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IN RE DHONDO KASHINATH.

Arunodaya Press as were used for the printintg of the "Hindu Panch" and should not have passed an order of forfeiture of the whole press.

It is to be observed, however, that section 3 of the Newspaper (Incitements to Offences) Act, VII of 1908, provides for the making of a conditional order declaring the printing press used for the purpose of printing or publishing such a newspaper to be forfeited, and clause (*c*) of section 2 defines printing press to include all engines, machinery, types, lithographic stones, implements, utensils and other plant or materials used for the purpose of printing.

As the paper was printed at the Arunodaya Press, the Magistrate was right in forfeiting the whole press as defined by the Act.

We, therefore, dismiss the appeal.

Appeal dismissed.

R. R.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

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December 8.

TRIMBAK RAMCHANDRA PANDIT AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS, *v.* SHEKH GULAM ZILANI WAIKER (ORIGINAL PLAINTIFF), RESPONDENT.*

Saranjam—Inam—Miras (permanent tenancy)—Denial of Saranjamdar's title—Attornment to successive Saranjamdars—Estoppel—Claim to hold as Mirasi tenant—Limited interest—Adverse possession.

In an ejectment suit brought by an Inamdar against persons claiming to hold as Mirasi or permanent tenants, it was conceded that the Inam rights in the land in suit appertained to a Saranjam held on political tenure and that the present incumbent of the Saranjam was the plaintiff. The defendants resisted the plaintiff's claim to eject them on the ground that the Inam rights were merely the right to receive the royal share of the revenue and that the proprietary rights in the soil were, prior to the date of the grant, vested in the grantee of the Inam, had descended to his heirs independently of the Inam and furnished the leasehold or Mirasi right.

* Second Appeal No. 537 of 1907.

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Held, that the defendants' contention involved the denial of the title to the reversionary rights in the lands in the defendants' occupation of the successive Saranjamdars approved by Government. The defendants had, however, been continuously paying rent for their holding to the successive Saranjamdars including the plaintiff. They were thus estopped by attornment from disputing the plaintiff's title.

Vasudev Daji v. *Babaji Ranu*(1) and *Doe dem. Marlow* v. *Wiggins*(2), referred to.

The rights of successive holders of hereditary and impartible estates not governed by the ordinary rules of inheritance but subject to the condition that Government shall approve of the heir may be barred by adverse possession.

Tekait Ram Chunder Singh v. *Srimati Madho Kumari* (3), referred to.

Where in an ejectment suit by an Inamdar it was shown that the defendants, for more than twelve years before the suit, openly asserted their claim to hold as permanent Mirasi tenants,

Held, that the defendants had acquired a title to the limited interest claimed by them and could not be ejected.

SECOND appeal from the decision of D. G. Gharpure, First Class Subordinate Judge of Satara with appellate powers, confirming the decree of G. N. Sathe, Subordinate Judge of Wai.

Suit in ejectment brought by an Inamdar against persons claiming to hold as Mirasi or permanent tenants.

The facts of the case were as follows:—

The plaintiff's family held several Saranjams, Inams and other properties situate in the Poona, Satara, Khandesh and Belgaum districts. The land in dispute, known as the Wai Saranjam, is situate at Wai in the Satara District. In the year 1716 the plaintiff's ancestor Shekh Mira I, who was in the service of Satara Government, made a representation to Shahu Chhatrapati who granted to him a Sanad (Exhibit 94) as follows:—

Peace. Prosperity. In the coronation year 42 (A. D. 1716) the name of the cyclical year being Manmath, the lunar date the 5th of Shravan Bahul (dark half)—Monday. The illustrious King Shahu Chhatrapati (*i.e.*, the lord of the umbrella) Swami—the ornament of the warrior race, issued an order to Rajashri Annaji Janardan, Deshadhikaris and Lekhaks (writers), present and

(1) (1871) 8 Bom. H. C. R., A. C. J., 175. (2) (1843) 4 Q. B. 367.
(3) (1885) L. R. 12 I. A. 197.

