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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 Kemball.

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 *jaghīr* 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.

and was the father of the defendant, Ramchandrarav; the second was the father of the plaintiff Venkatrao; and the third is the plaintiff No. 2. The propositus owned considerable property, moveable and immoveable, amongst which were the villages of Bagni and Kameri in the Satara District, Kochre in the Ratnagiri District, and Pandharpur in the Sholapur District. The plaintiffs alleged that they and the defendant were undivided, and sued for division in the Court of the First Class Subordinate Judge of Satara, who was empowered by the High Court to try the suit. The defendant contended, among other things, that he was a sardar exempt from the jurisdiction of the ordinary Civil Courts by Regulation XXIX of 1827; that the village of Bagni was impartible and descendable to the eldest son only as being a grant in *saranjam*. He also contended that the grant was a grant of the revenue, and not of the soil, and that without a certificate from the Collector of Satara the Civil Court had under the Pensions' Act XXIII of 1861 no jurisdiction to try the suit. The Subordinate Judge, holding that a *saranjam* was necessarily a grant of the soil, awarded the bulk of the plaintiff's claim. The defendant appealed to the High Court.

Jardine and Hon. *V. N. Mandlik* for the appellant.—Our contention is that the grant of Bagni in *saranjam* was an alienation of the land revenue and not of the soil of the village, and that a *saranjam* was impartible. The evidence adduced shows that *saranjams* are grants of revenue. The *onus* was on the plaintiffs to show that such is not the case; and they have not discharged their *onus*. The leading case in support of our proposition is *Krishnarav Ganesh* v. *Rangrav*(1)and is followed in *Vaman Janardan Joshi* v. *The Collector of Thana* (2)and *Ramchandra Sakharam Vagh* v. *Sakharam Gopal Vagh* (3)and other cases. *Saranjams* are of three classes, but as to impartibility there is no distinction between them. They are all impartible, and descend to the eldest son and senior representative of the family.

Inverarity and *Shantaram Narayan* for the respondents, the original plaintiffs.—We submit that the evidence shows that the soil, and not merely the revenue of the village of Bagni, was alien-

(1) 4 Bom. H. C. Rep. 1. A. C. J. (2) 6 Bom. H. C. Rep. 191, A. C. J.
(3) I. L. R. 2 Bom. 346.

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ated; that the defendant was a sardar for rank and precedence only, his name being included in the red portion of the Saranjam List, and that the rulings cited as to the nature of a *saranjam* were considerably modified by the ruling in *Ravji Narayan Mandlik* v. *Dadaji Bapuji Desai* (1). It is not invariably the case that a grant in *saranjam* is an alienation of the revenue merely. The Pensions' Act is, therefore, not applicable to this matter, and no certificate of the Collector is required.

MELVILL, J.—This is an appeal from the decision of the First Class Subordinate Judge of Satara, who has allowed the claim of the plaintiff to a partition of certain ancestral immoveable property.

The suit was for a division of lands, situated in the villages of Bagni in the Satara District, Kameri in the same district, Kochre in the Ratnagiri District, and Pandharpur in the Sholapur District. The plaintiffs also demanded a share in certain moveable property alleged to be in the defendant's possession.

The defendant claimed exemption from the jurisdiction of the Civil Courts, on the ground that he is a privileged sardar. He objected to a partition of the Bagni village, on the ground that it is a grant in *saranjam*, and, as such, impartible; and he further contended that the claim thereto is barred by the provisions of the Pensions' Act of 1871. He alleged that, as regards the villages of Kochre and Pandharpur, the suit is defective for want of parties. He claimed to be entitled himself to a share of certain property, moveable and immoveable, in the possession of the plaintiffs. Finally he took a general objection to the whole claim as being barred by limitation: but this objection was not seriously pressed, and has clearly nothing to support it: for Venkatrav, the ancestor of the parties, and the last holder of the estate, died in 1863, and the suit was brought in 1872. It is, moreover, admitted that there has never been any partition between the parties, and that each is in enjoyment of some portion of the family property.

The objection to the jurisdiction is equally untenable. The defendant has put in the *Bombay Government Gazette* of the 18th

(1) I. L. R. 1. Bom. 523.

