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RÁMCHANDRA NÁRÁYAN v. NÁRÁYAN MAHÁDEV.

WEST, J.:—When of two persons one is in enjoyment of property and the other has no enjoyment or possession, that is, *primâ facie*, an exclusion of the latter. There may be a contract or other jural relation between the parties which accounts for the sole possession, and makes it preserve, instead of destroying, the joint right, but of such a state of things positive evidence is always required, since otherwise possession continued even for centuries would afford no security to property. An enjoyment by agreement, even after partition, by one for several would, of course, satisfy the test, but then there must be evidence of the agreement to prevent the inference of exclusive possession. In the present case, there has been exclusive possession in fact since 1867 by Tilokchand and his son. They have had the mortgage deeds and have received the rents. Vishrám, who made the partition, must have known of this exclusion of him from this part of the once joint property, and, therefore, from the moment of separate sole enjoyment by Tilokchand, time must be computed for limitation. Hence the suit as one for a share in the mortgage rights over the property in question held by the defendants must fail, and not the less so because of a foolish or perverse admission of the widow Magnibái on which, seeing the whole case, it would be impossible to ground a decision in favour of the plaintiff. The plaintiff it appears has separately become a puisne mortgagee of the property in dispute. In that character he may redeem the prior mortgage; but his present suit, as one to obtain a share in the mortgage interest held by his cousins, is barred.

We, therefore, reverse the decrees of the Courts below, and reject the claim, with costs throughout on the plaintiff.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nánábhai Haridás.

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SHIVRA'M DINKAR GHA'RPURAY, (ORIGINAL PLAINTIFF), APPELLANT, *v.* THE SECRETARY OF STATE FOR INDIA, (ORIGINAL DEFENDANT), RESPONDENT.*

Jurisdiction—Suit against Government for inám lands and mokása amals—Regulation XXIX of 1827, *Sec.* 6—*Pensions Act* (*XXIII of* 1827), *Sec.* 4—*Bombay Revenue Jurisdiction Act* (*X of* 1876), *Sec.* 4—*Limitation—Attachment under Act XI of* 1852, *effect of—Adverse possession—Mokása amals, meaning of.*

In 1826, A. obtained a decree on a mortgage, awarding him possession and enjoyment of certain *inám* property, consisting of lands and of cash allowances annually paid from the Government treasury, called *mokása amals*. A. and his successors continued in possession down to 1852, when the *inám* was attached on behalf of Government pending an inquiry, under Bombay Act XI of 1852, into the title of the holders of the *inám*. The attachment remained in force till 1865,

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when Government finally decided that the *inám* property, with the exception of a certain portion, should be restored to those from whose possession it had been taken in 1852. Thereupon D., the successor in interest of A., applied to the Collector to be restored to possession. The Collector refused. D., therefore, sued him for arrears of the *mokása amals*, and obtained a decree in 1868. Thereafter D. did not receive any payment from the Government treasury.

In 1883, D. filed the present suit against Government to recover possession of the *inám* lands together with arrears of the *amals*.

Held, that the suit against Government was not cognizable by the Civil Courts both under the Pensions Act (XXIII of 1871), sec. 4, and under the Bombay Revenue Jurisdiction Act (X of 1876), sec. 4. Both these Acts, though not retrospective in their operation, still do not create rights to relief against the Government where none subsisted before. Accordingly, the suit, being barred under Bombay Regulation XXIX of 1827, was equally barred under the later Acts XXIII of 1871 and X of 1876 (*a*).

Held, also, that even if the suit were cognizable by the Civil Courts, it would be barred by limitation. The plaintiff's right to the periodical payments was barred by a total discontinuance of them for more than twelve years before the institution of the suit notwithstanding his decree for the *amals* in 1868, which might establish his right to them in that particular year.

Held, further, that the claim to the lands was also time-barred, the Collector's possession being that of an adverse holder since 1865, when the attachment was ordered to be withdrawn. The land could not properly be said to be in *custodia legis*, Government having taken possession of it in its own right, and not on behalf of any rival claimants thereto.

Ráo Karan Singh v. *Rájá Báker Ali Khán*(1), *Shidhojiráv* v. *Náikojiráv*(2), and *Tukárám* v. *Sujan Gir Guru*(3) referred to and distinguished.