future of Prant Vai as follows:—Ajam Shekh Mira walad Bava Khan, an inhabitant of Kasba Vai, made a representation before the Swami (*i.e.*, the King) at Fort Satara (stating) "I have rendered a great deal of service with a singleness of purpose in the kingdom of the Swami. As to that, there is my old *Katban** Thikan—being land cultivated by irrigation, measuring Bighas ... situated at Kasba Vai, which the Swami should be pleased to grant me in Inam." He made a representation to this effect. The Swami thereupon taking (the representation) into consideration and (considering) that he is a devoted servant of the Swami, is graciously pleased to grant in Inam the old *Katban** Thikan, being land cultivated by irrigation, measuring 6½ Bhighas, six and a half Bighas—together with all taxes and cesses (but) exclusive of the Hakdars (dues) to him and to his sons, grandsons, etc., from generation to generation. You are therefore to fix the said land (so as) to measure six and a half Bighas—twenty Pands going to make one Bigha—and mark off the four boundaries thereof and continue the (same as) Inam. You are not to insist upon the production of refresh letter (of grant) and deliver the original letter to the person aforesaid for his enjoyment. Note this.

Subsequently in the year 1848 Shekh Khan Mahomed, a descendant of Shekh Mira I, granted in Miras (perpetual tenancy) the land in dispute to Baburav Raghunath Pandit, an ancestor of the defendants. The Miraspatra (Exhibit 84) was as follows:—

To Bhai Baburao Raghunath Pandit, may your affection endure from your sincere friend Amir Hussain *alias* Shekh Khan Mahomed Baba Saheb of Wai Inami Jahagirdar. Greetings—In this Kasba there is my Inami land. The same called *Katban* measuring Bighas 4 and (the right to take) water for a Prahar (*i.e.*, three hours) have been with your father on a lease of cultivation for the total fixed rent of Rs. 40 since the Shak year 1745 (1823-24 A. D.). As to that, you intimate to me that a fresh lease should be granted by me in regard to the same. The same (request) being considered, and it being further considered that you and your father had been very useful to me, this fresh Miras lease is granted. Therefore you should pay Rs. 40 every year as rent in respect of the above land, as you have been paying hitherto and enjoy the same. In future when on a survey being made of the land the assessment may be increased or decreased, you should pay accordingly and enjoy the said land yourself, your sons and grandsons, etc., from generation to generation. You will not be molested for more. Forwarded on the 19th moon of the year one thousand two hundred and forty-nine. The lunar date the 5th of Jeshta Vaidya Shake 1770 (21st June 1848), the name of the cyclical year being Kilak.

* *Katban*=A grant or tenure in perpetuity for a fixed sum.

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Under the terms of the said Miraspatra the defendants' family continued to hold the land on payment of the fixed rent to the grantor Shekh Khan Mahomed till his death in 1872. After that year the defendants continued in possession on payment of the rent to the holders of the Saranjam for the time being or to Government when the Saranjam was resumed by Government owing to the death of the incumbent. In the year 1894 Government recognized the plaintiff as the holder of the Wai Saranjam, and he in the year 1904 brought the present suit to recover possession of the land in dispute from the defendants, alleging that they had been enjoying the land as Mirasdars under the former holders of the Saranjam and that the Miras grant was not binding on him.

The defendants contended *inter alia* that they were the Mirasdars of the land in dispute and the plaintiff had only the right of getting rent every year from them; that only the rent of the land was paid to the plaintiff, his ancestors and Government when the property was under attachment; that whenever the property was attached by Government, only the right to get the rent was attached, that the defendants' Miras right was thus recognized by Government and that the suit was time-barred.

The Subordinate Judge found that the Saranjam was handed over by Government to the plaintiff free of any incumbrances or other jural relations created by the previous holders, that the defendants were neither annual nor perpetual tenants of the land, they being occupants of the land were *quasi* tenants from year to year at the will and pleasure of the Saranjamdars, that the Saranjam included the ownership of the soil and was not restricted to the revenue of the land and that the plaintiff was entitled to recover possession. He, therefore, allowed the claim for the following reasons:—

