APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Heaton.

1910. *June 23.*

YELLAPPA BIN RAMAPPA KURI (ORIGINAL DEFENDANT No. 2), APPELLANT, *v.* MARLINGAPPA BIN CHAVADAPPA AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Shetsanadi † *lands—Rules framed under Act XI of 1852 (Bombay)* ‡*—Government continuing the shetsanadi lands to the family of the shetsanadi who is discharged by Government without any fault on his part—Continuance on condition of paying full survey assessment on the lands—Subsequent resumption of the lands by Government.*

On the death in 1865 of the then *shetsanadi*, one B, Government appointed one Y as the new *shetsanadi*; but under the rules framed under Bombay Act XI of 1852, Government continued the *shetsanadi* lands to the family of B on condition of their paying full survey assessment on the lands. The remuneration of Y was made payable out of the extra assessment recovered in 1905. Government resumed the lands and handed them over to Y for his services.

Held, that both the order passed in 1865 and the action taken under the rule framed under Bombay Act XI of 1852 had in law the effect of converting the land from a *shetsanadi vatan* into a *rayatwari* holding and investing the holder of the land with the rights of an ordinary occupant, entitled to it, so long as he paid the survey assessment.

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* First Appeal No. 1 of 1908.

† The *shetsanadi* is one holding a sanad or grant of lands for military service, applied especially to a local militia acting also as police and garrisons of forts; also an assignment or grant of revenue of land for certain services; the assignment, as well as the office, may be hereditary.—*Wilson's Glossary of Anglo-Indian Terms.*

‡ 1. The Honourable the Governor in Council affirms the principle that the lands of a *shetsanadi* are liable to be resumed and given to another if the holder misconducts himself. In reserving this right, however, the Governor in Council rules that it shall be exercised only in cases of extreme misconduct.

3. In ordinary cases of misconduct the dismissed *shetsanadi* will be allowed to remain in possession of the land, but the lands will be subjected to full assessment and to a further payment, if necessary, to make up the remuneration of the person employed to perform service.

5. Whenever a *shetsanadi* is discharged without fault because the service is no longer required, the land will remain in his possession subject to the survey assessment and no further demand can be made.

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Held, also, that the proceedings of 1905 were on the supposition that what was done in 1865 on B's death had the effect of continuing the lands in dispute as one reserved for *shetsanadi* service; but that was not its effect, and the proceedings in question were *ultra vires*.

APPEAL from the decision of T. D. Fry, District Judge of Dharwar.

One Bashya was the registered *shetsanadi* and as such certain lands were continued to him by Government free from assessment as remuneration for his services.

On his death in 1865, Government appointed one Yellappa as the new *shetsanadi*; but under the rules framed under Bombay Act XI of 1852, Government continued the lands to the family of Bashya on condition of paying to Government full survey assessment on the lands. The remuneration of the new *shetsanadi*, Yellappa, was arranged to be paid out of the extra assessment thus levied.

Yellava, the mother and heir of Bashya, was in enjoyment of the lands. She sold them to the plaintiffs in 1876.

In 1883, on the application of Yellappa, Government started an enquiry into the question whether they could resume the lands and place them in Yellappa's possession. It was decided that they could not. In 1905, Government again started a similar enquiry, resumed the lands and placed them in Yellappa's possession.

The plaintiff filed this suit against the Secretary of State for India in Council (defendant No. 1) and Yellappa (defendant No. 2), to obtain a declaration of title and to recover possession of the lands.

The defendants contended *inter alia* that the orders complained of by the plaintiffs were legally passed under the rules framed under Bombay Act XI of 1852.

The District Judge decreed the plaintiffs' claim holding that they were not liable to eviction under the rules. The grounds of his judgment were expressed as follows:—

The heirs of the deceased had to pay full assessment to Government and had no further obligation of any sort. It need hardly be added that they were in no way concerned with the manner in which Government might deal with the

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assessment levied. They ceased to be *shetsanadis* and no longer enjoyed the exemption which had been allowed them while they were still *shetsanadis*. From the date of the Collector's order they became ordinary occupants as defined in section 3 (16) of the Land Revenue Code and it will hardly be suggested that, holding as they did in that capacity, their alienee would legally be subjected to the treatment meted out to him in this case.

Clearly the Collector was following this last rule when he passed the order which I have quoted. As I read that rule it gave the *shetsanadi* an "occupancy" on full assessment in lieu of his more favoured tenure. If the services of Bashya had been dispensed with during his lifetime, he would have become an ordinary occupant with nothing whatever to distinguish him from the ordinary rayat whose rights are hereditary and transferable. If on his death the Collector has taken away the land itself, he would have been treating the family with the severity allowed only in case of extreme misconduct.

