APPELLATE CIVIL.

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

1916.
June 15.

SHRIMANT MADHAVRAO HARIHARRAO PATWARDHAN, JAHAGIRDAR, STATE MIRAJMALA, BY HIS AGENT VISHWANATH CHINTAMAN (ORIGINAL PLAINTIFF), APPELLANT *v.* ANUSUYABAI KOM EKNATH DAJI JAPE AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Saranjam—Succession to Saranjam—Title by inheritance—Saranjam Rules 2 and 5 under Bom. Act XI of 1852—Suit by previous holder of Saranjam—Subsequent holder filing a suit for the same relief—Res Judicata—*Civil Procedure Code (Act V of 1908), section 11—Adverse possession against the previous holder—Rights of successive holder barred by limitation—Establishment of right to levy assessment—Indian Limitation Act (IX of 1908), schedule I, article 130.*

The plaintiff was the Saranjamdar of an ancestral and hereditary Saranjam village where the lands in suit were situate. The lands were in defendants' possession on tenure in consideration of rendering certain Shetsanadi services. The defendants having no longer rendered any service, the plaintiff prayed for possession of the lands or in the alternative for a declaration establishing his right to levy assessment. The defendants contended that the suit was barred by limitation and also by *res judicata* in consequence of a previous decision in a suit (No. 458 of 1888) between the plaintiff's brother and the predecessors-in-title of the defendants for substantially the same reliefs as claimed by the plaintiff.

Held, that the previous decision operated as *res judicata* as against the present plaintiff because he was claiming under the previous holder and was litigating under the same title as the previous holder in 1888.

Held further, that, since the decision in suit of 1888, the defendants and their predecessors-in-title had been holding adversely without payment of assessment and therefore the claim for assessment was barred by limitation inasmuch as neither a special mode of devolution nor an incapacity of alienation would prevent limitation operating against an estate.

Radhabai and Ramchandra Konher v. *Anantrav Bhagvant Deshpande*,[1] followed.

Per HEATON J. :—The words "between parties under whom they or any of them claim litigating under the same title" in section 11 of the Civil Procedure Code, 1908, are intended to cover, and do cover, a case where the later

* Second Appeal No. 269 of 1914.

[1] (1885) 9 Bom. 198.

litigant occupies by succession the same position as the former litigant. The words of the section are not intended to make any distinction between different forms of succession.

SECOND appeal against the decision of C. Fawcett, District Judge of Poona, confirming the decree passed by H. K. Mehta, Subordinate Judge at Baramati.

Suit to recover possession.

The plaintiff was the Saranjamdar of the ancestral and hereditary Saranjam village of Janu where the lands in suit were situate. The lands were given to the defendants' ancestor on tenure in consideration of rendering certain Shetsanadi services and were continued in defendants' possession by virtue of that tenure. The defendants having no longer rendered any service, were called upon to deliver possession of the lands. On their failure to comply with the notice, the plaintiff sued for recovering possession of the lands. In the alternative he alleged that if it should be held that the defendants were not holding under a service tenure, he as Saranjamdar was entitled to recover assessment of the lands and prayed for a declaration establishing his right to levy assessment on the ground that he no longer wished to continue the land in Inam with the defendants.

The defendants contended *inter alia* that the plaintiff had no right to demand assessment and the suit was barred by *res judicata* in consequence of a previous decision in suit No. 458 of 1888 between the plaintiff's brother Laxmanrao Hariharrao and the predecessors-in-title of the defendants for the recovery of possession of the suit land on the ground that the defendants had ceased to perform service and had been holding the land wrongfully without payment of assessment. They also pleaded limitation.

1916.

MADHAVRAO HARIHARRAO v. ANUSUYABAI.

The Subordinate Judge held that the plaintiff's claim for possession was barred by *res judicata* and that for levy of assessment was barred under article 130 of the Limitation Act, 1908.