(*a*) Regulation XXIX of 1827, sec. 6, provides *(inter alia)* that no suit shall be cognizable by the Civil Courts on the following subjects :—

1*stly*.—All claims against Government in respect of *ináms*.

2*ndly*.—All claims against Government on account of *jághirs*, *varshásans*, pensions, *nemnuks*, and other advantages not hereditary.

3*rdly*—All disputes regarding public rent or revenue payable to Government.

Act XXIII of 1871, sec. 4, provides that "no Civil Court shall entertain any suit relating to any pension or grant of money or land revenue conferred or made by the British or any former Government, whatever may have been the consideration for any such pension or grant, andw hatever may have been the nature of the payment, claim, or right for which such pension or grant may have been substituted."

Act X of 1876, sec. 4, provides *(inter alia)* that no Civil Court shall exercise jurisdiction with respect to—

(*a*) "Claims against Government relating to lands held under treaty, or to lands granted or held as *saranjám*, or on other political tenure, or to lands declared by Government or any officer duly authorised in that behalf to be held for service; or

(*b*) Claims against Government to receive payments charged on, or payable out of, the land revenue.

(1) L. R., 9 I. A., 99; S. C., I. L. R., 5 All., 1.

(2) 10 Bom. H. C. Rep., 228.

(3) I. L. R., 8 Bom., 285.

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THIS was an appeal from the decree of W. H. Crowe, Acting District Judge of Poona, in Suit No. 4 of 1883.

The facts of this case, so far as they are material for the purposes of this report, are as follows:—

The Kolis of the fort of Purandhar were, since the time of the Peshwás, in enjoyment of certain *inám* lands and of cash allowances paid from the Government treasury, called "*mokása amals*:"—(*a*)

In 1826 a decree was passed against the Kolis in the Principal Sadar Amin's Court at Poona, awarding possession and enjoyment of the *inám* lands and *mokása amals* to one Antáji Yeshwant Chápekar as mortgagee. Under this decree, Antáji enjoyed the lands and cash allowances from 1831 till his death in 1839. In that year, Antáji's adopted son and heir sold his interest in the lands and *amals* to Narhar Vináyek Ghárpuray. Narhar remained in possession and enjoyment till his death in 1843, when his brother Dinkarráo succeeded. His possession continued till 1852.

In 1852 an inquiry was instituted, under Act XI of 1852, into the Kolis' title to the *inám* lands and *mokása amals*; and as no *sanads* or other documents of title were produced by the holders before the Inám Commissioner, the Collector took possession of the lands as Government property, and stopped the payments from the Government treasury.

The attachment remained in force till 1865, when the final decision of Government was communicated to Dinkarráo in the following terms:—

"Dinkar Vináyek Ghárpuray is informed, with reference to his petition of the 30th December, 1863, that the Revenue Commissioner, Southern Division, has issued instructions to the Collector of Poona, to the following effect, in the matter of the holdings of the Kolis of Killeh Purandhar, to which his petition relates:—

"1. *Inám* not resumed by the Peshwa and now continuable to the Kolis as private property under the summary settlement.

(*a*) Wilson in his Glossary defines *mokása* as "a village or land assigned to an individual either rent-free or at a low quit-rent on condition of service;" and *amal* as "a share of revenue after expenses and extra charges are defrayed." The *mokása amals* were thus alienations of the revenues of a village in consideration of certain services rendered or to be rendered to the State.

"2. Holdings of Umáji Náik's widow, which may be continuable during her life only, free of service, and the lands at Bhewady and Nygáon continuable as private property under the summary settlement.

"3. Service lands and Gair Dakhla cooruns to be continued on a quarter of the revenue survey assessment and a nominal *nazrána* on succession, on condition of the holders conserving the Government timber growing in and around the Purandhar hill, and during their good conduct and the pleasure of Government.