July, 1872, which contains a "List of the Three Classes of Sardars", to which is appended a note that "the names in red ink are those of the Sardars for Rank and Precedence only." The defendant's name is one of those entered in red ink. It is clear, therefore, that the Government did not intend to grant to the defendant the privileges which belong to certain sardars under Regulation XXIX of 1827: and, although it was contended that the Government could not deprive a sardar of those privileges, when his name has once been entered in the list prepared under the Regulation yet the answer to this is that there is no evidence that the defendant's name was ever entered in the list prepared and furnished to the Judge under section iii, clause 2, of the Regulation. It was held in *Maharajgir* v. *Anandrav and another* (1) that a sardar, whose name is entered in red ink, is not thereby exempted from the jurisdiction of the ordinary Civil Courts; and we see no reason to dissent from that decision.

The principal contention in the case is in regard to the village of Bagni; and, as respects this village, two questions arise, namely, first, whether the claim is barred by the provisions of the Pensions' Act, No. XXIII of 1871; and, secondly, if it be not so barred, whether the village, being admittedly a grant in *saranjam*, is impartible.

The Subordinate Judge, before whom the case first came, decided that the claim to Bagni, (and indeed the whole claim, though it is not clear how the same reason could apply to the whole claim), was taken out of the cognizance of the Civil Courts by the Pensions' Act, inasmuch as he held that the grant of Bagni was a grant, not of the soil, but of the land revenue only, and the plaintiffs had not produced the certificate of the Collector, which is necessary to enable the Civil Court to deal with a claim relating to a grant of land revenue.

The case came before the High Court in appeal, and on the 15th January, 1879, it was remanded to the Subordinate Judge, in order that the parties might have an opportunity of giving evidence as to the real nature of the grant, and of showing whether it was a grant of the soil, or only of the revenue; it appear-

(1) 8 Bom. H. C. Rep. 25, A. C. J.

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ing to the High Court that the grant, or continuance, of a village in *saranjam* does not necessarily, and in terms, import either the one estate or the other.

The present Subordinate Judge has now taken the evidence offered by the parties: but it does not appear to have influenced his decision. He has disposed of the question before him in the same summary way as his predecessor; and has come to an opposite conclusion on equally insufficient grounds. The former Subordinate Judge held that a grant in *saranjam* is necessarily a grant of land revenue, and nothing more: his successor seems to hold that it is necessarily a grant of the soil. We cannot, without some qualification, support either conclusion: but, we think, that the former comes nearer to the truth than the latter.

In *Krishnarav Ganesh* v. *Rangrav* (1) Westropp, C. J., said: "Sanadi grants in inam, saranjam, jagir, wazifa, wakf, devasthan, and sevasthan, are, generally speaking, more properly described as alienations of the royal share in the produce of land, *i.e.*, of land revenue, than grants of land, although in popular parlance, and in this judgment, occasionally so-called." This observation has frequently been quoted with approval, and the principle involved in it was the foundation of the decision in *Vaman Janardhan Joshi* v. *The Collector of Thana* (2), which has been followed in many subsequent decisions. In *Rowji Narayan* v. *Dadaji Bapuji* (3)Westropp, C.J., repeated his former observation as being undoubtedly true, though he qualified it by adding that "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 may 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." He then added:" 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),

(1) 4 Bom. H. C. Rep. 1 A. C. J. (2) 6 Bom. H. C. Rep. 191 A. C. J.
(3) I. L. R. 1 Bom 523.

the mines, and the hidden treasures therein." Consequently, in that particular case the Chief Justice refused to hold the Pensions' Act applicable; remarking that "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." But the principle that grants in *inam* are ordinarily to be regarded as grants of land revenue, and nothing more, is in no way weakened by the decision in that case

If this principle be true as regards grants in *inam* generally it appears to us to be specially applicable to grants in *jaghir* or *saranjam*.