On appeal, the District Judge confirmed the decree, observing as follows :—

" As regards the first point, it is contended that the decision in the previous suit does not operate as *res judicata*, because under the Saranjam Rules of 1898 every Saranjam is held as a life-estate only and is 'made over to the next holder as a fresh grant from Government unencumbered by any debts or charges save such as may be specially imposed by Government itself' (see Rule 5 of the Rules published in the *Bombay Government Gazette* for 1898, Part I at page 36). But the fact of such a re-grant cannot, in my opinion, prevent the new Saranjamdar from being subject to rights and equities (other than monetary debts or charges) which have accrued in favour of any person against the preceding Saranjamdars. It might be different if the rule already cited used for instance such wide words as are contained in section 56 of the Land Revenue Code, 1879, as amended by Bombay Act VI of 1901, and declared the Saranjam, when re-granted to be deemed to be freed from all tenures, rights, incumbrances and equities theretofore created in favour of any person other than Government, but on the contrary it only says the Saranjam is to pass " unencumbered by any debts or charges. " And it would seem obviously inequitable that the re-grant should affect, for instance, rights of permanent or rent-free tenancy which may have been judicially recognised in litigation between a tenant and the Saranjamdar. Rule 10 of the same rules does not affect this conclusion because that only protects the Saranjam or its revenues, and a judicial finding that the Saranjamdar has no right of resumption over a particular occupancy does not lessen the Saranjam estate or its revenues (at any rate in a case like this where admittedly the defendants and their predecessors-in-title have been in possession rent-free for a very long time). In any case the rule is one which only operates when it is actually put into force, and does not justify any inference that a re-grant of a Saranjam does away with all rights and equities existing prior to the re-grant. I can, therefore, see no sufficient ground for distinguishing the case at I. L. R. 34 Bom. 329 which is relied on by the lower Court. It is true that, that case was one of adverse possession and not *res judicata*, but the same principle applies to the latter doctrine. I concur with the opinion expressed on this point in Dandekar's 'Law of Land Tenures,' Vol. I, page 188 and the case at P. J. for 1897 page 92 there cited supports this view.

" As to the point of limitation, I can see no ground for holding that article 130, Limitation Act is not applicable to the suit. The words 'rent-free' are very

wide and plaintiff's suit seems exactly of the kind described, viz., 'for the resumption or assesment of rent-free land. This article was held applicable to land which had in fact been held rent-free, though liable to assessment in a certain event in the case at P. J. for 1896, page 602. The alleged liability to assessment is no reason for excluding the lands in suit from the scope of the article."

The plaintiff preferred a second appeal.

D. A. Khare and *W. B. Pradhan*, for the appellant :- The plaintiff does not claim under the previous Saranjamdar. He claims in his own rights. He got a fresh grant from the Government. A reference to the Saranjam rules issued by the Government will show that the grant to the plaintiff is a grant which cannot be affected by anything which the previous Saranjamdar may have done. The case law on Vatan tenures has nothing to do with the present case, as the rules on which Vatan tenures are held and enjoyed are different from the rules on which a Saranjam is held. The case of *Trimbak Ramchandra* v. *Shekh Gulam Zilani* [1] cannot apply to the present case, as therein the point was one of limitation. The grant being a fresh one, the right to recover assessment first accrued with the grant. Therefore the suit is not time-barred : see *Vithalrao* v. *Ganpatrao* [2].

P. B. Shingne, for respondents Nos. 1 to 3 :—The Saranjam rules show that the new Saranjamdar gets the grant as he belongs to the family and he takes the Saranjam with some obligations in favour of the members of the family. As a fresh grantee he enjoys a few exemptions, *e.g.*, immunities from debts and charges created by the previous Saranjamdar, but he is none the less bound by the decisions against the previous Saranjamdar who represented the Saranjam. The grant is merely formal and is meant as a matter of administrative prudence. The new Saranjamdar takes

(1) (1909) 34 Bom. 329. (2) (1902) F. A. No. 31 of 1902 (Un. Rep.)

1916.

MADHAVRAO HARIHAR-RAO v. ANUSUYA-BAI.

the Saranjam by virtue of inheritance and no substantial difference can be drawn between a Saranjam and a Vatan. If so, the point is concluded by the Full Bench decision of *Radhabai and Ramchandra Konher* v. *Anantrav Bhagvant Deshpande*:[1] see *Trimbak Ramchandra* v. *Shekh Gulam Zilani*;[2] *Tekait Ram chunder Singh* v. *Srimati Madho Kumari*;[3] *Balwantrao Ramchandra Jahagirdar* v. *Shankar Bisto Nadgir*.[4]

Khare, in reply.

