the Legislature makes the provisions of the above sections extendible to holders of other villages in the island of Salsette. The plaintiff is not a holder of such village or any village. He has gardens in Uran, a village in quite a different taluka, and has not made any application to Government within three months of the Abkari Act coming into operation.

The suit is, moreover, barred by clause 2 of section 67. The contention founded on clause 1 [may] be good, but the plaintiff's

claim is certainly barred by the former. The Government of Bombay rejected the plaintiff's petition on the 24th of March 1880, which is the date on which the cause of action, if any, arose to him. A repetition of that order on a subsequent occasion makes no difference. [MELVILL, J.—If it did, a person has only to continue to make petitions to keep his cause of action perpetually alive.]

The judgment of the Court was delivered by

MELVILL, J.—Section 14 of Bombay Act V of 1878 says "no toddy shall be drawn from any tree * * * except under the authority and subject to the terms and conditions of a license to be granted by the Collector." Section 20 says: "For every toddy-producing tree from which toddy is drawn, there shall, if Government so direct, be levied, for any period during which such tree is tapped, such duty as Government from time to time directs." There is no ambiguity in the terms of these sections. They are clearly as wide and general as words could make them. We are asked to hold that when the Legislature spoke of "any tree" and "every tree", it only meant any and every tree in regard to which no special right of drawing toddy previously existed. It would be a strong measure, even if the Act were wholly silent as to the reservation of rights, to assume that the Legislature, when it used such general terms, intended to limit them in the manner suggested. But, in fact, sections 64, 65, and 66 of the Act show that, when the Legislature intended to recognize such rights over toddy-producing trees, it thought it right and necessary to introduce into the Act express provisions authorizing the grant of compensation; and it would be contrary to all rules of construction to imply a similar recognition of such rights in other cases not expressed.

For this reason we confirm the decree of the Court below with costs.

Decree confirmed.