Now the present holder of the saranjam is 5th in descent from Shekh Mira I to whom the grant of the saranjam was made in 1708 (1716 ?) A. D., and the title of the re-grant in his (present holder's) favour dates from 1894 (exhibit 42). The history as to how the property has been held by successive holders shows that each of them has received it at the pleasure of the then ruling power either for the military service to be rendered at the time of the grant or on

political considerations entirely within the discretion of the paramount power. The words of the grant from time to time predicate rather the break of the old estate with the death of the holder than its continuity through him to the new holder. The words showing continuity from generation to generation have to be given in this case restricted sense and not their usual significance; and this is evident from the nature of the estate passed. It is argued for the defence that the words in the *sanad* relating to the lands called Katban, suggest that they were already in the occupation of the plaintiff's family and the grant created only the right under which they were thereafter to be held. It was argued that accordingly the powers of resumption to be exercised by Government at the death of the holder of the saranjam cannot go beyond what was originally granted. It cannot disturb the occupancy right. The import of the document was under the consideration of their Lordships of the Privy Council, and whatever their effect so far as the plaintiff's interest is concerned as against Government, they cannot be available to defendants who come under the grant of Khan Mahomed II and he could not pass more than what he had. He could give the life estate he had, and the words of the title-deed of the defendants itself indicate that a regrant was considered necessary and desirable. It has been decided by the Privy Council that no distinction can be drawn between the Inam and the other property in question, and the whole of the property including the Inam has to be continued as a personal and military Jahagir. Government's action from time to time was based on political considerations and the tenure created was political. The scope of defendants' title must, therefore, be judged from the scope of title of the plaintiff himself. Plaintiff has acquired the title as a holder under a re-grant of the saranjam, and this circumstance cuts asunder all relationships of title through which defendants' claim through the previous holders of said saranjam, and there is no continuity of interest through previous holders. Plaintiff acquired the estate free of any jural relationships created between previous holders and defendants. * * * * *

It will be seen from the peculiar nature of the estate successive holders of the saranjam have acquired that the defendants in occupation of the lands under them have no subsisting relations either as ordinary yearly tenants or as permanent tenants in the ordinary significance of the two terms. The occupation is of the nature of *quasi* tenants from year to year, if I may so style it, terminable with the estate of the successive holders, and continuable at their pleasure. The acts and omissions of previous holders cannot bind the plaintiff, and time cannot run against him as dating from the period of the last holder's enjoyment of the saranjam.

On appeal by the defendants the appellate Court confirmed the decree. The following are extracts from the Appellate Court's Judgment:—

The grant of the *saranjam* to plaintiff is admitted. It is also conceded that the Inam rights in the suit lands belong to the *saranjam* and are passed to plaintiff by the grant. The question is about the *Miras* rights. Plaintiff says

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that these rights were created by former holders of the *saranjam* and that they terminated by the grant to him of the *saranjam* by Government. I feel not the slightest doubt that if plaintiff's former allegation is true, the latter must follow. The question now reduces itself to this: whether *Miras* rights were created in defendants by a former holder of the *saranjam* or existed in defendants prior to the very creation of the *saranjam*. It is proved in this case that the *saranjam* was created prior to 1785 (*vide Sanad* * * translated at p. 446 of I. L. R. 17 Bom. 445) and the plaint lands, at any rate, since that year, came to be considered as appertaining to the *saranjam*. It is not, therefore, necessary to go behind 1785. Now the creation of defendants' *Miras* was in 1848 (*vide* Exhibit 84). They are not able to go behind this year. If so, their rights must cease with the death of the grantor unless revived by the next holder of the saranjam. It is admitted that not only has the original grantor died but also his successors. Plaintiff who is now the holder of the *saranjam* does not wish to continue defendants' rights and they must vacate. This settles the whole question.

Plaintiff's title was created in 1895 (1894?) from which the present suit is within 12 years. It is not, therefore, time-barred. On this point I was referred to *Radhabai* v. *Anantrav*, I. L. R. 9 Bom. 198, which is, however, a *vatan* case. A *vatandar* succeeds to the *vatan* by right of inheritance. A *Saranjam* is entirely within the gift of the ruling power (I. L. R. 17 Bom. 431) and a successor takes the *saranjam* by virue of this gift and not by right of inheritance, or any other right.

The defendants preferred a second appeal.

