

was not complete until the amount due to defendant on account of the house should be determined. If this argument were sound, the decree would be inoperative, as it directs that the amount be determined in execution of the decree, and if there was no complete decree, there could be no execution.

" Application similar to the present one was made by the plaintiffs on the 9th September 1881, and was subsequently withdrawn on the 31st July 1882. It is unnecessary to discuss the effect of such withdrawal as nullifying the application as paragraph 4 of art. 179 provides that time is to run from the date of applying for execution, and not from the date on which the application was disposed of. There are two conflicting decisions of the Bombay High Court on the subject of the applicability of the s. 374 of the Civil Procedure Code to such application (see I. L. R., 6 Bom. 681 and I. L. R., 10 Bom., 62; see also I. L. R., 7 All. 359). As the application was made in September 1881, and the present one not until April 1885, the latter is clearly time-barred, unless some other step in aid of execution has been taken in the interval.

" It is contended that such a step was taken by the application for execution in respect of costs made on the 19th September, 1882. Whether this is so or not, must depend on the construction to be placed on the second part of Exp. I to art. 179 of the Limitation Act. This provides ' that when the decree has been passed severally against more persons than one, distinguishing portions of the subject-matter as payable or deliverable by [247] each, the application shall take effect against only each of the said persons or their representatives as it may be made against. But when the decree has been passed jointly against more persons than one, the application, if made against any one or more of them or against his or their representatives, shall take effect against them all.' In the present case there were several defendants. The decree in respect of the house was against the present respondent severally, but the order with regard to costs rendered him jointly liable to the plaintiffs with all other defendants except one. This fact, however, does not make the decree two separate decrees. An application to recover costs awarded by the decree is certainly a step-in-aid of execution of the decree, and as the present respondent was made a party to that application, I think it must be held sufficient under cl. 4 of art. 179 to keep the decree alive against him by affording a fresh starting point for limitation."

Against the decree made by the District Court the defendant appealed to the High Court.

Gokuldas Kahandas Parekh, for the appellant.

Govardhanram Madhavram Tripaihi, for the respondent.

JUDGMENT.

The High Court (NANABAI HARIDAS and JARDINE, JJ.) confirmed the decree of the District Court on the 25th January, 1888.

15 B. 247.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Telang.

NARAYAN JAGANNATH DIKSHIT (*Original Plaintiff*), Appellant v.

VASUDEO VISHNU DIKSHIT (*Original Defendant*), Respondent.*

[29th August, 1890.]

Saranjam—Descent of—Impartibility of—Suit for possession of—Possession an interest in immoveable property within art. 144 of sch. II of Act XV of 1877—Adverse possession—Joint management of saranjam—Manager of saranjam a trustee of profits—Account of management.

A *saranjam* is ordinarily impartible and descends entire to the eldest representative of the past holder.

In 1885 plaintiff brought this suit to recover possession of certain *saranjam* villages from the defendant. His beneficial right to a third share of the rents and profits of the villages was admitted by the defendant. The point in dispute

* Appeal, No. 76 of 1889.

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was the possession and management. The defendant contended (1) that the plaintiff never was entitled to the exclusive possession and management; (2) that he (the defendant) had for years been in actual possession and management and entitled thereto by virtue of an arrangement between all the sharers in the villages; and (3) that the plaintiff's claim to such possession and management was barred.

Held, on the evidence, that the right of management belonged to the plaintiff's branch of the family, and that there was no proof of the arrangement alleged by the defendant. But

[248] *Held*, also, that the right to such possession and management was an interest in immoveable property within the meaning of art. 144 of sch. II of the Limitation Act XV of 1877; that the defendant had enjoyed that interest adversely to the plaintiff's rights at all events since January 1866, at which date the plaintiff, who had been in correspondence with Government with reference to his claim against the defendant, was referred by Government to the Civil Courts and that the plaintiff's claim was, therefore, barred by limitation.