Of these two terms Colonel Etheridge says in the Preface to the List of Saranjams, published by him as the same stood on the 1st August, 1874, "Under the Mahomedan dynasty such holdings were known as *jaghir*, under the Mahratta rule as *saranjam*. If any original distinctive feature marked the tenure of *jaghir* and *saranjam*, it ceased to exist during the Mahratta Empire: for, at the period of the introduction of the British Government, there was no practical difference between a *jaghirdar* and a *saranjamdar*, either in the Deccan or Southern Mahratta Country. The terms *jaghir* and *saranjam* are convertible terms in these districts. The latter is now almost universally adopted. These holdings, being of a political character, were not transferable, nor necessarily hereditary, but, as a rule, were held at the pleasure of the Sovereign. On succession a nazrana was levied. When of a personal nature, they were termed *Zat Saranjam*, when for the maintenance of troops *Fouj Saranjam*."

Colonel Etheridge's observation that *jaghirs* were not necessarily hereditary, hardly conveys a correct idea of the fact. I would have been more correct if he had said that *jaghirs* were not necessarily grants for life only, but might occasionally be hereditary. This is how the fact is stated by the Judicial Committee in *Gulabdas Jajgivandas* v. *The Collector of Surat*(1), where their Lordships say that a *jaghir* must be taken, *prima facie*, to

(1) I. L. R. 3 Bom. 186.

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be an estate only for life, although it may possibly be granted in such terms as to make it hereditary. Similarly, in the Fifth Report from the Select Committee on Indian Affairs (page 86) it was said: "With regard to the *jaghirs* granted by Mahomedans either as marks of favour, or as rewards for public service, they generally, if not always, reverted to the State on the decease of the grantee, unless continued to his heir under a new *sanad;* for the alienation in perpetuity of the rights of Government in the soil was inconsistent with the established policy of the Mahomedans, from which they deviated only in the case of endowments to the religious establishments and offices of public duty, and in some rare instances of grants to holy men and celebrated scholars."

The circumstance that grants of this kind were ordinarily of so temporary a nature, raises a presumption, even stronger than that which exists in regard to *inams* generally, that the grants were ordinarily grants of the land revenue, and not of the soil. And the best authorities on the subject agree in so defining the nature of *jaghirs* and *saranjams*. Colonel Etheridge, in the preface to which we have already referred, says: "It was the practice under former Governments, both Mahomedan and Mahratta, to maintain a species of feudal aristocracy for State purposes by temporary assignments of revenue, either for the support of troops for personal service, the maintenance of official dignity, or other specific reason. Holders of such grants were entrusted at the same time with the powers requisite to enable them to collect and appropriate the revenue, and to administer the general government of the tract of land which produced it. Under the Mahomedan dynasty such holdings were known as *jaghir;* under the Mahratta rule as *saranjam.*" Professor Wilson in his Glossary defines *saranjams* as "temporary assignments of revenue from villages or lands for the support of troops, or for personal service, usually for the life of the grantee; also grants made to persons appointed to civil offices of the State to enable them to maintain their dignity. They were neither transferable, nor hereditary, and were held at the pleasure of the Sovereign." The term *jaghir* he defines as "a tenure common under the

Mahomedan Government, in which the public revenues of a given tract of land were made over to a servant of the State, together with the powers requisite to enable him to collect and appropriate such revenue, and administer the general government of the district." Mr. Steele (Hindu Castes, page 207) says: "Grants by the Native Government in jaghir were either Fouj Saranjam, subject to the performance of military service, or Jat Saranjam, personal jaghir. The subject of these grants were the whole or particular portions of the revenues of villages belonging to the Sarkar * * * * *. Usually the grants depended on the pleasure of the Sovereign, and the fidelity of the grantee * * * * * * *. They were not, in general, hereditary; sanads seldom exist; on the first grant it was usual to give the grantee a *khat* or order addressed to the Government officers of the district." Mr. Neil Baillie, in his Essay on the Land Tax of India, says (page xliv) "the jaghir is, properly speaking, an order upon the *khiraj* of particular lands, which are said to be granted by way of jaghirs. Two examples of it are given in the Appendix; and the terms in which they are expressed are worthy of attention. In both a sum of money, so many *lakhs* of *dams* is said to be bestowed out of a particular pergunneh, the officers and inhabitants of which are directed to account for their just rents and dues of the Divani (that is of the Civil Government), to the agent of the jaghirdar, up to the sum specified, from which they are forbidden to withhold or deduct a single *dam*." He then goes on to say: Though the jaghir was, in form, an order for the payment of the *khiraj*, there is no doubt that the jaghirdar was treated, in some respects, as the zamindar, or holder of the land. Thus No. IV of the Appendix is a perwanneh, addressed to the agent of a jaghirdar, in which he is required to do justice to a complainant; and though the purpose of the jaghir was to make a provision, by an order on the revenue, yet this was said to be by way of jaghir, as if some holding or taking of the land itself was necessary to give due effect to this object. The jaghir is thus sometimes treated as an estate in land, not only in the Regulations of the Indian Government, but also in the decisions of the Courts of Justice, and in this sense it is considered to be