Jayakar, with *G. B. Rele* and *S. R. Bakhle*, appeared for the appellants (defendants):—Our first contention is that under the sanad, exhibit 94, what was granted as Saranjam to Shekh Mira I was the revenue of the land and not the land itself. The land is mentioned in the sanad as *Katban*, which word is the corruption of the word *Katuban*, and the meaning of *Katuban* is 'a grant or tenure in perpetuity for a fixed sum': see Molesworth's Dictionary. That being so, the land was thus already in the possession of the grantee as *Katban*, that is *Miras*, and what was granted by the sanad as Saranjam was the exemption from the payment of land revenue. The then Government exempted the grantee from the payment of the revenue due to royalty. The language of the sanad is quite clear on the point. Under the sanad the grantee's *Kadim* (old) *Katban* was granted in Inam. That means what was granted was the right of Government, namely, the right to receive revenue. Government could not profess to grant what already belonged to the grantee as perpetual tenant,

namely, the land. It was wrong to hold that the grant of the Saranjam affected the soil. Our contention is fortified by the grant of the Miraspatra, exhibit 84. That grant expressly refers to the revenue of the land. The land *Katban* was granted in *Miras* to the plaintiff's ancestor and we were to pay to him, our landlord, the revenue which was Saranjam.

Further, whenever Government resumed the Saranjam on the death of the holder and levied attachment thereon, what was attached was the revenue and not the land. They allowed the land to remain in our possession and we paid them the revenue. If the land was Saranjam Government would have attached the land.

[Batchelor, J.:—What Government resumed was the estate, that would mean the land also.]

We submit that was not so. If the land was Saranjam there was nothing to prevent Government from taking possession of the land by ejecting us, which they never did. Further, by resumption Government does not make itself the absolute owner of the Saranjam. The Saranjam is not extinguished. Government holds as trustee for the next incumbent to be chosen by Government. Such incumbent is generally a capable and an eligible member from the family of the deceased incumbent. A stranger is not generally allowed to come in. Whenever Government re-grants the Saranjam, such re-grant is always accompanied by the cash appertaining to the Saranjam accumulated in the hands of Government.

Further, it has been held that Saranjam is generally the grant of Royal revenue and very rarely soil: *Krishnarav Ganesh* v. *Rangrav*[1]; *Vaman Janardan Joshi* v. *The Collector of Thana*[2]; *Ravji Narayan Mandlik* v. *Dadaji Bapuji Desai*[3]; *Ramchandra* v. *Venkatrao*[4]. There is no distinction between Saranjam and Jahagir. They are one and the same.

(1) (1867) 4 Bom. H. C. R. (A. C. J.) 1 at p. 7.
(2) (1869) 6 Bom. H. C. R., A. C. J. 191.
(3) (1875) 1 Bom. 523.
(4) (1882) 6 Bom. 598 at p. 606.

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Our next contention is that the suit is time-barred. The lower Court has computed the period of limitation from the time of the plaintiff's selection as Saranjamdar in the year 1894. But that is not a correct view. According to the nature of the Saranjam holding, each incumbent is only a life-member. Assuming that the grant of the Saranjam included land, then the land came into our possession in the year 1848 under the terms of the Miraspatra granted by Shekh Khan Mahomed. He died in the year 1872, therefore the grant of the Miras by him also came to an end in that year. Notwithstanding that the grant thus came to an end we have continued in possession up to this day. Since 1872 we have been in possession. Therefore adverse possession began to run in our favour from the year 1872 and the present suit was brought in the year 1904. It is therefore clearly time-barred: *Dattagiri* v. *Dattatraya*(1); *Nilmony Singh* v. *Jagabandhu Roy*(2); *Behari Lal* v. *Muhammad Muttaki*(3); *Gnanasambanda Pandara Sannadhi* v. *Velu Pandaram*(4); *President, &c., of the College of St. Mary Magdalen, Oxford* v. *The Attorney-General*(5); *Bobbett* v. *South Eastern Railway Company*(6).

Coyaji, with *G. S. Rao*, for the respondent (plaintiff):—This is a suit in ejectment and our title has been held proved. It was argued that the Saranjam was the grant of revenue and not of land. The documents relied on for this contention are of doubtful import. What was granted by the sanad, exhibit 94, was *thikan Katban*, that is land *Katban*. What is to be considered is what is the inference of fact to be drawn from the documents, and both the lower Courts have concurred in drawing that inference. Such an inference cannot be interfered with in second appeal.