"*If any of these holdings are still under attachment, they should be restored by the Collector to the persons in whose possession they were at the date of the attachment.* Arrears, if any are due, to be paid to the persons to whom the holding may be restored, after giving due notice to all parties concerned, in order that those who may consider themselves entitled to receive the whole or any portion of the amount may have the opportunity of applying for an order of attachment from the Civil Court. These being continuable only during the pleasure of Government and the good conduct of the holders, and on condition of their performing certain service, will be restored only to the Kolis, Rámoshis, &c., to whom Government have continued them as a matter of grace, whether or not they were in possession at the date of attachment, as they alone can fulfil the conditions on which the holdings are to be continued. Arrears due to be paid to the Kolis and Rámoshis, to whom these holdings are to be restored after a delay sufficient to enable their creditors (those in possession at the date of attachment receiving due notice) to apply for an order from the Civil Court for the payment of the same to them in liquidation of their claims should the Civil Court consider that they have any."

In accordance with this decision, Dinkarráo applied to the Collector to be restored to the possession of the lands and *amals*. The Collector refused. Thereupon Dinkarráo filed a suit against the Collector for arrears of the *amals*, and obtained a decree in 1868. After that date he received no payment from the Government treasury, and the lands formerly held by him were handed back to the Kolis.

In 1883, Dinkarráo filed the present suit against the Government to recover possession of the *inám lands* and *mokása amals*, which had been awarded to Antáji under the decree of 1826.

The lower Court dismissed the suit, on the grounds, first, that it was barred under the Pensions Act (XXIII of 1871), sec. 4, and the Bombay Revenue Jurisdiction Act (X of 1876), sec. 4; and, secondly, that it was also barred by limitation, the plaintiff not having received any profits arising from the lands or any cash allowances since 1865.

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Against this decision the plaintiff appealed to the High Court.

Branson (with him *V. K. Bhátavdekar*) for the appellant:—The suit is not governed by the Pensions Act XXIII of 1871. This Court has ruled in *Rávji Náráyan Mandlík* v. *Dádáji Bápuji Desai* (1) and *Gurushidgavda* v. *Rudragavdati* (2) that the Pensions Act should receive a strict construction. The Act does not apply to suits brought before it came into force. Here there was a previous suit, and in execution of the decree in that suit the plaintiff and his predecessors in title had been in possession. Therefore, his rights under the decree are not affected by the Act—*Jamnádás* v. *Lalitarám* (3). We are alienees not merely of the land revenue, but also of the soil itself. The Pensions Act (XXIII of 1871), therefore, does not apply: see *Bábáji Hari* v. *Rájárám Ballál* (4). The *sanads* in dispute do not fall within the class declared to be service lands. Therefore the Revenue Jurisdiction Act (X of 1876) does not apply.

As to the question of limitation, Government took the lands in 1852 to consider whether they should or should not be continued free from assessment. In 1861-62 a summary settlement was made with the Kolis. The order of 1865 does not say which are service lands. The possession of the Collector is not adverse to the mortgagee. Refers to *Shidhojiráv* v. *Náikojiráv* (5) and *Ráo Karan Singh* v. *Rájá Báker Ali Khán* (6) and *Tukárám* v. *Sujan Gir Guru* (7).

Hon. Ráv Sáheb *V. N. Mandlik*, Government Pleader, for the respondent:—The suit against Government is barred under Regulation XXIX of 1827, sec. 6, Act XI of 1852, and Act X of 1876. The attachment was made under Act XI of 1852, and the land was declared to be service land in 1865. Therefore the suit is barred under Act X of 1876. The claim to the *amals* is also barred under the Pensions Act.

The lands were attached by Government in its own right, and not on behalf of either the Kolis or the mortgagees. The Collector's possession was clearly adverse to the plaintiff, at the latest, since

(1) I. L. R., 1 Bom., 523.
(2) I. L. R., 1 Bom, 531.
(3) I. L. R., 2 Bom., 294.
(4) I. L. R., 1 Bom., 75.
(5) 10 Bom. H. C. Rep., 228
(6) L. R., 9 I. A., 99. S. C., I. L. R., 5 All., 1.
(7) I. L. R., 8 Bom., 585.

1865, when he refused to restore the lands to the plaintiff. In this respect this case differs from the cases cited by Mr. Branson. The adverse possession of the Collector for more than twelve years bars the suit, even assuming that it is cognizable by the Civil Courts. The claim to the *amals*, too, is time-barred, no payment having been made since 1868.