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essentially, an estate for life. There is reason, however, to think this view of the jaghir to be erroneous. As an order for payment of the *khiraj* to a particular person, it necessarily fell to the ground on his death, unless some other persons, by name or description, were included in the grant. Such other persons might be his children: and if a jaghir were granted to a man and his children, there seems to be no just reason why it should not pass to them at his death; much less is there any just cause for suspecting the genuineness of a document constituting a *jaghir*, because it contains such words, as seems to have been done in the case above alluded to." We understand Mr. Neil Baillie as expressing in this passage a clear opinion that, although the etymology of the word *jaghir* has sometimes given rise to the idea that the term involves a taking of land, or an estate in land, and although a *jaghirdar* has been treated as having some of the powers of a land-holder, yet, in fact, the grant is nothing more than an assignment of land revenue. And the case of *The East India Company* v. *Syed Ali*(1) shows that it was upon this ground that the Madras Government justified the resumption of jaghirs, when it assumed the Government of the Carnatic in 1801. At page 575 of the Report of the plea of the East India Company, that "even when the language of the grants might seem to convey a proprietary interest in the soil, the grantees confessedly possessed no such interest, the subject-matter of the grant being a mere jaghir, or portion of public land revenue, together with the Government powers of collecting the same."

The authorities which we have quoted, (and none have been shown to us which support a different conclusion), may, we think, be taken as at least establishing that a grant in *jaghir* or *saranjam* is very rarely a grant of the soil, and that the burden of proving that it is in any particular case a grant of the soil lies very heavily upon the party alleging it. If it had not been that in the present case, in which there is no *sanad*, a Division Bench remanded the case for the taking of evidence, we should have been disposed to say that such a contention could not be made out by any evidence except such a *sanad* as was produced

(1) 7 Moore I. Apps, 555.

in *Ravji Narayen v. Dadaji Bapuji* already referred to. As, however, other evidence has, by the direction of this Court, been taken, we feel bound to consider it: but we have no difficulty in coming to the conclusion that it not only fails to discharge the plaintiffs from the burden which lies upon them, but that it supports the defendant's contention that the grant of the village of Bagni was nothing more than the grant of the land revenue. The evidence on the point is meagre, as was to be expected: but it shows that the *jamabandi* of the village is made by the Collector, and that the village officers are appointed and paid by the Government. It shows (exhibit 313) that, if dry-crop land was converted into garden land, and so became liable to a higher rate of assessment, the *saranjamdar* had to obtain the permission of the Mamlatdar to levy the increased assessment. There is nothing to show how the village was entered in the Government accounts previously to the year 1863-64, but the *tharavbund* for that year (exhibit No. 62) shows the village to be described as "*Khalsa Ryatava* land," *i.e.*, land cultivated by Government tenants, and it is stated that out of the assessment Rs. 6,847-9-0 is to be continued to the Inamdar. Further on, the amount (which is liable to deductions for certain payments) is stated as Rs. 7,902-9-0, "Purbhara Juma Khurch," *i.e.*, to be levied by the Inamdar without reference to Government. The *tharavbund* for 1872-73 (exhibit No. 336) shows that the village was ordered to be entered under the heading "Political", and the dumaldar's (or *saranjamdar's*) interest in it is stated as Rs. 6,610-9-0, payable in cash. Some stress was laid by the plaintiffs' counsel on the circumstance that in Colonel Etheridge's List of Saranjams "the entire village of Bagni" is entered under the heading "Description of Saranjam," while in many other cases the entries show merely a grant of the whole or part of certain '*Amals*', or items of revenue. We do not, however, think that this difference in the mode of description indicates an intention on the part of Colonel Etheridge to draw a distinction between the grant of the soil in one case and the grant of the revenue in another. Having regard to the general description of *saranjams*, which we have quoted from his Preface, it is very unlikely that he should, without any explanation, declare that in certain

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cases there had been an exceptional grant of the soil of a village. If he did intend to make such a declaration in the case of Bagni, we can only say that he appears to us to have had no sufficient grounds for so doing. It is not suggested that he had any materials in 1874 which are not before us now: and we are quite unable, on the evidence before us, to come to any other conclusion than that the plaintiffs have wholly failed to prove that the grant of the village of Bagni was anything more than a grant of the land revenue.