The Saranjam and Inam have been held under one political tenure: *Shekh Sultan Sani* v. *Shekh Ajmodin*(7). This ruling of the Privy Council, though not *res judicata*, is relevant under sections 13 and 43 of the Evidence Act. It shows that Saranjams and Inams stand on the same footing and there is no distinction between them. In the year 1785 the character of the Saranjam

(1) (1902) 27 Bom. 363.
(2) (1896) 23 Cal. 536.
(3) (1898) 20 All. 482.
(4) (1899) L. R. 27 I. A. 69.
(5) (1857) 6 H. L. C. 189.
(6) (1882) 9 Q. B. D. 424.
(7) (1892) 17 Bom. 431.

holding was changed and it was brought to the level of Inam holding as shown in the above ruling.

Saranjam and Jahagir are different estates. They differ in their nature: *Gulabadas Jugjivandas* v. *The Collector of Surat* (1); *Dosibai* v. *Ishvardas Jagjivandas*(2).

The point of adverse possession was not taken in the first Court. There was an issue on the point of limitation in appeal and the finding thereon was in the negative. When a party is in possession, his possession must be referred to a legal and not to an illegal origin. The defendants set up tenancy, therefore their possession cannot be adverse to us: *Dadoba* v. *Krishna*(3); *Budesab* v. *Hanmanta*(4); *Thakore Fatesingji* v. *Bamanji A. Dalal*(5).

The cases relied on in support of the point of adverse possession relate to Vatan and not to Sarangam. Vatan estate is hereditary, while Saranjam is only a life estate: *Ramchandra* v. *Venkatrao*(6). On the death of the Saranjamdar the property goes to Government. The period of adverse possession against Government is sixty years. It is not shown when the defendants' possession became adverse to us.

Jayakar in reply:—The decision of the Privy Council in *Shekh Sultan Sani* v. *Shekh Ajmodin*(7) does not touch the point as to the construction of the sanad in suit.

The land is mentioned in the sanad because its revenue was to be paid to the landlord.

Our possession became adverse from the year 1872 when Shekh Khan Mahomed who gave the Miraspatra to us died. Further there is evidence in the case, exhibit 73 and exhibit 79, which shows that in the years 1885 and 1889 we claimed to hold as Mirasdars, while the present suit was filed in the year 1904.

The cases relied on for the purpose of showing that Saranjam and Jahagir are distinct, turned upon the words of the particular grants therein.

(1) (1878) 3 Bom. 186.
(2) (1891) 15 Bom. 222.
(3) (1879) 7 Bom. 34.
(4) (1896) 21 Bom. 502.
(5) (1903) 27 Bom. 515.
(6) (1882) 6 Bom. 598 at p. 606.
(7) (1892) 17 Bom. 431.

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SCOTT, C. J.:—This is a suit in ejectment brought by an Inamdar against persons claiming to hold as Mirasi or permanent tenants.

It was conceded in the lower Court that the 'Inam' rights in the lands in suit appertain to a Saranjam held on political tenure and that the present incumbent of the Saranjam is the plaintiff. The defendants, however, contend that the Inam rights are merely the right to receive the royal share of the revenue and that the proprietary rights in the soil were prior to the date of the Inam grant vested in the grantee of the Inam, have descended to his heirs independently of the Inam, and have furnished the permanent leasehold or Mirasi interest by virtue of which the defendants resist the plaintiff's claim to eject them. The lower appellate Court held it proved that the Saranjam was created prior to 1785 and that the lands in suit, at any rate since that year, came to be considered as appertaining to the Saranjam. As the lease under which the defendants claim dates only from 1848, the finding of fact of the lower Court disposes of the point.

