

## APPELLATE CIVIL.

Before Mr. Justice Melvill and Mr. Justice Pinhey.

1882  
August 22.

LOTLIKAR (ORIGINAL PLAINTIFF), APPELLANT, v. WAGLE (ORIGINAL DEFENDANT), RESPONDENT.\*

*Temple property—Guravki—Sale of right, title and interest of holder—Service land.*

The property of a temple cannot be sold away from the temple; but there is no objection to the sale of the right, title and interest of a servant of the temple in the land belonging to the temple which he holds as remuneration for his service; the interest sold being subject in the hands of the alienee to determination by the death of the original holder, or by his removal from his office on account of his failure to perform the service.

THIS was a second appeal from the decision of J. L. Johnston, Acting Assistant Judge of the District of Ratnágiri, confirming the decree of the Subordinate Judge of Ratnágiri.

The plaintiff sued the defendant to recover rent for three years of a piece of land. The piece formed part of the land belonging to a Hindu temple which several Guravs held as remuneration for their service, and which, for the sake of convenience, they divided amongst themselves. One Báchá bin Bábling was one of such Guravs, and he held the land in dispute as his share of remuneration. In execution of a decree against him it was sold by the Civil Court, and purchased by one Sáheb Khán, who sold it to the plaintiff on the 17th of March, 1874, and put him in possession. The defendant lived on the land as the tenant of Báchá, and refused to acknowledge the plaintiff's title or pay him any rent, alleging that the land belonged to the temple, and could not be sold by Báchá, who was a mere trustee. The plaintiff brought this suit.

The Subordinate Judge as well as the Assistant Judge allowed the defendant's contention, and rejected the plaintiff's claim. They held that the sale by Báchá to Sáheb Khán was a sale of land held on behalf of a charitable or religious institution within the meaning of Bombay Act II of 1863, sec. 8, cl. 3, and, therefore, illegal and of no effect.

The plaintiff appealed to the High Court.

\* Second Appeal, No. 629 of 1881.

*Yashvant V. Athlye* for the appellant.—The Courts below have mistaken the question for decision. A religious office may be unsaleable, but the land attached to an office or a religious institution may be sold.

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*S. S. Wagle* for the respondent.—The land admittedly belongs to the office of “Gurav”, and goes with it. The office is not divisible or alienable; nor is the land belonging to it: *Mancharam v. Franshankar* (1). [MELVILL, J.—This case and the cases cited in it refer to the sale of an office, and have no application to the sale in the case, which is a sale of service land.]

MELVILL, J.—The Assistant Judge was, no doubt, right in holding that land, which is the property of a temple, cannot be sold away from the temple. But what was sold in this case was the right, title, and interest of one Bacha, a servant of the temple, who held the land in dispute as remuneration for his service. I think that, in the absence of any statute to the contrary, such interest as a holder of service land has in the land may be alienated; subject, of course, in the hands of the alienee, to the determination of such interest by the death of the original holder, or by his removal from his office on account of his failure to perform the service for which the land was held. In the present case there appears to be no objection on the part of the temple authorities to the sale of Bacha’s interest, and we are informed that Bacha still continues to perform the service of the temple. Under these circumstances I do not think that it is open to the defendant, who is a mere tenant of Bacha, to refuse payment of rent to the purchaser of Bacha’s interest.

The decree of the Assistant Judge, which proceeds wholly on the ground that the sale to the plaintiff was illegal, is reversed, and the case remanded for a decree to be passed on the merits. Costs to follow final decision.

PINNEY, J.—Plaintiff purchased the right, title and interest of Bacha, who holds the land in suit as remuneration for his services as Gurav of the temple of Shri Vishweshwar. Bacha still lives, and still performs service for the temple. The assignment of the land to Bacha has never been terminated. Therefore, during

(1) Printed Judgments for 1832, page 120.

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the three years named in the plaint, the plaintiff is entitled to recover the rent which Bacha would have recovered from the defendant, Bacha's tenant, if Bacha's rights had not been sold. Plaintiff's rights over the land were Bacha's, and will last as long as Bacha continues assignee of the land from the temple authorities,—that is, possibly as long as Bacha lives, if Bacha continues to render efficient service to the temple—possibly only until the trustees of the temple consider it right or advisable to eject Bacha.

I agree that the decree of the lower Courts must be reversed, and the suit remanded for trial on its merits.

*Decree reversed.*

## APPELLATE CIVIL.

*Before Mr. Justice Melvill and Mr. Justice Kcmball.*

June 12.

RAMCHANDRA MANTRI (ORIGINAL DEFENDANT), APPELLANT, v.

VENKATRAO AND B. MANTRI (ORIGINAL PLAINTIFFS), RESPONDENTS.\*

*Saranjam—Jaghir—Grant of revenue—Grant of soil—Pensions' Act XXIII of 1871—Evidence—Burden of proof—Impartibility—Primogeniture.*

The grant in *jaghir* or *saranjam* is very rarely a grant of the soil, and the burden of proving that it is in any particular case a grant of the soil lies very heavily upon the party alleging it.

It is for the Government to determine how *saranjams* are to be held and inherited, and in cases where the Civil Courts have jurisdiction over claims relating to *saranjams* in consequence of the non-applicability of the Pensions' Act XXIII of 1871 or otherwise, they would be bound to determine such claims according to the rules, general or special, laid down by the British Government. In the absence of such rules the Courts would be guided by the law applicable to impartible property.

*Semble*, that a *saranjam* is impartible, and on the death of the eldest son descends to his son, in preference to his surviving brother.

THIS was an appeal from the decision of Rao Bahadur P. S. Binivale, Subordinate Judge (First Class) of Satara.

The material facts of the case are as follows:—

The plaintiffs and the defendant are members of the Mantri family, the last head of which was one Vyankatrao, who died on the 19th of August, 1863. He left three sons, Narayanrao, Madhavrao and Bhaskarrao. The first of these was the eldest,

\*Regular Appeal, No. 21 of 1880.