It follows that, in our opinion, the Pensions' Act is applicable; and as the plaintiffs have failed to produce a certificate from the Collector, their claim, so far as it relates to the village of Bagni, must be rejected.

Some argument has, indeed, been addressed to us, founded on the circumstance that certain lands in Bagni are described in the pleadings as "*sheri*" lands, which are explained to be lands which were unoccupied at the time of the grant, or in which tenant-rights have since lapsed. It was contended that the *saranjamdar* might deal with these lands as he pleased, and that, therefore, he is, as regards them, something more than an alienee of the land revenue. But we are unable to appreciate this argument. The *saranjamdar* may, of course, deal with all unoccupied lands as may be best for the purposes of revenue, and may either cultivate them himself or through tenants; but this is because he is entitled to realise as much revenue as he can, and as best he can, and not because he has a grant of the soil of unoccupied lands.

Our decision upon this preliminary point of the application of the Pensions' Act puts it out of our power to give any decision on the second question which we have mentioned as arising in regard to the village of Bagni, namely, whether, the grant being one in *saranjam*, the plaintiffs would be entitled to claim a partition of the village. As, however, the case may go before a higher tribunal, it may not be out of place to offer a few remarks upon this question.

The history of the manner in which Deccan *saranjams* were dealt with by the Government of India and the East India Com-

pany, when it succeeded to the Government of the Peishwa, is succinctly stated in Colonel Etheridge's Preface. The correspondence cited by him shows clearly enough that, when on the advice of Mr. Mountstuart Elphinstone, then Commissioner at Poona, it was determined that all *saranjams* granted prior to A.D. 1751 should be considered hereditary, this concession was made, not as of right, but as an act of grace and State policy, and the Government reserved to itself the power of determining, whenever occasions might arise, the nature and extent of its own bounty. This reservation of the power of Government has been recognised in all the legislation on the subject since Mr. Mountstuart Elphinstone, as Governor of Bombay, framed his Code of Regulations. Section 38 of Regulation XVII of 1827 provides that "land held exempt as *jaghir* shall be liable to resumption and assessment under the general rules at the pleasure of Government." This is explained in clause 3, section I, Regulation VI of 1833, which says: "*Jaghir* or other lands held on service tenure are declared to be resumable at the pleasure of Government, under the forms laid down in Clause First, Section 38, Regulation XVII, A.D. 1827", it being understood that the expression used in the said clause, viz., "under the general rules", meant "such rules as Government may think proper to issue from time to time." Act XI of 1852, after providing for rules for adjudicating upon titles to exemption from payment of land revenue, says (Section 10): "These rules shall not be necessarily applicable to jaghirs, *saranjams* or other tenures for service to Government, or tenures of a political nature, the title and continuance of which shall be determined, as heretofore, under such rules as Government may find it necessary to issue from time to time." So, in Bombay Act II of 1863, which was an Act to facilitate the adjustment of unsettled claims to exemption from the payment of Government land revenue in those parts of the Bombay Presidency which are subject to the operation of Act XI of 1852, section 1, clause 2, says: "The excepted cases, to which the authority of adjustment and guarantee vested in the Governor-in-Council by this provision shall not extend, are the cases of lands held as follows:—

1st. * * * * * *

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2nd. Lands granted or held as jaghirs, or saranjams, or on similar political tenure."

