

of s. 8 of Act VII of 1887. In *Bhagvantraï v. Mehta Bajurao* (1) the High Court, in a similar suit, followed *Khushalchand v. Nagindas* (2), pointing out at the same time that the law so laid down had already been embodied in s. 8 of Act VII of 1887, when that decision [103] was passed. The question is whether that section is applicable to the present suit.

It was contended for the respondent that it is a suit for "a declaratory decree where consequential relief is prayed" as contemplated by s. 7, cl. 4, sub-cl. (c) of Act VII of 1870. It was urged for the appellants that an injunction is not such "consequential" relief as is intended by that expression in sub-cl. (c). "An injunction" is undoubtedly in the nature of consequential relief, and the following sub-cl. (d) shows that the Legislature considered it was a form of relief which might be valued in a suit which asked for it. Moreover, in the present case the relief sought is not merely an injunction, but, in the alternative, for an account of the timber which defendant might cut before the actual partition. We think, therefore, that the above rule applies to the present suit, and that the relief having been valued at only Rs. 230, the appeal lay to the District Court, and we must, therefore, return the appeal for presentation in that Court. Appellants to pay the costs incurred in this Court.

Appeal returned for presentation to proper Court.

18 B. 103.

APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and
Mr. Justice Bayley.*

BABA KAKAJI SHET SHIMPI (*Original Plaintiff*), Appellant v.
NASSARUDDIN VALAD AMINUDDIN KAZI AND ANOTHER (*Original
Defendants*), Respondents.* [19th January, 1893.]

*Kazi, office of—Hereditary office—Watan—Watan-dars Act (Bombay Act III of 1874),
s. 9†—Mortgage.*

The office of Kazi is not an hereditary office, unless perhaps by special custom of the locality. Where such a custom is not established, property attached to the [104] office is not watan property, and the Collector has no power to make an order with respect to it under s. 9 of the Watan-dars Act (Bombay Act III of

* Second Appeal, No. 910 of 1891.

† Section 9 of the Watan-dars Act (Bombay Act III of 1874)—

9. *Clause 1.*—Whenever any watan or any part thereof, or any of the profits thereof, whether assigned as remuneration of an officiator or not, has or have, before the date of this Act coming into force, passed otherwise than by virtue of, or in execution of a decree or order of any British Court and without the consent of the Collector and transfer of ownership in the revenue records, into the ownership or beneficial possession of any person not a watan-dar of the same watan, the Collector may, after recording his reasons in writing, declare such alienation to be null and void, and order that such watan or any part thereof, or any of the profits thereof, shall from the date of such order belong to the watan-dar previously entitled thereto, and may recover and pay to such watan-dar any profits thereof accordingly.

Clause 2.—If such part of a watan be land, it shall be lawful for the Collector, instead of transferring the possession of the land, to demand and recover the full rent ordinarily paid by tenants of land of similar description in the same locality, and the amount so recovered shall be considered as the profits. The decision of the Collector shall be final.

(1) 18 B. 40.

(2) 12 B. 675.

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1874). *Jamal valad Ahmed v. Jamal valad Jallal* (1) and *Daudsha v. Ismalsha* (2) followed.

A Resolution of Government empowering a Collector to levy full assessment from the person other than the grantee in possession of land granted for public service does not authorize him to order the delivery of possession of the land to the grantee.

[R., 21 B. 733 (737).]

SECOND appeal from the decision of L. G. Fernandez, First Class Subordinate Judge, A. P., at Nasik.

On the 30th May, 1869, the first defendant mortgaged with possession to the plaintiff's father certain property attached by *sanad* to the office of Kazi in the villages of Wani and Sewali in the district of Nasik. The mortgagee continued in possession until 1883, but in that year the property was restored to the first and second defendants, who were Kazis in these villages in pursuance of an order of the Collector in exercise of the power vested in him by the Watan Act (Bombay Act III of 1874), s. 9.

The plaintiff's father died, and the plaintiff sued to recover the mortgage-debt. He prayed for the sale of the mortgaged properties, or for possession of them until the amount of debt was paid.

The defendants pleaded (*inter alia*) that they had been put into possession by the Collector under the Act, and they contended that the property in question was service *inam* property, and as such inalienable without the sanction of Government.