Branson in reply:—Regulation XXIX of 1827 is repealed by Act X of 1876. The present is not a suit on account of an *inám*. The Government constituted itself a trustee for the true owner by its order of 1865. Act XI of 1852 applies only to claims to hold lands free of assessment. To apply these Acts to this case would be a breach of the trust assumed by Government in attaching this property. Refers to *The East India Company* v. *Oditchurn Paul*(1).

WEST, J.:—The plaintiff in the present case sues as the representative or successor in interest of Antáji, who in 1826 obtained a decree on a mortgage against the defendants, called the Kolis of the Fort of Purandhar. The decree awarded to the mortgagee possession and enjoyment of certain *inám* lands and of payments from the Government treasury, called "*mokása amals*." The latter phrase would seem to properly imply benefits derived from the land revenue attended with a reciprocal obligation of service, whether the rendering of such service was a condition of the right to the benefit or not; but such service as might have been exacted from the Kolis, in return for their benefits either in land or periodical payments, had been allowed to fall into disuse. In 1864 the Acting Collector reported that the services were purely nominal (exhibit 13).

The possession of the decree-holder and his successors continued down to 1852 without any approach, apparently, to final satisfaction of the decree. In 1852 the "*inám*" was "attached" on behalf of the Government. This means that the Collector thenceforth levied the land tax, without abatement, from the occupants cultivating the lands, instead of accepting it from the mortgagee (representing the Koli *inámdárs*) with certain deductions or a total remission as to certain lands of the full assess-

(1) 5 Moore's Ind. Ap., 43.

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ment. It means also that the Collector ceased to pay from the Government treasury the "*mokása amals*" previously recognised, though perhaps only provisionally, as a property of the Kolis, and regularly paid to the decree-holders under the attachment in their favour.

The attachment on behalf of the Government was made, or, if not first made, was brought under the provisions of the Inám Act XI of 1852. Under Regulation XVII of 1827 the Collector's order as to the liability of land to the land tax in full or in part was, in the first instance, decisive, but a liberal provision was made for a suit against him in the ordinary Civil Courts at the instance of any land-holder who might feel himself aggrieved by the order. In extending the Regulations to the Deccan districts, Regulation XXIX of 1827 by section 6 cuts down the rights enjoyed by subjects against the administration by excluding from the cognizance of the Civil Courts "all disputes regarding public rent or revenue payable to Government," "all claims against Government on account of *iná*ms' and "on account of *jághírs, varshásans,* pensions, *nemnuks* and other advantages not hereditary." As the Civil Courts were also debarred from taking cognizance of "complaints of exaction by Mámlatdárs or district or village officers," it is plain that no rights, in the proper sense, were enforceable against the Government in its fiscal capacity as exacter and dispenser of the public revenue, especially that arising from the land. All was virtually left to the equity of the Executive.

The provisions made by Regulation XVII of 1827 for the investigation of claims to exemption from land tax were almost a dead letter in the hands of the Collectors. The Government thus, no doubt, sustained severe losses while a prescription of popular sentiment, if not of strict law, was daily growing up against its claims. Act XI of 1852 provided a special machinery and procedure for dealing with the so-called "alienations." Chapters IX and X of Regulation XVII of 1827 were repealed as to the Deccan, and entirely new rules were laid down by the Act. These apply only, in strictness, to "claims to exempt lands and interests therein" (section 4), and such a general word as "*Inám*"

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(=*beneficium*) occurring in some parts of the Act must be construed with reference to this limitation of its scope. The stoppage of a payment from the treasury was not within the wording or the purpose of the Act. A person aggrieved, or thinking himself aggrieved, by the withholding of his annuity had no legal remedy, unless indeed the stipend being claimed as hereditary might perhaps for that reason be thought cognizable by the Civil Court as saved from the disempowering clause of Regulation XXIX of 1827 already quoted. In practice, the "Inám Commission" was charged with the functions not only of investigating claims to withhold a part of the ordinary revenue from the Government, but also to payments by Government out of the revenue. The orders of the Inám Commissioner were subject to a reversal or variation by the Government (Act XI of 1852, section 5, Schedule A, Rule 2). It is not to be supposed that an unfair advantage as against the individual *inámdárs* was meant to be secured to the Executive Government, representing the general public interest, but all was brought under its control.

