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[670] CRIMINAL REVISION.

Before Mr. Justice Telang and Mr. Justice Fulton.

IN RE ANTAJI KESHAV TAMBE.* [1st February, 1893.]

Forest Act (VII of 1878), ss. 75,76—Ratnagiri District—Khot—Khoti khasgi *land—Trees—Right to cut trees—Dunlop's proclamation—Right of Government to rescind proclamation—Crown grant, construction of.*

In 1824 by a proclamation known as Mr. Dunlop's proclamation it was declared that the owners of land in the Ratnagiri District, on which teak and other forest trees were growing or should thereafter be grown, should be the owners of these trees and might dispose of them at their pleasure without any claim on the part of Government. In 1851, however, this proclamation was rescinded by a subsequent proclamation which declared that the "Government resumed, in regard to forest, all the seigniorial rights which it possessed previously to 1823."

The accused was *khot* of the village of Asgoli in the Ratnagiri District. He was charged under s. 75, cl. (*c*) of the Indian Forest Act (VII of 1878) with the offence of cutting down two teak trees without obtaining the permission of Government as required by the rules framed by Government under the Forest Act. He contended that he was absolute owner of the trees under Dunlop's proclamation. He was convicted, and applied to the High Court under its revisional jurisdiction.

Held, that the conviction must be reversed. The land on which the trees in question were growing was the *khoti khasgi* land of the accused, and he was, therefore, entitled to the benefit of Dunlop's proclamation, by virtue of which the trees thereon became his property.

Held, also, that Dunlop's proclamation could not be withdrawn by Government in so far as it related to trees planted after that date.

Collector of Ratnagiri v. *Vyankatrav N. Surve* (1), followed.

Per FULTON, J.—*Khasgi* land of which the *khot* was actually in possession was clearly within Dunlop's proclamation and it granted the right to teak and other trees in *khasgi* lands held by *watandar khots* * * * It is clear, too, that the right to trees having once been conceded could not be withdrawn by the proclamation of 1851, and it seems also manifest that the contention is untenable that the benefit of the first proclamation did not extend to the case of trees planted after its cancellation in 1851. Even though the *khot* may not be the proprietor of the soil in *khoti khasgi* lands, he is certainly the holder of an interest in it, and that interest having in 1823 been increased by the concession of all trees which he might grow thereafter could not subsequently be reduced by the withdrawal of the right to such trees.

[F., Rat. Unr. Cr. Cas. 823; R., 23 B. 518; 25 B. 714 (750)=3 Bom. L.R. 603 (620).]

THIS was an application under s. 435 of the Code of Criminal Procedure (X of 1882).

The accused was the *khot* of the village of Asgoli in the Ratnagiri District. He was charged with having committed an [671] offence under ss. 75 and 76 of the Indian Forest Act (VII of 1878) by cutting down two teak trees, growing on his *khoti khasgi* land, without obtaining the permission of Government, as required by the rules(2) framed by Government under the Forest Act (VII of 1878).

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* Criminal Revision No. 301 of 1892.

(1) 8 B.H.C.R.A.C.J. 1.

(2) Rule II made under s. 75, cl. (*c*) of the Forest Act provides as follows:—

"No person who holds land on which trees are growing, *which are the property of Government*, shall cut, lop or in any way injure any such tree, and knowingly and wilfully permit any other person to cut, lop, or in any way injure the same without having first obtained the permission of the Collector, or in the case of teak, blackwood, or sandalwood trees, of the Conservator of Forests."

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The accused pleaded not guilty. He contended (*inter alia*) that under Mr. Dunlop's proclamation dated 1st March, 1824, he was the absolute owner of the teak trees growing on his *khoti khasgi* land, and had a right to deal with them as he pleased, and that Government had no claim to such trees.