[105] The Subordinate Judge dismissed the suit. He held that he had no power to interfere with Collector's order. On appeal the decree was confirmed.

The plaintiff preferred a second appeal.

Daji Abaji Khare, for the appellant (plaintiff).—The question is whether a Kazi is a watandar under the Watan Act. The appointment of Mahomedan law officers was made under Reg. XXVI of 1827. But that Act was repealed by Act XI of 1864, and thereupon Mahomedan officers ceased to be officers of Government. A Kazi is now no longer an officer connected with the civil administration of the country, and is, therefore, not a watandar under the Watan Act (III of 1874). He is not an hereditary officer under the Act—*Jamal valad Ahmed v. Jamal valad Jallal* (1); *Daudsha v. Ismalsha* (2).

To be a watandar under that Act, payment must be received from Government for service performed. If, then, the defendants are not watandars under the Act, the Collector was wrong in restoring the mortgaged property to them, and s. 9 of the Act does not afford them protection.

Govardhanram M. Tripathi, for the respondents (defendants).—A Kazi is connected with the civil administration of the country—*Muhammad Yusub v. Sayad Ahmad* (3). The question here is as to the property and not the office of a Kazi. It is within the cognizance of the Collector to determine whether a property is watan or not, and he having once held that the property in dispute is watan, it is inalienable, and consequently not liable to the appellant's mortgage.

JUDGMENT.

SARGENT, C.J.—The judgments of both the Courts below proceed on the assumption that the Collector's order was made under the Watandars

Act of 1874. The decisions in *Jamal valad Ahmed v. Jamal valad Jallal* (1) and *Daudsha v. Ismalsha* (2) are, however, conclusive that the office of Kazi is not an hereditary one, unless perhaps by a special custom of a locality, and there is no evidence of any such established custom in this case. The [106] Watandars Act, III of 1874, relates to watan property, which by that Act is defined to be "property acquired or assigned for providing remuneration for the performance of the duty appertaining to an hereditary office." The properties in question which, by the *sanad*, were attached to the office of Kazi were, therefore, not watan property under the Act, and not such as the Collector had power to recover from the defendants under s. 9 of the Watandars Act.

However, an examination of the Collector's order shows that he acted under a Resolution of Government (No. 512 of 1882 (3)), which he considered entitled him to order the lands to be handed over to the defendants on the ground that they had been granted for public service. That Resolution may have enabled such lands to be resumed by the Collector, but it is plain from the subsequent Resolution of Government on 25th August 1883 (4) that by the "resumption" in that Resolution was only meant the levying of full assessment from the person in occupation [107] other than the grantee and his descendants. The Collector had, therefore, no legal authority to make the order for the handing over of the properties to the defendants.

We must, therefore, reverse the decree of the Court below, and direct that the lands in question be restored by the defendants to the plaintiff as mortgagee. Appellant to have his costs throughout.

Decree reversed.

(1) 1 B. 633.

(2) 3 B. 72.

(3) Bombay Government Resolution No. 512 of 1882.—Bombay Act III of 1874 does not appear to be applicable to village servants useful to the community. All the *sanads* which have been issued to such servants prohibit alienation of the property to which they relate. Under the terms of the settlement, land which ceases to be held as remuneration for service to the village community may be resumed. (Nairn's Hand Book, p. 526).

(4) No. 6310.—Revenue Department, 25th August, 1883. RESOLUTION.—Government concur with the Commissioner, Central Division, and the Remembrancer of Legal Affairs that the terms of the settlement made in the case of village servants useful to the community should be held applicable to all cases in which their service lands have ceased to constitute the remuneration of such servants, and that the lands should be resumed at once irrespective of the date of alienation.

2. It should be borne in mind that by resumption in such instances is only meant the levy of full assessment from the person in occupation other than the original grantee or his descendants. The present holders should, therefore, be allowed to remain in possession on payment of the full assessment to which the lands are liable.

3. If the original holders or their descendants have thought proper to alienate their lands in which they had only a life interest, and have thus deprived themselves of the remuneration provided for the performance of their duties, they themselves are to blame for their own action, and the Governor in Council does not consider them to be entitled to any consideration. The full assessment to be levied in the case of these alienations should accordingly be credited to Government.