If the question were, as urged by Counsel for the defendants, a mixed question of fact and law it must, nevertheless, be decided against the defendants. The contention involves the denial of the title to the reversionary rights in the lands in the defendants' occupation of the successive Saranjamdars approved by Government. The defendants have, however, been continuously paying rent for their holding to the successive Saranjamdars including the plaintiff. They are thus estopped by attornment from disputing the plaintiff's title. See *Vasudev Daji* v. *Babaji Ranu*[1] and *Doe dem. Marlow* v. *Wiggins*[2]. In so far as the defendants' case depends upon the construction of the Sanad of 1785, the decision of the lower Court rests upon the authority of the judgment of the Privy Council in favour of Sheikh Ajmodin, the Saranjamdar, who succeeded their lessor, against Sheikh Sultan Sani, their lessor's devisee, with reference to the lands in suit. A reference to the report of the proceedings in that litigation will show that the lands in suit were held not to be the private heritable and devisable property of the defendants' lessor but to

(1) (1871) 8 Bom. H. C. R. (A. C. J.) 175. (2) (1843) 4 Q. B. 367.

be held on political tenure as part of the Saranjam. See *Shekh Sultan Sani* v. *Shekh Ajmodin*[1].

The defendants' second line of defence was that the plaintiff's right is barred by the adverse possession of the defendants for upwards of twelve years under a claim to hold as permanent tenants. It is urged that time will run against the successive Saranjamdars for the same reasons as it was held to run against successive Watandars in *Radhabai* v. *Anantrav*[2]. This defence involves an examination of the nature of the particular estate with which we are concerned. The nature of the estate appears clearly from the judgment of the Privy Council in *Shekh Sultan Sani* v. *Shekh Ajmodin*[1]. It is there stated that in consequence of the advice of Mr. Elphinstone the Court of Directors, in a despatch of the 26th October 1842, directed that the Jaghir of Shekh Mira (being the estate in question) "already restored to the son of the last holder but for life only must be considered hereditary". "It remained for Government," say their Lordships, "when necessity should arise to determine to whom it should regrant or in whom it should recognise a right of succession to the Jaghirs then possessed by Khan Mahamed". Khan Mahamed died on the 31st of December 1872. It then became necessary to determine to whom his Saranjam should be granted. Amongst the candidates was Shekh Ajmodin, the respondent, a descendant of Shekh Abdul Khan, the half brother of Khan Mahomed. This led to a Resolution by the Government dated the 23rd of October 1873 "that the Agent for Sardars should be requested to investigate judicially and after due notice to all parties concerned whether Shekh Ajmodin is under Mahomedan law the legitimate successor to the headship of the family either by adoption or descent." On the 28th November 1873, the Agent reported that Shekh Ajmodin was not the legitimate successor to the headship of the family under Mahomedan law as Khan Mahomed had left a daughter and she had sons who were nearer the head of the family than Shekh Ajmodin, but he recommended that any property the succession to which Government had power to regulate should go

(1) (1892) 17 Bom. 431. (2) (1885) 9 Bom. 198.

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to Ajmodin. On the 27th March 1874 the Government confirmed the Agent's report in the following terms:—

"Resolution.—The proceedings of the Agent for Sardars are approved and for the reasons given by Baron Larpent Shekh Ajmodin should be recognised as the head of the family to whom the Saranjam should be continued. To avoid disputes, the allowances for maintenance of the widows of the deceased Shekh Khan Mahomed and Shekh Abdul Kadar and of any others who have a claim for maintenance on the estate should be settled by order of Government after receiving the recommendation of the Agent. The allowances now paid to Shekh Rakmodeen and Rahimanbee under Government letter of 28th March 1861 should be continued."

This arrangement having been approved by the Secretary of State, the whole of the Jaghir and Inam incomes were made over to Shekh Ajmodin, and the agent and the administrators of the estate which had been taken into the hands of Government called on all persons to acknowledge him as owner.

Their Lordships conclude their judgment as follows:—

"Their Lordships, however, are of opinion that no distinction can be drawn between the Inam and the other property in question. As has been pointed out, the Sanad of 1785 included the inam villages and lands with the Mokasa as parts of one Saranjam for the support of troops. The effect of the treaty of the 3rd July, 1820, was to continue to Shekh Mira the whole of the property, including the inam, as a personal and military jaghir. This was done by the Government on political considerations, and the tenure thereby created was political. This was the view taken by the Government in 1876, when it adopted the report of the Alienation Settlement Officer that 'the whole estate intact, Saranjam and Inam, as restored after the war under the treaty of 3rd July, 1820, is continuable as a guaranteed estate to the adopted son' (Ajmodin) 'as the head of the family'.