When it is remembered that these rules provided for the remuneration of the person performing the service, it seems clear that Government did not and could not look for further liability in that land. They "resumed" the land in the sense in which that term is generally understood when applied to inam land. In other words they make it khalsa and with this imposition of full assessment the favoured tenure of the *shetsanadi* became the "occupancy" of the ordinary cultivator.

The Collector following as in duty bound the directions of Government levied full assessment on the land of a *shetsanadi* the continuance of whose office was no longer necessary, and on condition of payment of full assessment granted the occupancy to the *shetsanadi* heirs. There the relations between Government and the occupants ceased and I can imagine no circumstances which could legally justify the removal of these occupants or those claiming under them with a view to the transfer of their rights to the person holding the office of the *shetsanadi*.

I am not dealing here with what might be equitable. I look on the matter from the strictly legal point of view and my conclusion is that Government had no better right to vest the plaintiff than they would have to eject the neighbouring tenant on the ground that his land should preferably be with the Kulkarni as part of his remuneration.

I hold that no particle of liability other than payment of assessment adhered to the land when it was continued to Bashya's heirs (even if any liability ever existed) and that these heirs had as much right to alienate their holding as is recognized in the case of all occupants under the Land Revenue Code and consider the case as I may I cannot perceive any alternative to this finding.

The defendant No. 2 appealed to the High Court.

G. S. Rao, for the appellant.

D. A. Khare, for the respondents.

CHANDAVARKAR, J.:—It has not been contended before us, nor does it appear to have been contended in the Court below by either of the defendants, that the orders passed, and the action taken by the Collector in consequence of those orders in 1865, were illegal. One of the rules then in force and having the force of law under Act XI of 1852 provided that in case of the discharge of a *shetsanadi* "without fault" but because his service was no longer required, his *shetsanadi* land should be allowed to remain in his possession, subject to the survey assessment, and that no further demand could be made. And this is substantially what the Collector did in respect of the land in dispute on the death of Bashya in 1865. The *shetsanadi* service required of Bashya's branch of the family was dispensed with upon the ground that there was no necessity for it; full survey assessment was imposed upon the land; and Bashya's heir was allowed to remain in possession, subject to the survey assessment. After that, no further demand could be made from the person let into possession on that condition. Both the order passed and the action taken under the rule had in law the effect of converting the land from a *shetsanadi vatan* into a *rayatwari* holding and investing the holder of the land with the rights of an ordinary occupant, entitled to it so long as he paid the survey assessment.

But it is urged for the appellant, who was the 2nd defendant in the Court below, that in 1865 the Collector also entered the land in the appellant's name in the revenue records as a *shetsanadi* holding and that he also ordered a portion of the amount of the assessment payable by Bashya to be paid to the appellant for his services as a *shetsanadi*. The appellant's pleader has not been able to show why the land was entered in his client's name in the revenue records as a *shetsanadi vatan* contrary to the implication of the rule just mentioned. The action taken under that rule conferred a certain right upon Bashya's heir; and the mere entry could not affect that right or preserve that as a vatan which, in virtue of the action of the authorities under or on the analogy of the rule, had ceased to partake of that character. The land was not made over to the appellant; nor were its profits as such charged with the remuneration for his services as a *shetsanadi*. He had held the office of *shetsanadi* independ-

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ently of this land in Bashya's lifetime; and on the latter's death all that was done was that his remuneration for that service was increased and the enhanced amount was made payable, not from the land in dispute, but out of the assessment, payable to Government by its occupant. That was an arrangement between the appellant and Government, which could not prejudice the rights of Bashya's heir in the absence of any law affecting that right.

The proceedings adopted by the Collector in 1883 and in 1905, on which the appellant relies in support of his case, were on the supposition that what was done in 1865 on Bashya's death had the effect of continuing the land in dispute as one reserved for *shetsanadi* service. That was not its effect and the proceedings in question were, in our opinion, *ultra vires* of the Collector.

This is the conclusion arrived at by the learned District Judge in his lucid judgment, and we entirely agree with him.

His decree under appeal must be confirmed with costs.

Decree confirmed.

R. R.

ORIGINAL CIVIL.

Before Mr. Justice Macleod.

1910.
March 11.

JOHN GEORGE DOBSON, PLAINTIFF, *v.* THE KRISHNA MILLS, LTD., DEFENDANTS.*

Letters Patent, clauses 12 and 14—Cause of action arising partly within jurisdiction—Further cause of action arising wholly outside jurisdiction—Joinder—Time of application.

An application under clause 14 of the Letters Patent to join a further cause of action arising wholly outside the jurisdiction, can be made in a case in which leave to sue has to be obtained under clause 12; nor is there anything in clause 14 to show that this application must be made before the plaint is filed. There is nothing to prevent the plaintiff making the application at any time before the hearing, but it would certainly be advisable for him to make it at the time the plaint is presented.

* Original Suit No. 64 of 1910.