And then, lest any question should be raised, (as was attempted to be raised in the argument in this case), whether the mere order of Government that land should be entered in the accounts under the heading "Political" is conclusive as to the political character of the grant, section 16 of the Act goes on to say: "Political tenure" is defined to be tenure created from, or dependent upon, political considerations, the existence of which shall be determined by the Government." So, in Bombay Act VII of 1863, which is a similar Act relating to districts not subject to the operation of Act XI of 1852, section 2, clause 2 provides that "lands granted or held as saranjam, or on similar political tenure, shall be resumable or continuable in such manner, and on such terms as Government, on political considerations, may from time to time see fit to determine;" and section 32 contains a definition of the term "political tenure," similar to that which we have quoted from Bombay Act II of 1863. The Regulations and Acts which we have cited show beyond all question that it is for the Government to determine how *saranjams* are to be held and inherited, and that, if the Civil Courts had jurisdiction over claims relating to *saranjams*, they would be bound to determine such claims according to the rules laid down by the Government. It would, therefore, be useless to refer, as in this case we have been referred, to evidence tending to show, that, under the Native Government, the ancestors of the parties dealt with their *saranjam* villages as if they were proprietors of the soil, and partitioned the villages among their families. The questions which the Courts would have to consider would simply be, what are the terms of the grant by which the British Government continued the *saranjam*? and what is the rule of succession laid down by the British Government for *saranjams* in general, or for this *saranjam* in particular?

In the case before us the *saranjam* was continued in the family of Venkatrav Bhaskar, the father and grandfather of the parties, by a Resolution of Government in the Political Department, No. 1819, dated 17th June, 1864; that Resolution is as follows:—

"The Honourable the Governor-in-Council is of opinion that it has been satisfactorily shown that the village of Bagni was held as a personal saranjam by the family of Venkatrav Bhaskar for a century before the introduction of British rule. It should now be pronounced a saranjam of the first class, and be continued hereditarily to the representative of the first British grantee, Venkatrav Bhaskar."

Unless it were an accident, (and in so important a document this is unlikely), that the singular word "representative", and not the plural, was used, the Resolution indicates that it was the intention of Government that the saranjam should descend always to the eldest member of the family for the time being, and should not be divided amongst all the representatives of the last incumbent. That this was the view taken by the Revenue authorities in 1865 may be gathered from an order of the Revenue Commissioner, dated 13th September, 1865, of which we have allowed a certified copy to be put in in appeal. It appears to be an answer to a petition from Madhavrav, the second son of Venkatrav, and father of the present minor plaintiff Venkatrav. Venkatrav's eldest son, Narayanrav, had died during his father's life-time, and thereupon the *saranjam* had been continued to Narayanrav's son, the present defendant Ramchandrarav, and not to Venkatrav's eldest surviving son, Madhavrav. Madhavrav, having obtained a certificate of heirship or administration to Venkatrav, (and no doubt he was properly recognized as having the best right to administer such portion of Venkatrav's estate as was governed by the ordinary rules of inheritance or survivorship), seems to have applied to have the *saranjam* continued to him as the senior representative. The reply of the Revenue Commissioner was as follows:—

"Madhavrav Venkatesh Muntri is informed, in reply to his petitions of the dates marginally noted, that the Alienation Settlement Officer, S. D., has reported that the village of Bagni was decided to be continuable, as a first class personal saranjam hereditarily, to the representative of the first British grantee Venkatrav; that on Venkatrav's death it was restored, in accordance with the saranjam rules, to Ramchandrarav, the eldest

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surviving son of Venkatrav's eldest son; and that the certificate of heirship granted to the petitioner by the Judge of Poona cannot divert the succession of the holding, which is a political one, from the representative line. Under these circumstances, the Acting Revenue Commissioner, S. D., sees no reason to interfere with the order of the Collector of Satara, against which the petitioner complains."

