APPELLATE CIVIL.

Before Mr. Justice Beaman and Mr. Justice Hayward.

CHUNILAL JAMNADAS (ORIGINAL OPPONENT AND DECREE-HOLDER), APPELLANT, *v.* BHANUMATI AND ANOTHER (ORIGINAL PETITIONERS AND JUDGMENT-DEBTORS), RESPONDENTS.*

1911. *September* 5.

Dekkhan Agriculturists' Relief Act (XVII of 1879), section 2, explanation (b)(1)*— Agriculturist—Grant of a village as service vatan—Construction—Grant of revenue and not of soil—Holders not agriculturists.*

Where a Sanad evidencing the grant of a village as service vatan did not go the length of granting anything more than a share of the revenue and provided that in certain cases the grant may be converted into private property, which had not been done, and a question having arisen as to whether the grant was one of soil and whether the holders were agriculturists within the meaning of the Dekkhan Agriculturists' Relief Act (XVII of 1879),

Held, that the grant was a grant of a share of the revenue and not a grant of the soil and did not entitle the holders to be considered agriculturists in view of explanation (*b*) to section 2 of the Dekkhan Agriculturists' Relief Act (XVII of 1879).

FIRST appeal against the decision of G. V. Saraiya, First Class Subordinate Judge of Ahmedabad, in an execution proceeding, Darkhast No. 286 of 1909.

Chunilal Jamnadas, owner of the firm of Manekchand Gordhan, obtained a decree, No. 299 of 1903, in the Court of the First Class Subordinate Judge of Ahmedabad against Majmudar Haribhai Ranchodrai and Majmudar Dayabhai Madhavrai,

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* First Appeal No. 209 of 1910.

(1) Section 2, explanation (*b*), of the Dekkhan Agriculturists' Relief Act is as follows :—

2. In construing this Act, unless there is something repugnant in the subject or context, the following rules shall be observed, namely :—

1st.—'Agriculturist' shall be taken to mean a person who by himself or by his servants or by his tenants earns his livelihood wholly or principally by agriculture carried on within the limits of a district or part of a district to which this Act may for the time being extend, or who ordinarily engages personally in agricultural labour within those limits.

Explanations:—(*a*) * * * * * *

(*b*) An assignee of Government assessment or a mortgagee is not as such an agriculturist within this definition.

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deceased, represented by his daughters Behen Chandramati and Bhanumati, both minors, by their guardian Jadurai Dolatrai for the recovery of Rs. 12,151-4-1. The decree was dated the 20th November 1903. The defendants held a Sanad, dated the 26th July 1877, under which they were owners in equal shares of a Majmudari vatan consisting of the village of Zinjra and cash allowances payable from the Sub-Treasury at Viramgam. The plaintiff, in the year 1909, presented a Darkhast, No. 286 of 1909, for the execution of the said decree and levied attachment on the defendants' property. Thereupon, Jadurai Dolatrai, the guardian of the minor defendants, applied that the proceedings in execution should be transferred to the Collector inasmuch as the minor defendants were agriculturists, their deceased father's source of income being lands. On the plaintiffs' contention that the defendants were not agriculturists because the grant to them was of the royal share of revenue and not of the soil of the village of Zinjra, the Subordinate Judge instituted inquiry and came to the conclusion that the defendants were agriculturists. The Subordinate Judge, however, observed that though under the Sanad the defendants were merely assignees of Government assessment and would not, therefore, be agriculturists within the meaning of section 2 of the Dekkhan Agriculturists' Relief Act, still in support of his conclusion that they were agriculturists, he relied mainly upon the following considerations :—

(1) The second clause in the Sanad gave to the vatandars a privilege, which was not exercised by them, of converting the vatan into private property heritable and transferable in all legal modes.

(2) In the matter of an application by a vatandar to the Collector for a certificate under section 10 of the Pensions Act, the Collector informed the vatandar that no certificate was necessary for the purpose of the intended suit.

(3) Some land in the village was acquired by Government and compensation with respect to trees standing on the land was paid to the vatandars.

(4) The Revenue authorities dealt with the vatandars as owners of the soil and not of land revenue only.

The Subordinate Judge, therefore, passed an order that the execution of the decree should be transferred to the Collector.

Chunilal Jamnadas, opponent and decree-holder, appealed.