The mode of procedure prescribed by Act XI of 1852 in the case of exemptions from land revenue and pursued by analogy in the case of annuities drawn from the Government treasury was first a general invitation to the persons concerned to send in statements of their titles to the Commissioner. This failing, a personal notice was to be sent to the individual enjoyer of a charge or exemption to show and maintain his title (Schedule A, Rules 5, 6) This notice, if unattended to, was to be followed by one still more peremptory, and by an attachment or seizure of the particular benefit. The requisition of the Inám Commissioner was to be a "warrant to the Collector for the attachment of the land and for the collection of the rents accruing therefrom on account of Government during its attachment." At the close of the Inám Commissioner's inquiry he was to intimate to the Collector his decision in any case in which the attachment was to be removed. This implied that the title set up had been proved, but still the rents collected during the attachment were "in no case to be restored to the alleged proprietor, except under the general or special instructions of Government" (Schedule A, Rule 11). The decisions of the Inám Commissioner were to be carried out by

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the Collector "in any manner which may from time to time be prescribed by the Governor of Bombay in Council," and the same authority could review with final effect the orders of the Commissioner.

It was under Act XI of 1852 that the property now in question was attached. The profits hitherto enjoyed by the mortgagee in right of the Kolis were appropriated by the Collector for the Government while the investigation of the Kolis' title as against the Government was pending before the Inám Commissioner. A decision of this officer seems to have been arrived at in 1861, and on the 18th February, 1862, the Government (exhibit 18) approved the settlement proposed by the Commissioner. This settlement left the question of the terms on which certain lands might be "continued,' *i. e.* allowed to remain to the Kolis free of the land tax in consideration of service still to be arranged, and the final arrangements and recommendations were to be reported to Government.

Some delay occurred in arriving at the desired arrangement. The attachment on account of the mortgagee as against the Kolis was meanwhile continued, though under what may be called the prerogative attachment on behalf of Government he gained no immediate advantage from it. In July, 1863, Dinkarráv, the then mortgagee, seems to have requested that his attachment might be removed from certain of the lands, as he had come to an arrangement with the Kolis; but the lands, it is said, were again attached by the Collector at his request. This attachment, like the former one, would, of course, be merely nominal so long as the attachment by Government continued. It would avail only in favour of Dinkarráo as against the Kolis.

Dinkarráo now sought to take advantage of the decision of the Government, which, as he thought, had at any rate in some measure set the estate free. He was met by rival claims set up by the widow of the late mortgagee, Narhar, and by the Kolis, who having no valuable interest in the property as free, desired that it should all, or as far as possible, be ranked as "service" emolument annexed to the nominal duties they were to perform, and, as they hoped, guarded in consequence against alienation. The Collector not

seeing his way amongst these contradictory claims, referred the parties to the Civil Court for a determination of their respective rights. Meanwhile Bombay Act II of 1863 had become law. Dinkarráo sought a restoration of the property to him on the terms of the Act at one-fourth of the full assessment on the lands. The Collector still refused to move without a decision from the Civil Court. Dinkarráo next applied to Colonel Etheridge, the Settlement Officer under the new Act (exhibit 12), but by him was informed that instructions had been issued to restore the property and the proceeds of it to those from whom it had been taken by attachment in 1852.

Still the question of the property to be appropriated as service emolument remained to be settled. The Acting Collector made a full report in 1864 (exhibit 13), and in 1865 the final decision was communicated to Dinkarráo by the Revenue Commissioner (exhibit 10, dated 12th May, 1865). In this document the property was divided into three categories. As to two of these, the lands assigned for service and to the widow, no question is now raised. As to the first category in the Revenue Commissioner's letter, we are clearly of opinion that the decision is that they be restored to the persons from whom they were taken. The District Judge has held that the lands now sought, cannot be included amongst those to be restored, because the summary settlement admittedly did not apply to them. It did not apply to them, or, at any rate, some of them, because the title had been investigated under Act XI of 1852. The plaintiff has set forth the precise lands that he claims, and, except so far as any of them may be shown to be affected with the obligation of providing for the Kolis' service or for the widow's maintenance, they ought, if taken from him in 1852, to have been restored to him in 1865.