Held, also, that it was not open to the plaintiff to ask to be placed in possession and management of the villages jointly with the defendant. If the condition of the tenure requires sole management by one person, that condition must be held to pass with the tenure, even though the tenure has passed out of the hands of the lawful holders by adverse possession. The general rule, that persons beneficially entitled to shares in an estate are entitled to partition of it, is excluded from application to properties such as *saranjams*.

Held, further, that the defendant's possession being admittedly one for management subject to the rights of the sharers to receive their respective shares in the profits of the villages, was the possession of a trustee of such profits. The plaintiff was, therefore, entitled to have an account taken of the management of the villages by the defendant, and there was no limit to the period over which the accounts should extend other than the limit stated in the plaint.

[R., 30 B. 101 (106) = 7 Bom. L.R. 659; 5 Bom. L.R. 983 (986); 10 N. L. R. 64 = 24 Ind. Cas. 855; D., 21 B. 458 (460).]

THIS was a first appeal from the decision of Rao Bahadur C. N. Bhat, First Class Subordinate Judge of Dhulia.

The plaintiff sued to recover possession of certain *saranjam* villages from the defendant and for the balance of income that might be found due to him after taking accounts of rents and profits of the villages from the year 1863-64.

The plaint stated that in the year 1797 the Peishwa Bajirao Raghunath granted a *sanad* to plaintiff's grandfather Ramchandra Dikshit, conferring on him 23 villages in Sindurni Paragana as *jaghir*. Ramchandra Dikshit was put in possession of the said *saranjam*, and after his death his son, Jagannath Dikshit (plaintiff's father), succeeded to the possession. The Court of Directors declared the *saranjam*, to be a first class *saranjam*, and directed that it should remain in the plaintiff's family from generation to generation.

In the year 1833 the plaintiff's father, Jagannath, went on a pilgrimage after entrusting the management of the *saranjam* to Moreshvar Dikshit, the defendant's grandfather. After Moreshvar Dikshit's death, his son, Vishnu Dikshit (the defendant's father), succeeded to the management, and on the latter's death, his son, the defendant Vasudev Dikshit, succeeded. During [249] Moreshvar Dikshit's management, he gave 12½ villages out of the 23 *saranjam* villages to one Balkrishna Dikshit, (a representative of the third branch of the family). With respect to those 12½ villages an award was passed between the plaintiff and Balkrishna Dikshit's son.

The plaintiff contended that the defendant and his father and his grandfather before him were trustees on behalf of the plaintiff and his ancestors. He alleged that he had received from them the income of the

saranjam up to the year 1864-65; that after the death of the defendant's father he had received the income from the defendant. The defendant, however, failed to furnish accounts, and the plaintiff became suspicious. He now claimed to recover possession of the *saranjam*, which stood in his grandfather's name, and he claimed accounts from the year 1864-65. The suit was filed in July, 1885.

The defendant pleaded (*inter alia*) that the plaintiff's suit was barred by limitation and by the provisions of the Pensions Act (XXIII of 1871); that the defendant and his ancestors were the owners of the property, and not trustees for the plaintiff, and that the plaintiff had received his share of the revenue of the villages.

The Subordinate Judge found that the defendant and his ancestors were not trustees of the villages for the plaintiff, but might be regarded as trustees of the plaintiff's share of the revenue of the villages, and held that the plaintiff's claim to recover possession of the villages and of his share in the revenue thereof for a longer period than six years before the filing of the suit was time-barred.

Against the decree passed by the Subordinate Judge the plaintiff appealed to the High Court.

The facts of the case, in addition to those stated above, appear from the arguments of the counsel and the judgment of the High Court.