Mr. Dunlop's proclamation was to the following effect:—

"Whereas the Government has observed that the former Government used to take the teak, blackwood, and other good timber grown on the lands situate in the aforesaid zilla belonging to any person whatever, the people did not take the trouble of raising (such timber trees); and (whereas the Government) thinks that it would be to the advantage of all if from this day forth teak, blackwood and any other kind of good timber (trees) were raised in the country, it is proclaimed to all the people that the Government has no intention (eye) towards the trees that may be growing on the lands of any person whatever situate beyond the frontiers (limits) of the jungles preserved by the Government . . . . that those who may own and may grow hereafter (such trees) may (*i.e.*, have the liberty to deal with them in any manner they like; and that no obstruction whatever will be made by the Government (to their so doing)."

"*Dated 1st March*, 1824."

This proclamation was rescinded by a subsequent proclamation in 1851.

The subsequent proclamation ran thus:—

"*Proclamation regarding Teak and Sissu in the Collectorate of Ratnagiri.*

"1. Be it known that in 1823 (*sic.*) Mr. Dunlop, when Collector of the Southern Konkan, put forth a proclamation wherein he conditionally made over, on behalf of Government, the royalty rights heretofore exercised in regard to teak and sissu trees growing in certain places.

"2. The object of the said proclamation, as stated in the first paragraph thereof, was the extension of the growth of useful timber.

[672] "3. As, however, from past experience it is clear that the continuance of the permission to cut teak and sissu trees on such terms throughout the Collectorate will speedily lead to the complete annihilation of such useful timber.

"4. The Right Honourable the Governor in Council is pleased to declare that the proclamation of 1823 is rescinded, and that the Government resumes, in regard to forest, all the seigniorial rights which it possessed previous to 1823.

"5. At the same time, as it is understood that a few persons, taking advantage of the liberal offer made by Government in 1823, did attend to the teak and sissu timber growing in their own grounds (jagih), Government is prepared to grant full benefit, present and prospective, to such persons, provided they establish to the satisfaction of the Collector and Conservator of Forests, within six months from 1st June next, that the wood in their lands had been attended to and nurtured since 1823, such benefit to be contingent on their continuing their care to the trees now in course of growth.

"6. The forest preserves in the taluka of Suvarndurg and in the subha of Malvan to remain, as at present, exclusively Government

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preserves, subject to such future orders as Government may see fit to issue in regard to them."

The accused was convicted under s. 76 of the Indian Forest Act (VII of 1878) by the Second Class Magistrate of Guhagar and sentenced to pay a fine of Rs. 3, or in default to suffer four days' simple imprisonment.

This conviction and sentence were upheld, on appeal, by the District Magistrate of Ratnagiri.

Thereupon the accused applied to the High Court under its revisional jurisdiction.

Ganesh K. Deshmukh, for the accused.

Rao Saheb *Vasudeo J. Kirtikar*, Government Pleader, for the Crown.

JUDGMENT.

TELANG, J.—In this case the accused was charged with having committed an offence under s. 75 (*c*) of the Indian Forest Act by cutting down some trees in what is admitted to be his *khoti khasgi* land in contravention of the rules made by Government under the Indian Forest Act. The section of the Act as well as the rules referred to, relate, in terms, to trees belonging to Government; and in order to convict the accused the Court must be satisfied that the trees cut down by the accused were the property of Government.

It was argued in the first instance by the learned Government Pleader, as we understood him, that if he could [673] show that there was some reasonable ground for the claim made on behalf of Government to the trees in question, that would be sufficient justification for the Government "notification" whereby the trees have been declared to be the property of Government, and that the Magistrate would be justified and even bound to accept such notification as proof of the declared ownership in such a case as the present. We must express our entire dissent from this view. The offence is only committed, as we have seen, under the express terms of the Act and rules, when the trees cut are the property of Government. And, therefore, in this case as in any other, where the same issue arises, the Court before convicting is bound to satisfy itself of Government proprietary right in the usual modes and by means of the usual materials recognized in Courts of Justice. The declared opinion of the Executive Government merely as such can have no more weight with the Court than that of the humblest of Her Majesty's subjects.

On the other side it was similarly argued, that if the accused could show that he had reasonable grounds to believe that he might cut the trees in question, he ought not to be convicted of a criminal offence. The answer to that argument is clear. The law which the Courts have to apply in this case says nothing about belief or reasonable grounds for belief. The act of cutting the trees is itself an offence, whatever the belief of the man who cuts, if the trees are proved to be, in truth, the property of Government.