Dinkarráo asked the Collector for a specification of the free lands, in order that he might enter on the possession of them under the Revenue Commissioner's order. The Collector was still in a difficulty (exhibit 11). The Kolis had not yet accepted unequivocally the terms on which the "service" lands, or rather exemptions from land tax, were to be restored to them, and Narhar's widow, Parvati, set up a claim against Dinkarráo's succession to

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his interest. Moreover, the Collector answered, Dinkarráo had given up his interest by his removal of his attachment in 1863. Being thus placed at arm's length by the Collector, Dinkarráo sued him for arrears of the *amals* included in his mortgage, and after the usual course of litigation obtained a final decree in this Court in 1868. Since that time he has received nothing. The lands formerly held by him, in the sense of his taking the revenue from the rayats, seem to have been handed back to the Kolis under the impression shared by the District Judge, that all had been " continued " to the Kolis and Rámoshis alone on a tenure of personal service which they alone could perform. This was to confound the first and third categories in the Revenue Commissioner's order, but Dinkarráo's reclamations proved unavailing, and in 1883 he filed the present suit.

Limitation is pleaded in bar of the suit on behalf of the Government, and against this it is contended that the property, having been taken possession of by the Government with a view to adjudicating on the rights set up to it, must be held to have been *in custodia legis* and then retained by the Government on a constructive trust which would endure until restoration of the property. But, in spite of Mr. Branson's able argument, we do not think this contention a sound one. The cases cited by him are far from identical, in principle, with the present. In *Ráo Karan Singh* v. *Rájá Bákar Ali Khán*[1] what was decided was that the Collector's possession of an estate in order to realize arrears of revenue is not adverse to one more than to the other of the rival alleged owners, and that one is not prejudiced by payment to the other of the surplus proceeds. The estate, when set free by the Collector, became then, and not till then, available as an object of possession, and, therefore, of adverse possession to one of the claimants as against the other. The same point had been ruled the same way in *Shidhojiráv* v. *Náikojiráv* [2]. In *Tukárám* v. *Sujan Gir Guru* [3] an estate attached by the Peshwa, in order to determine the adverse pretensions of rival branches of a family, was eventually re-

(1) L. R., 9 I. A., 99. S. C. I. L. R., 5 All, 1.

(2) 10 Bom. H. C. Rep., 228.

(3) I. L. R., 8 Bom., 585.

leased by the British Government. Neither Government had set up a right of its own, and the decision was that, during its possession on account of the unascertained owner, no rights adverse to the owner could have grown up, he being prevented from guarding his interests. In the present case the Government seized the property as its own, and called on the previous possessor to show his title. No doubt the Inám Commissioner was to investigate the title set up, and would do so justly to the best of his ability; but the final order had to be given by the Executive Government, and that could not be called a judicial process in which one of the parties could begin by taking possession of the object in dispute and end by pronouncing on his own rights and those of his adversary. The inquiry by the Inám Commissioner bears more resemblance to an inquest of office under the English law than to a suit in Court, and the finding of an inquest was traversable in the ordinary Court on a petition of right. The procedure under Regulation XVII of 1827 was quite analogous to this, for the Collector's decision, however carefully arrived at, could be challenged by a suit in the Civil Court; but this part of the Regulation law was, as we have seen, not extended to the Deccan. When, therefore, the order of the Revenue Commissioner was made in 1865, and the Collector became bound, in consequence, to restore the free or partially taxed lands to the former possessors, his continued detention of them would be no longer covered by the provisions of Act XI of 1852; it would be a contravention of Rule 11 of Schedule A of the Act, and would put him into the possession of an adverse holder. Dinkarráo must needs have treated the Collector as being in this position when he sued him for arrears and got a decree against him in 1867-68. The Government had, in fact, taken possession of the property as its own, subject to such rights as it might itself recognize and such concessions as it might eventually make. If it held in a manner or under a law giving to the mortgagee a right of relief, he had a cause of action in 1852. If the provisions of Act XI of 1852 prevented this down to 1865, his right of action, supposing he had one, arose in that year. There was no admission of his right afterwards. His decree for the *amals* in 1868 might establish

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his right to them in that year; but his right to these periodical payments, if otherwise cognizable, would be barred by the subsequent total discontinuance of them for more than twelve years before the institution of the present suit.