"Their Lordships, therefore, concur in the opinion expressed by the Governor-in-Council that a mixed estate of Saranjam and Inam was granted by the treaty of July, 1820, to be held on the

same political tenure, and passed intact to the person whom the Government might recognise as the head of the family."

The estate then is a guaranteed hereditary estate. The right to succession is in the family, but it is subject to regulation by Government. When there is a delay in the choice of a successor to the last incumbent, Government collects the revenues for the next holder. The holder has no power of testamentary alienation and presumably has no greater powers with regard to the estate than the holders of other Saranjam estates which are, as a general rule, inalienable and impartible. See *Radhabai* v. *Anantrav*[1].

It was conceded that a Saranjamdar would not, except possibly for necessity, have power to create a Mirasi lease to enure beyond his life-time, and the defendants could not, after Khan Mahomed's death, successfully base their possession upon the lease of 1848. The defendants' contention was disposed of by the lower Court on the ground that a successor takes the Saranjam by virtue of the gift of the ruling power and not by right of inheritance or any other right, and that as the plaintiff succeeded in 1895 and the suit was filed in 1904, the claim is not time-barred. It is clear from what has been said above that the lower Court did not rightly apprehend the nature of this particular estate. In its incidents it resembles Ghatwali estates of the kind investigated by the Privy Council in *Rajah Nilmoni Singh* v. *Bakranath Singh* [2], estates which are not transferable nor divisible, which are hereditary though not governed by the ordinary rules of inheritance, and which are subject to the condition of the Government's approval of the heir. Against the successive holders of such estates rights may be acquired by adverse possession. See *Tekait Ram Chunder Singh* v. *Srimati Madho Kumari* [3]. In that case it was held that time would begin to run not from the commencement of the tenancy of persons claiming to hold as permanent tenants but from the date when the claims of the parties became openly and undoubtedly adverse. In the present case it is shown that at least from 1889 the defendants openly asserted their claim to hold as permanent Mirasi tenants. As this was

(1) (1885) 9 Bom. 214, Note (8). (2) (1882) L. R. 9 I. A. 104.
(3) (1885) L. R. 12 I. A. 188 at p. 197.

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more than 12 years before suit the defendants have acquired a title to the limited interest claimed by them and cannot be ejected.

We, therefore, allow the appeal. We set aside the decree of the lower appellate Court and dismiss the suit with costs throughout.

Decree set aside and suit dismissed.

G. B. R.

APPELLATE CRIMINAL.

Before Mr. Justice Batchelor and Mr. Justice Knight.

1910.

January 19.

EMPEROR *v.* BALVANTRAO ANANTRAO.*

Bombay A'bkári Act (Bombay Act V of 1878), sections 43 (b), 47†—Cocaine—Illegal possession—Removal—Transportation of cocaine.

Accused No. 1 who was illegally in possession of cocaine brought it from his room and gave it to accused No. 2 who stood opposite his house. The latter carried it to some distance and delivered to a Purdeshi. The two accused were, under these circumstances, charged with transporting cocaine, an offence punishable under section 43 (*b*), of the Bombay A'bkári Act, 1878. The Magistrate however, acquitted them of the offences and convicted them of illegal possession of cocaine, under section 47 of the Act. Against this order of acquittal, the Public Prosecutor appealed to the High Court:

Held, that the Magistrate was right in declining to convict the accused under section 43 (*b*), of the Bombay A'bkári Act, 1878, inasmuch as the accused's

* Criminal Appeal No. 413 of 1909.

† Sections 43 (*b*) and 47 of the Bombay A'bkári Act (Bombay Act V of 1878) runs as follows:—

43. Whoever, in contravention of this Act, or of any rule or order made under this Act, or of any license, permit or pass obtained under this Act,—.....

(*b*) transports or removes liquor, hemp or any intoxicating drug from one place to another, or ..... shall be punished for each such offence with fine which may extend to one thousand rupees or with imprisonment for a term which may extend to six months, or with both.

47. Whoever, except under the authority of some license, permit, pass or special order obtained under this Act, has in his possession within any local area or place to which the provision of section 17 has been applied, any larger quantity of country liquor or of any intoxicating drug than may legally be sold by retail under the provision of the said section, shall be punished with fine which may extend to two hundred rupees.