The question, therefore, which must be determined in this case is whether the trees cut down by the accused were or were not the property of Government. No special evidence has been given in the case bearing on this point, and both sides have rested their respective contentions on the general rules applicable to trees growing on land of the kind to which the land of the accused belongs. The learned Government Pleader has broadly argued that in no case has a *khot* any right to the soil, or to the trees growing upon it, unless he affirmatively proves such a

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right. He relies on the decision at I. L. R., 4 Bom. 264 ; P. J., 1875, p. 325 (*Nagardas* v. *The Conservator of Forests*) ; I. L. R. 12 Bom. 534 (*Collector of Ratnagiri* v. *Antaji Lakshman*). We are very far from being certain that the authorities referred [674] to really lay down such a sweeping proposition, without reference to the *onus* of proof in each particular case. And in the present case, as will be seen further on, we could not decide against the accused on the strength of any such wide presumption. Nor can we hold that s. 37 of the Bombay Land Revenue Code of 1879 helps the Government; because on the other side it would be necessary to have regard to the presumption of full ownership arising from actual possession and enjoyment, which in this particular case appears to have extended over a considerable period. We think that we cannot, in this case, give effect to either of these arguments in favour of Government in this case; because we are of opinion that the land here being admittedly the *khoti khasgi* land of the accused, must be deemed to be entitled to the benefit of Dunlop's proclamation by vritue of which the trees then growing and thereafter to be planted on the land become the landholder's property free from any right on the part of Government. Such appears to have been the view of the Court in the case of *The Collector of Ratnagiri* v. *Vyankatrav N. Surve* (1), and, in the absence of any specific evidence in the present case, we think that view must be followed, notwithstanding the observations referred to by the District Magistrate limiting the effect of that decision which are contained in Sir M. R. Westropp's judgment. We cannot agree with the District Magistrate in his view that Dunlop's proclamation could be withdrawn by Government in so far as it related to trees planted after its date. The contrary was expressly decided in *Surve's case*, and in that decision we concur, having regard to the express terms of Dunlop's proclamation. That being the conclusion at which we have arrived, it is unnecessary to consider the points raised in reference to Bombay Act I of 1865 and Bombay Act V of 1879. It is not contended that either of those Acts deprived landholders of any rights already conceded to them. Whether those Acts or either of them would have helped the accused in this case, but for the view which we take of the effect of Dunlop's proclamation, we need not in this case determine. On the whole, therefore, we must reverse the conviction had in this case, and order the fine to be refunded.

[675] FULTON, J.—The first question which we have to consider is whether the teak trees in dispute were the property of the defendant by virtue of Mr. Dunlop's proclamation. It is not disputed that the land on which they grew was held by the defendant as *khoti khasgi*, but it is contended that such land did not come within the terms of the concession. The proclamation as translated on p. 535 of I. L. R., 12 Bom., was as follows:—

"Whereas the Government has observed that as the former Government used to take the teak, blackwood and other good timber grown on the lands situate in the aforesaid zilla belonging to any person whatever, the people did not take the trouble of raising (such timber trees); and (whereas the Government) thinks that it would be to the advantage of all if from this day forth teak, blackwood, and any other kind of good timber trees were raised in the country, it is proclaimed to all the people that the Government has no intention (eye) towards the trees that may be

(1) 8 B.H.C.R.A.C.J. 1.

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growing on the lands of any person whatever situate beyond the frontiers of the jungles preserved by the Government . . . that those who may own and may grow hereafter (such trees) may (*i.e.*, have the liberty to) deal with them in any manner they like; and that no obstruction whatever will be made by the Government (to their so doing)."