Latham (Advocate General), with *Manekshah Jehangirshah* and *Mahadev Vaman Bhat*, for the appellant (plaintiff).—The plaintiff is the lineal descendant of the grantee of the *saranjam*. The beneficial ownership, therefore, belongs to him, and he is entitled [250] to recover possession. There were originally three branches of the family, and one-third share of the income of the *saranjam* belongs to each branch. The plaintiff's grandfather entrusted the management to defendant's grandfather, when he went on a pilgrimage. In 1833 the plaintiff's father Jagannath went to Benares, entrusting the management to defendant's grandfather, *Moreshvar*. Since then the defendant's branch of the family has had management as trustees. We frequently asked that the management of the *saranjam* should be restored to us, and the Government in the year 1866 finally referred us to a Civil Court. There was an award made in a suit which we then filed, but ultimately the High Court held that we could not get any relief, as the defendant was then a minor, and his guardian had no right to represent him in the arbitration. This was decided in 1872. After that nothing was done till 1885, when the present suit was filed. *Ramchandra Mantri v. Venkatrao* (1) decides that it is the Government that determines how *saranjams* are to be held and inherited.

There is no question as to our having received one-third profits. I submit that we are entitled (1) to sole management, or at least (2) to joint management with other sharers, and (3) to obtain accounts for more than six years and for at least twelve years, the trust being admitted. We have only had sums paid on account which we have been asking for since 1865.

Shantaram Narayan, for the respondent.—The plaintiff's claim is barred by limitation. We rely on an arrangement by virtue of which we are in management. Between the years 1827 and 1834 the plaintiff's father was not in sole management, and he had management only for a

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time. Apart from limitation, we rely on *Shankar Baksh v. Hardeo Baksh* (1), as showing that the Court cannot interfere in a case like the present.

At any rate, our possession has been adverse since 1858, when the plaintiff attempted to recover possession from us—*Shankar Baksh v. Hardeo Baksh* (1). If the plaintiff was entitled to the right he seeks, he ought to have asserted his title in 1858, or at least in [251] 1866, and he having failed to do so, his claim is time-barred. The plaintiff can demand accounts of only three years previous to the institution of the suit.

Latham, in reply.—We do not rely merely on our name being entered in the Government records. We are the real *saranjamdar*. A *saranjam* is an impartible estate descending lineally. The Privy Council case, *Shankar Baksh v. Hardeo Baksh* (1), relates to partible property, and is inapplicable to *saranjams*. The right of a *saranjamdar* cannot be barred while the right to *saranjam* remains. Even the grant of a *vatan* cannot divest the right of management thereof—*Bhimaji Balvant v. Giriapa Timapa Desai* (2). Our position as *saranjamdar* was never denied. The trust being practically admitted with respect to one-third share of the profits, there is no limitation at all to the claim for accounts.

JUDGMENT.

TELANG, J.—This suit was instituted by the plaintiff for the purpose of recovering possession of certain *saranjam* villages from the defendant, and for payment, after taking accounts of the rents and profits of those villages, of the balance remaining due to the plaintiff. It is admitted that the plaintiff is entitled to a third share in the villages in question, and that he has received payment from time to time and down to within a very recent period, of divers sums on account of such share. But the defendant contends, first, that the plaintiff never was entitled to the exclusive possession and management of the village; secondly, that he (the defendant) has for many years past been in actual possession and management, and entitled to such possession and management by virtue of an arrangement between all the sharers in the villages; and, thirdly, that, in any event, the plaintiff's claim to such possession and enjoyment is barred by limitation.

Now the earliest document in the case is Ex. 5, dated 1798, the original *sanad*, under which the present villages were granted by the Peishwa in lieu of certain others which had before been granted by the Scindia. That grant is made to Ramchandra Dikshit, a direct ancestor of the plaintiff, and the defendant is only a collateral relation of the grantee. In 1818 that grant is directed by Captain Briggs (Ex. 23) on behalf [252] of the East India Company to be continued to Ramchandra Dikshit, as before. [His Lordship then referred to the evidence in detail, and continued :—] In 1858, however, the plaintiff made an attempt to recover possession and management of the *jaghir* through the Revenue Department, and on the 9th March, 1859, the Collector of Khandesh writes to the Revenue Commissioner stating that Moreshtar had been in management since 1836 and deprecating any change in this respect. The final order on this proceeding is apparently made on the 23rd January, 1866, when the plaintiff is informed that actual possession can only be obtained through the Civil Court and that the Executive Government cannot help him in that matter. A review of all these documents taken

(1) 16 C. 397.