L. A. Shah for the appellant (opponent and decree-holder).

N. K. Mehta for the respondents (petitioners and defendants).

HAYWARD, J. :—The appellant decree-holder complains that the respondents judgment-debtors have wrongly been held to be agriculturists within the meaning of the Dekkhan Agriculturists' Relief Act and have wrongly had the execution of the decree against them transferred for execution to the Collector in accordance with the notification of Government under section 320 of the old Civil Procedure Code (Act XIV of 1882), now section 68 of the new Civil Procedure Code (Act V of 1908).

The lower Court held that the respondents were agriculturists because they were holders of certain service inam land and were grantees of the soil and not merely grantees of a share of the revenue upon a true construction of their Sanad, and so were not excepted from the definition of agriculturist by explanation (*b*) to section 2 of the Dekkhan Agriculturists' Relief Act. The lower Court admitted that *primâ facie* the Sanad was a grant not of the soil but of a share of the revenue, but held on a consideration of certain circumstances previous and subsequent to the Sanad that the true construction of the grant was that it was one of the soil.

Now it appears to us that what we must mainly look to is the terms of the Sanad and that the previous and subsequent circumstances are not in this case of any real assistance to us in construing its terms. The main terms of the Sanad are as follows :—

"Whereas certain emoluments are now entered in the Government accounts as the service vatan of the Majmudari—of taluka Viramgam—in the Ahmedabad Collectorate; and whereas the holders of the said vatan have agreed to the annual deduction therefrom as below stated in consideration of Government foregoing the service which they have a right to demand, it is hereby declared that" :—

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"1st:—The vatan as now confirmed, and below specified, shall be continued subject to certain conditions hereditarily without demand of service, and without any further deduction therefrom on account of service and without objection or question on the part of Government as to the rights of any holders thereof, so long as there shall remain in existence any legal heir to the vatan, whether lineal, collateral or adopted within the limits of the vatandar's family and whether descended in the male or female line."

"2nd:—When all the recorded sharers in the vatan agree to request it, the general privilege of adopting at any time any person out of the vatandar's family who can be legally adopted, and of transferring the vatan or any recognized share thereof, by sale, mortgage, etc., as private property, will be granted by the Government to the vatan on the payment from that time forward, in perpetuity of an annual Nazerana of one anna in each rupee of the total emoluments of the vatan as now confirmed and from the date of the imposition of this Nazerana the whole vatan or the recognized shares thereof will be converted into private property heritable and transferable in all legal modes."

Then follows a table showing the name of the vatan to be Majmudari, the amount of land to be the village assessed at Rs. 1,650 of which Rs. 825 is deducted in lieu of service and Rs. 825 is confirmed as emoluments to the grantees.

Now it appears to us that the first clause of this Sanad clearly does not go the length of granting anything more than a share of the revenue, and this is made clearer by a consideration of the second clause which lays down that in certain circumstances the grant may be converted into private property. It is admitted that no such conversion has taken place. If it had, then possibly there might have been room for the argument that the grant had been converted into a grant of the soil.

The distinction between a grant of a share of the revenue and a grant of the soil has been pointed out in the case of *Ramchandra* v. *Venkatrao*[1], where Melvill, J., quoted with approval these remarks in certain other cases of Westropp, C. J.: "Sanadi grants in inam...are, generally speaking, more properly described as alienations of the royal share in the produce of land, *i.e.*, of land revenue, than grants of land" and again "if words are employed in a grant, which expressly, or by necessary implication, indicate that Government intends that, so far as it may have any ownership in the soil, that ownership may

(1) (1882) 6 Bom. 598 at pp. 602, 603.

pass to the grantee, neither Government nor any person subsequently to the date of the grant deriving under Government, can be permitted to say that the ownership did not so pass. * * * * In the Sanad in evidence here, whosoever framed it, was apparently determined that no ambiguity should exist as to what the force of the term 'village' might be; and, in order to be explicit, he added to the grant of the village in *inam* the words 'including the waters, the trees, the stones, (including quarries), the mines, and the hidden treasures therein'." These remarks were again noticed with approval by Jenkins, C. J., in the case of *Rajya* v. *Balkrishna Gangadhar*[1]. We think, therefore, that the grant in this particular case must be held to be a grant of a share of the revenue and not a grant of the soil; and that, therefore, the fact that this village is held by the judgment-debtors does not entitle them to be held to be agriculturists in view of explanation (*b*) to section 2 of the Dekkhan Agriculturists' Relief Act.

We accordingly set aside the order of the lower Court transferring the execution of the decree to the Collector and direct it to dispose of the execution application according to law. Costs of the execution up to date and of this appeal to be borne by the respondents.

Order set aside.

G. B. R.

(1) (1905) 29 Bom. 415.