From this document it would appear that, under "the Saranjam rules" an hereditary *saranjam* is considered by the Revenue authorities to descend entire to the eldest representative of the last holder, and that, if the eldest son pre-deceases his father, his son takes precedence of the next surviving son of the last holder. If this be the rule, the defendant's title in the present case is established. During the hearing of this appeal we caused a letter to be written to the Government, asking that we might be favored with a copy of the Saranjam Rules; and, in reply, we have been informed that the only rules are those contained in the Preface to Colonel Etheridge's List of Saranjams, to which we have so repeatedly referred. As the Regulations and Acts which we have quoted contemplate that *jaghirs* and *saranajms* should be continuable under general rules to be issued from time to time by Government, it seems strange that no rules should be forthcoming, bearing the authorization of the signature of a Secretary to Government. We must, however, take it that Colonel Etheridge speaks under the authority of Government when he says, in the Preface to which we have been referred, that succession to *saranjam* is restricted to lineal male heirs in the order of primogeniture; and that the eldest son is the heir in the first instance. Colonel Etheridge says that in *saranjams* of the second class, if the eldest son of the first British grantee die before his father, but leave a son, that son, on his grandfather's death, is to be considered the second generation, and the whole *saranjam* will be continued to him. But, curiously enough, Colonel Etheridge does not say whether the same rule of succession would be applicable to hereditary *saranjams*; and on this point, therefore, we are left without any distinct rule. The rule to which the Revenue Commissioner referred in 1865, as giving to the son of a pre-deceased eldest son a preference

over his uncle, is not forthcoming in the Secretariat; nor does Mr. Nairne in his Handbook mention any such rule, except that which have already quoted from Colonel Etheridge's Preface, as applicable to *saranjams* of the second class. In the absence of a rule made by Government, the Courts would, if they had jurisdiction in the matter, be obliged to decide according to the ordinary rule of Hindu law applicable to impartible property; and although, as stated by Mr. Mayne in his work on Hindu Law (section 461), there is rather a want of authority as to the rule to be adopted where an eldest son, who has never taken the estate, has died, leaving younger brothers, and also a son, yet the Courts would probably hold that the grandson took in preference to his deceased father's eldest surviving brother. In the present suit it is to be observed that the second plaintiff, Bhaskarrav, who is Venkatrav's only surviving son, does not claim the *saranjam*, to the exclusive of his nephews, as being himself the eldest representative, but joins with one nephew in claiming a partition from the other. It would, therefore, be a sufficient answer to the present suit for partition, if the Court were merely to say that a *saranjam* is impartible, and it would not be absolutely necessary to determine whether the defendant, Ramchandrarav, as the son of Venkatrav's eldest son, or the plaintiff Bhaskarrav, as Venkatrav's only surviving son, is entitled to be regarded as Venkatrav's representative.

As regards the question of the impartibility of a *saranjam*, the rule stated by Colonel Etheridge is in accordance with the orders conveyed in a despatch from the Court of Directors, No. 27, dated 12th December, 1855. In para. 20 of that despatch they say: "We agree with you that saranjams should not be sub-divided, but that the holders should be required to make a suitable provision for their younger brothers." A *jaghir*, to which service is attached, is certainly not divisible, but descends to the eldest son: *Hurlall Singh* v. *Jorasun Singh*(1), cited with approbation by Lord Kingsdown in 6 Moore's Indian Appeals, 125, and *Rajah Nilmoney Singh* v. *Bakranath Singh* decided by the Privy Council, 10th March, 1882. There is some evidence in the present case that the *saranjam* was originally given for the maintenance of a body

(1) 6 Calc. S. D. 169, 204.

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of horse, and was, therefore, in its inception a *jaghir* held for service. But independently of this, and of any Government rule, the same principle would probably be applied to all *saranjams* on the ground stated by Mr. Mayne (Hindu Law, Section 393), that an estate, which has been allotted by Government to a man of rank for the maintenance of his rank, is indivisible, as otherwise the purpose of the grant would be frustrated.

The claim of the plaintiffs, so far as it relates to the village of Bagni, being rejected, the remaining questions at issue between the parties are not of an important character.

The plaintiffs' right to a share in the lands mentioned in the plaint as situated in the village of Kameri in the Valva Taluka of the Satara District, does not appear to have been disputed, and the Subordinate Judge's award of this share must be confirmed.

As regards the lands in Pandharpur and Kochre, it is in evidence that these lands have never been divided, but that they are held jointly by the parties to the suit and other co-parceners. The income derived from Pandharpur is said to be devoted to religious purposes, while the rents and profits of the lands in Kochre are divided among the co-parceners. If the plaintiffs desire that these lands should be divided by metes and bounds, they must make all the co-parceners parties to their suit; but they are not entitled to a decree for partition in a suit so defectively constituted as the present. Nor can they recover anything from the defendant as mesne profits of the village of Kochre. It is not proved that the defendant has received any profits from that village, which should have been paid to the plaintiffs. On the contrary, as the Subordinate Judge observes, the evidence of witness No. 91, who was called for the plaintiffs, shows that the plaintiff Bhaskarrav and his deceased brother Madhavrav have received their share of the proceeds, though the accounts have not been made up for two or three years.