(2) 14 B. 82.

together shows that the right of management of the *jaghir* has always been regarded as belonging to the plaintiff's branch of the family ; that it has never been claimed as of right, although for some time and under special circumstances it has been actually held, by the defendant's branch ; and that although the revenue officers of Government desired at one time that Moreshtar, who had been actually managing for many years, should continue in such management, they have finally decided that the question of the right of possession was not one for them to adjudicate on, and that, therefore, they must refer the plaintiff to the Civil Courts for a determination of it.

It follows from this that plaintiff's claim to possession and management of the *jaghir* villages must be allowed, unless the defendant can succeed in making out one or other of the defences he has set up. The defence based on the decision of this Court in *Ramchandra Mantri v. Venktrao* (1) cannot be sustained. The rule there laid down is 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 Government." But as in the present case the Government has in its final order left the matter to be decided by the Civil Courts, the suggestion—for it is nothing more—made by the Collector of Khandesh in Ex. 246 is not one to which the Court is now in a position to give effect, and, [253] on the other hand, the Court must determine the claim according to the rules contained in the earlier exhibits to which reference has already been made—especially in Ex. 25.

The second ground of defence, indicated in Mr. Shantaram's argument for the defendant, also fails. There is no evidence whatever to show that the defendant has obtained the right of management by virtue of any arrangement among the members of the family entitled to share in these *jaghir* villages. It was said, no doubt, that this absence of evidence is due to the other sharers not being made parties to the suit. But it is to be remarked that there is no reference in the written statement, nor in the judgment of the Court below in favour of the defendant, to any such arrangement, and the circumstance that the other sharers were not made parties to the suit could not in any way have prevented the defendant from adducing the evidence of those sharers themselves, as well as any other evidence he might have desired, to prove the arrangement, which was only suggested for the first time in argument in this Court.

The third ground of defence is the important one, and it is on that that the Court below decided in favour of the defendant, holding that the "plaintiff's suit to recover management of the property must be regarded to be barred under art. 124, or 143, or 144 of Sch. II of the Limitation Act." There is no doubt that in 1866, as above pointed out, the plaintiff was finally told that Government could not help him to obtain possession of his *jaghir*, and, therefore, if the claim is one to which limitation applies, the plaintiff is barred, because his present suit is instituted after more than twelve years had elapsed from the order in 1866. But the claim here is a peculiar one. It is admitted—in fact, it is the case of the defendant in his written statement—that the plaintiff has all along been receiving his share of the rents and profits of the

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villages, and, therefore, the beneficial right in the villages and their produce is clearly not barred. And the question is whether that being so, the mere right of possession and management can become barred.

In *Shankar Baksh v. Hardeo Baksh*(1), the Privy Council had [254] to deal with a somewhat similar interest in immoveable property. The right there claimed is described in their Lordships' judgment thus :— "that the family was still to have a sole head to it, and that he would take the title of *talukdar*, and have the management of the property, and though he would be accountable to his brothers, the younger branches, for certain shares of the profits, yet the property was still to be held in one hand as an entire estate ; and that they could not displace the head of the family from that position." This description applies with almost perfect accuracy to the estate here claimed by the plaintiff. The main difference is that the plaintiff here claims it by virtue of the form of the grant and long usage recognized by the orders of Government ; in the case before the Privy Council it was claimed by virtue of certain family arrangements. The Privy Council there, after setting out the description above quoted, proceeded to observe that "it is extremely difficult to understand what sort of an estate that would represent. . . Such an estate is entirely foreign to the common Hindu law of Oudh. Nor is any such thing apparently contemplated by the Oudh Estates Act." They did not, however, in that case actually decide whether such an estate could legally exist. In the case of property held on the ordinary tenures, there would, no doubt, be great difficulty in holding that such an estate could legally exist. But here it is to be remarked, in the first place, that both plaintiff and defendant apparently allege that such an estate does, in fact, exist, each claiming that it belongs to himself, though each claims acquisition on different grounds. Secondly, it is important to note that a *saranjam* is ordinarily impartible and descends *entire* to the eldest representative of the past holder, and accordingly, in the documents to which we have referred the officers of Government evidently contemplate that the *saranjam* villages should be held and managed by one man only, subject to the liability to divide the profits with the other members of the family. And Ex. 216, dated in 1859, in speaking of the *saranjam* as being one to be continued to the Dikshit family in the name of Narayan Jagannath, again seems to point to the same conclusion. If so, it would be difficult to say that, having regard to the conditions of the *saranjam* tenure, [255] such an estate as is here in question is "quite foreign" (in the words of the Privy Council) to the law prevailing in this Presidency. And, again, if it is recognized by the law, it would be impossible to say that it does not fall within the term "interest in immoveable property" used in art. 144 of sch. II of the Limitation Act. And if it is an interest in immoveable property, it is quite manifest that the enjoyment of that interest by the defendant in this case has been adverse to the plaintiff's rights, at all events from the 23rd of January, 1866, which is more than twelve years before the institution of this suit.