The Government Pleader argued that this proclamation did not apply where the *khot* was not proprietor of the soil, and referred us to the remark of Melwill, J., in the judgment in *The Collector of Ratnagiri* v. *Raghunathrav* (1), in which the *khot* claimed the trees on land held by him either as *khot* or as tenant under the *khoti* co-parceners. "It has been decided in regular appeal No. 15 of 1869 (and in this decision we concur) that a *khot* has no right to cut timber either as *khot* or by virtue of Mr. Dunlop's proclamation, unless he can prove the grant of a proprietary title in the land of the village." But as pointed out in *The Collector of Ratnagiri* v. *Antaji Lakshman* (2), "it may be a question whether this did not carry the ruling beyond what was the intention of the Court, as Westropp, C. J., distinctly refrained in his judgment from expressing any opinion upon the general rights of *khots*, and what is even more important, referred without disapproval to his decision in the *Collector of Ratnagiri* v. *Vyankatrav Narayan Surve* (3)." Turning to this last decision we find that Westropp, C. J., held that the proclamation did apply to timber grown on *khoti khasgi* or *khoti nisbat* **[676]** lands. He remarked (p. 4): "It also appears that the land on which the timber was cut was either '*khasgi*' or '*khoti nisbat*' land in the possession of the plaintiff or his sub-tenants, and of such land at all events he would be the proprietor, and not a mere farmer of the revenue, if that be the true position of the *khot* in respect of ordinary *khoti* lands."

The learned Government Pleader, while not disputing that the land on which the timber, in the present case, stood, was *khoti khasgi* land both at the time of the proclamation in 1823, and up to the present date, maintained that the defendant was not the proprietor of the soil, and referred us to the decision of the Privy Council in *Nagardas* v. *The Conservator of Forests* (4), as showing that he was, therefore, not entitled under Mr. Dunlop's proclamation to the teak trees growing on it. It seems to me, however, unnecessary to determine whether or not the *khot* is the owner of the soil of *khoti khasgi* of which he is in possession. I think that the decisions in regular appeal 15 of 1869 and in *The Collector of Ratnagiri* v. *Antaji Lakshman* (2) must not be carried beyond what was actually determined, and, as suggested by Sargent, C. J., in the last-named case, that it is doubtful whether judgments deciding that a *khot* is not entitled to the timber in the forest and uncultivated lands can be applied to the *khoti khasgi* lands which were in the actual occupation of the *khots* at the time of Mr. Dunlop's proclamation and from which they could not be ousted by Government so long as they paid the assessment due on their *khoti*.

The correct mode of construction of grants by the Crown or Government is stated by Westropp, C. J., at the top of p. 331 of the Printed Judgments for 1875 as follows:—"In respect to Crown grants upon a question of the meaning of words the same rules of commonsense and justice must apply, whether the subject-matter of construction be a grant

(1) P. J. (1875), p. 324.
(2) 12 B. 534 (549).
(3) 8 B.H.C.R.A.C.J. 1.
(4) 4 B. 264.

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from the Crown or from a subject,' and that 'it is always a question of intention, to be collected from the language used with reference to the surrounding circumstances.' If those guides to a satisfactory construction fail, but not otherwise, the ancient rule is that 'if the king's grant can endure to two intents it shall be taken to [677] the intent that makes most for the king's benefit." Applyng this test we have to decide, not whether *khots* can be said to be the owners of the soil of their *khasgi lands*, but whether the language of Mr. Dunlop's proclamation, when read by the light of surrounding circumstances, is such as to make it clear that he intended it to apply to *khoti khasgi* lands.

The circumstances under which the proclamation was issued are explained in Mr. Dunlop's letter to Government, No. 5 of the 18th October, 1823 (paras. 21 to 28), and of Government's reply thereto, No. 1630 of the 1st November, 1823, to which by the courtesy of the Chief Secretary we have been enabled to refer. Mr. Dunlop's recommendation, which was sanctioned by Government, was stated in the last sentence of his letter as follows:—

"I, therefore, think that the established forests should be retained by Government, and with the hope of encouraging the growth of teak that a proclamation should be issued surrendering all the claims asserted by the former Governments to teak or other valuable woods, and declaring that wherever these may be found beyond the limits of the three forests of Band and Tordil and Vinhiri in the Surambay (Suvarnadurg?) Taluka and of Mhan near Malvan, they shall henceforth be the full and exclusive property of the persons on whose grounds they may grow, who shall be free to or dispose of such trees in any way they choose."