Act XXIII of 1871 and Act X of 1876, while excluding the jurisdiction of the Civil Courts over suits relating to pensions and grants of land revenue and over claims to hold land wholly or partly free from the land tax, except pending suits from their operation. This is what ordinary interpretation would say, even without the express exception. It would say, with still more emphasis, that the rights fully acquired under previous suits and in course of realization through the execution of decrees thus obtained, could not, without express provisions to that end, be affected by the new law. Thus in *Jamnádás* v. *Lalitarám*[1] the attachment of a pension had, under the law as it then stood, given to the decree-holder a real right, a part of the ownership of the annuity, which the new law did not destroy. But though these new laws did not destroy fully acquired rights, or even inchoate ones involved in pending suits, neither did they create rights to relief against the Government where none subsisted before. Now under Regulation XXIX of 1827, sec. 6, the Government thinking fit to appropriate an *inám*, to refuse payment of an annuity, or to exact land tax where the landowner averred it was not due, could not be sued for such acts in the Civil Courts. The rights it is said to have infringed in the present case are of the character either of rights to periodical payments, or else to exemptions from, or appropriations of the land revenue. The actual physical detention of the soil appears always to have been with the rayats. The plaintiff, therefore, has no right to relief against the Government, even apart from the Acts of 1871 and 1876. Its proceeding in taking or keeping possession in 1865 was hostile alike to him and to every proprietor of the estate thus appropriated or of an interest therein, and not the less so because there had been a suit between him and the former owners and a decree in his favour. Against this act, which he thinks wrongful, he either had no remedy

(1) I. L. R., 2 Bom., 294.

under Regulation XXIX of 1827 and the recent Acts, or, if he had a remedy, it was barred by limitation before the institution of the present suit.

We, therefore, confirm the decree of the Court below with costs.

Decree confirmed.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nánábhái Haridás.

HARI SADA'SHIV, (ORIGINAL DEFENDANT), APPELLANT, *v.* SHAIK AJMUDIN, (ORIGINAL PLAINTIFF), RESPONDENT.*

1886. *August* 19.

Inám—Resumption of inám village and regrant, effect of—Acts of State—Wáikars, status of—Treaties of 1820*—Effect of grant of inám under construction—Attachment by Government of such village limited to what.*

From the year 1820 down to the year 1872 the Wáikar family had been in the enjoyment of the village of Pasarni under a treaty between the East India Company and one Shaik Mira. Abdul Kádar and Khán Mahomed were brothers and the last male descendants of Shaik Mira. For an alleged fraud of Khán Mahomed, Government restricted the enjoyment of the said village to his life-time only. Abdul predeceased Khán Mahomed. On the death of Khán Mahomed, Government, on the 31st December, 1872, placed an attachment over the village. On the 13th July, 1874, a judgment-creditor of Abdul caused the lands in dispute, which were *mirási* lands of the Wáikar family situated at Pasarni, to be sold in execution of his decree against Abdul, and they were purchased by the defendant, who was put in possession on the 22nd April, 1876. In the meanwhile, Government, having chosen to recognize the plaintiff as a representative of the Wáikar family, had removed the attachment, and regranted the village to the plaintiff shortly before, *viz.*, on the 3rd April, 1876. The plaintiff being dispossessed, sued the defendant, contending *(inter alia)* that Abdul, having predeceased his brother, had no interest in the lands, which had been purchased by the defendant. The Court of first instance awarded the plaintiff's claim, and directed the defendant to pay the plaintiff's costs. The defendant appealed to the District Judge, who was of opinion that the proceedings of Government since the attachment in 1872 and restoration of the village were acts of State, and he varied the decree of the lower Court by cutting down the plaintiff's costs, made payable by the lower Court's decree, to half. On appeal by the defendant to the High Court,

Held, reversing the decree of the lower Appellate Court, that the plaintiff's claim should be dismissed. The attachment placed by Government on the death of Khán Mahomed in December, 1872, was limited to an exemption from assessment, and the resumption and regrant to the plaintiff did not give the plaintiff any title to the lands in question. The proceedings of Government in 1873 and 1876,

* Appeal, No. 278 of 1884.