It is admitted that the house and other property at Poona, which is mentioned in the plaint, is in the possession of the plaintiffs. The defendant is entitled to a share in this property.

We agree with the Subordinate Judge in holding that the plaintiffs have not proved that the defendant has any moveable property in which they are entitled to share. On the other hand, the defendant has endeavoured to show that there is a very large quantity of moveable property in the plaintiffs' possession, which ought to be brought into hotchpot. Although he raised an issue in regard to the existence of this property, the Subordinate Judge does not appear to have recorded any definite finding on the subject. The defendant relies chiefly upon a document, exhibit No. 232, which purports to be a testamentary disposition of his property made by Venkatrav shortly before his death. It enumerates all the estate belonging to Venkatrav, and distinguishes those portions of the moveable property which were at the time in the possession of Madhavrav, Bhaskarrav and Ramchandrarav, respectively. The defendant refers to this document as showing that, at the time of Venkatrav's death, Madhavrav and Bhaskarrav had a much larger share than he had of the family jewels and other valuables, and he argues that the plaintiffs are bound to account to him for his proper share of this property. We are not aware of any rule of evidence by virtue of which the statements contained in the document, exhibit No. 232, could, even if the document be genuine, be admitted as establishing the existence of property in the hands of the plaintiffs. But, in fact, the document was considered by the Subordinate Judge to be a forged document: and we see no sufficient reason for dissenting from his conclusion. The account given by the witnesses (Nos. 260, 262, 263, and 265) of the manner in which the document came into the hands of the defendant at a late period of the suit is very unsatisfactory; and, considering how much it was to the defendant's advantage that effect should be given to Venkatrav's will, it is almost incredible that for twelve years the witness No. 260, who was in the defendant's employ, should not even have informed his master of the existence of the will.

We have been referred to the evidence of a number of witnesses, (Nos. 178, 180, 183, 184, 187 to 192, and 194), as showing that the plaintiffs have, at some time or other, been in possession of valuable ornaments and other moveable property. We have

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carefully perused the depositions of these witnesses; but we find that they are of too vague a character to enable us to say with any certainty that the plaintiffs are, or have been, in possession of any particular articles which are liable to partition, or, if such articles exist, to determine their nature and value. It is clear that, until the present suit was brought, the defendant never thought of claiming a share in the moveable property in the hands of the plaintiffs; and it is not likely that he would have acquiesced, from Venkatrav's death in 1863 until this suit was brought in 1872, in such a very unequal apportionment of the family jewels, &c., as he now alleges to have been made. On the whole, therefore, we are of opinion that the Subordinate Judge properly declined to make a decree in regard to the moveable property in favour of either party.

We amend the decree of the Subordinate Judge, and direct that the defendant do deliver to the plaintiffs two-thirds of the property in the village of Kameri which is mentioned in the plaint, and that the plaintiffs do deliver to the defendant one-third of the house and other property at Poona mentioned in the plaint. The rest of the plaintiffs' claim is, for the reasons stated in this judgment, disallowed.

The plaintiffs must bear all costs throughout.

Decree varied.

APPELLATE CIVIL.

Before Mr. Justice Kemball and Mr. Justice Pinhey.

June 29.

BAPUJI LAKSHMAN (ORIGINAL PLAINTIFF), APPELLANT, *v.* PANDURANG AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

Hindu law—Inheritance—Divesting—Son of excluded person—Deaf and dumb from birth.

One Bapuji, a Hindu, died, leaving him surviving Lakshman, his undivided son, born deaf and dumb and the defendant, Pandurang, his (Bapuji's) brother's son. Lakshman being disqualified from inheriting, the defendant, Pandurang, at Bapuji's death succeeded to the entire family estate, and subsequently sold a part of it. Lakshman subsequently married and had a son, the plaintiff, who sued to recover his half share in a certain village.

* Second Appeal, No. 217 of 1881.