Whether the proclamation issued in pursuance of the recommendation above expressed, gave *khots* a right to the valuable timber in forests and jungle lands in *khoti* villages, may well be doubted. Mr. Dunlop's report of the 31st December, 1822, referred to in Mr. Candy's compilation on Khoti tenure, shows that he spoke of watandar *khots* (*vide* para. 10) as "purely farmers" (of the revenue), and it may, therefore, be improbable that in his proclamation about trees he would, in referring to *khots*, have intended to include in the category of lands "belonging to" them the uncultivated and jungle lands of the village. Accordingly in appeal No. 15 of 1869 (P. J., 1875, p. 325) the High Court held that the proclamation did not confer on the *khot* the right to trees growing in a *khoti* village in respect of which he was unable to prove a proprietorship in the soil, and the decision was confirmed by the Privy Council on appeal (I. L. R., 4 Bom., 264). Similarly in *The Collector of Ratnagiri* v. *Antaji Lakshman* (1) it was [678] held that, in the absence of a *sanad* expressly granting the right to cut timber and the proprietorship in the soil of the village, a *khot* had no right to cut timber on the uncultivated and forest land, inasmuch as in uncultivated land he had no right of proprietorship which could fall within the contemplation of Dunlop's proclamation. But it seems to me that in regard to *khasgi* land, of which the *khot* was actually in possession, it is impossible to say that it was not within the contemplation of the proclamation. The correspondence preceding the issue of this document shows that it was intended to be of wide application, and it is difficult to imagine to what class of lands it was intended to apply, if it did not include those of which the *khot* was entitled to the permanent occupation so long

(1) 12 B. 534 (549).

as he paid the assessment due on the village. It may be said that it would apply to the holdings of *dharekaris*; but it is not easy to suppose that Mr. Dunlop intended to make the concession to these men and not to other classes of permanent occupants, for in paragraph 52 of his report of 15th August, 1824, he speaks of the lands "belonging to the *khots*," and in this expression he must certainly have intended to include *khoti khasgi* lands. The passage which is quoted at the top of p. 14 of Mr. Candy's compilation is as follows:—"In the register of *pahanis* or surveys that have at different times been made of the districts under the Collectorate, the fields belonging to *khasgi* or *dharekari* rayats are entered in their own names, whereas those belonging to the *khots* and cultivated by *ardhelis* are entered in the names of the *khots*." This extract supports the view that when in his proclamation he referred to lands "belonging to any person" he intended to include those occupied by *khots* as their *khasgi*, and that he had not in his mind the idea of excluding from its scope all lands excepting those in respect of which valid *sanads* could be produced, granting to the holders the proprietary right in the soil.

Under these circumstances, while aware that it is difficult to reconcile this judgment with that reported in *The Collector of Ratnagiri* v. *Raghunath* (1) I think that we ought to follow the decision in *The Collector of Ratnagiri* v. *Vyankatrav N. Surve* (2) in holding that Mr. Dunlop's proclamation did grant the right [679] to teak and other forest trees in the *khasgi* lands held by watandar *khots*. It is true that it was the intention of that decision not to prejudice the right of Government, in any similar case that might subsequently arise, to give evidence upon the points on which light had not been shed; but I do not find that in the present case our attention has been called to any facts requiring us to differ from the conclusion arrived at. It is clear, too, that the right to trees having once been conceded could not be withdrawn by the proclamation of 1851, and it seems also manifest that the contention is untenable that the benefit of the first proclamation did not extend to the case of trees planted after its cancellation in 1851. Even though the *khot* may not be the proprietor of the soil in *khoti khasgi* lands, he is certainly the holder of an interest in it, and that interest having in 1823 been increased by the concession of all trees which he might grow thereafter could not subsequently be reduced by the withdrawal of the right to such trees.

Such being my opinion on the first question raised, it is unnecessary to consider whether the second contention on behalf of the defendant, *viz.*, that the right to trees had been conferred on him when the survey settlement was introduced, is maintainable. For the foregoing reasons, I concur in setting aside the conviction and directing that the fine, if paid, be refunded.

Conviction quashed.

(1) P. J. (1875), p. 324. (2) 8 B.H.C.R.A.C.J. 1.