From these considerations it would seem to follow that the plaintiff's claim as regards possession is barred. It may be that this result is not the one contemplated in the order of January, 1866, (Ex. 153), and that it frustrates the intentions of Government, which are of special authority in regard to *saranjam* estates. But while it is open to Government to

(1) 16 C. 397 (404, 406).

exercise its own authority, whatever it may be, in regard to these particular *saranjams*; in the form in which the case comes before the Court—as a case raising the question of a right to possession of immoveable property upon a certain tenure recognized by the law and by the constituted authorities—the Court must hold that such a right is one to which it cannot after this lapse of time give effect in consequence of the law of limitation.

In the view above expressed, it is not open to the plaintiff to claim to be placed in possession and management of the villages jointly with the defendant. If the condition of the tenures requires sole management by one person, that condition must be held to pass with the tenure, even though the tenure has passed out of the hands of the lawful holders by adverse possession. The general rule, that persons beneficially entitled to shares in an estate are entitled to partition of it, is excluded from application to the villages here in question—and the same considerations which exclude that rule disentitle the plaintiff to joint management. That being our opinion, it is unnecessary to consider whether joint management could, in any event, have been decreed under the present prayer of the plaint, and without the other sharers being made parties to the suit.

[256] The defendant's possession, however, being admittedly one for management and subject to the rights of the sharers to receive their respective shares in the profits of the villages, must be held to be the possession of a trustee of such profits. The defendant in possession under a claim to manage the *saranjam* as representative of the family stands in a very different position from the defendant in such cases as *Harmukhgauri v. Harisukhprasad* (1) and is not entitled to the benefit of the rule of limitation laid down in those cases. In *Shanker Baksh v. Hardeo Baksh* (2) already cited, and also in the case of *Pirithi Pal Singh v. Thakur Jowahir Singh* (3), which is referred to in Lord Hobhouse's judgment in that case, the sharer in possession is described by the Privy Council as a trustee. And there is no reason why he should not be regarded as holding the profits on a "specific trust" within the meaning of the Limitation Act. The evidence in this case is certainly not inconsistent with such a conclusion, but so far as it goes is rather in harmony with it. In this view, it is the right of the plaintiff to have an account taken of the management of the villages by the defendant, and there is no limit to the period over which the account should extend other than the limit stated in the plaint, namely, 1864-65, down to which year the plaintiff admits the accounts to have been made up and adjusted.

The decree of the Court below must, therefore, be confirmed as regards the refusal to give possession to the plaintiff, but must be varied as regards the other part thereof, by directing an account to be taken of the rents and profits of the *jaghir* villages in question, and payment to the plaintiff of what shall be found to be due in respect of the plaintiff's share on taking such account, after making all just allowances. Costs in proportion.

Decree varied.

(1) 7 B. 191.

(2) 16 C. 397.

(3) 14 I.A. 37=14 C. 493.