SCOTT, C. J. :—The plaintiff alleged that he was the Saranjamdar of the ancestral Saranjam village of Janu where the lands in question were situate ; that the lands were given to the defendants' ancestor on tenure in consideration of rendering certain Shetsanadi services and that the lands continued in the defendants' possession by virtue of that tenure ; and that the defendants had no longer been rendering any service, and did not deliver possession of the lands though called upon to do so, and he prayed for possession of the lands. In the alternative he alleged that if it should be held that the defendants were not holding under a service tenure, he as Saranjamdar was entitled to recover the assessment of the lands, and prayed for a declaration establishing his right to levy the assessment on the ground that he no longer wished to continue the land in Inam with the defendants.

According to the plaint this is a hereditary Saranjam village. Saranjams are held subject to the Saranjam rules published by Government under the schedule to Act XI of 1852. Rule 2 says :—

"A Saranjam which has been decided to be hereditarily continuable shall ordinarily descend to the eldest lineal male representative, in the order of

(1) (1885) 9 Bom. 198.
(2) (1909) 34 Bom. 329.
(3) (1885) L. R. 12 I. A. 188 at p. 197.
(4) (1897) P. J. p. 92.

primogeniture, of the senior branch of the family descended from the first British grantee or any of his brothers who were undivided in interest. But Government reserve to themselves their right for sufficient reason to direct the continuance of the Saranjam to any other member of the family, or, as an act of grace, to a person adopted into the family with the sanction of Government. When a Saranjam is thus continued to an adopted son, he shall be liable to pay to Government a Nazarana not exceeding one year's value of the Saranjam."

Rule 5 says :—

"Every Saranjam shall be held as a life estate. It shall be formally resumed on the death of the holder, and in cases in which it is capable of further continuance it shall be made over to the next holder as a fresh grant from Government, unencumbered by any debts or charges save such as may be specially imposed by Government itself."

The defendants rely upon the decision in suit No. 458 of 1888 between the plaintiff's brother Laxmanrao Hariharrao and the predecessors-in-title of the defendants for the recovery of possession of the suit land, on the ground that the defendants had ceased to perform service and had been holding the lands wrongfully without payment of assessment. That suit was decided in favour of the defendants, the Court holding that the lands were not held by the defendants on condition of rendering service.

The first question that we have to decide is whether that decision operates as *res judicata* against the present plaintiff. That depends upon whether the present plaintiff can be said to claim under the plaintiff in the suit of 1888, and to be litigating under the same title within the meaning of section 11 of the Civil Procedure Code. It appears from the Saranjam rules, to which reference has been made, that the succession to the Saranjam is in the plaintiff's family, and the plaintiff would be entitled to succeed as the eldest lineal male representative in the order of primogeniture upon the death of his brother Laxmanrao, the plaintiff in suit No. 438 of 1888. The estate is an estate which is bound according to the rules to continue in

1916.

MADHAVRAO HARIHARRAO v. ANUSUYABAI.

that family, and although on the death of a holder it is provided under Rule 5 that there shall be a formal resumption and re-grant free from debts and charges to the next holder, there is no provision (as pointed out by the learned District Judge) for freedom from all tenures, rights, incumbrances and equities created in favour of any person other than Government such as we find in section 56 of the Land Revenue Code as amended by Bombay Act VI of 1901. Subject to its being free from debts and charges, the new holder takes the estate as it was on the death of the previous holder, and he takes by virtue of his inheritance from the previous holder subject to the provisions of formal resumption and re-grant by Government. Therefore, in our opinion, for the purposes of section 11 of the Civil Procedure Code he claims under the previous holder and is litigating under the same title as did the previous holder in 1888. That conclusion, arrived at upon the words of the Saranjam rules, is in accordance with the conclusion of the Full Bench of this Court in *Radhabai and Ramchandra Konher* v. *Anantrav Bhagvant Deshpande*[1] in the analogous case of Vatan estates. For, once it is established that the present Saranjam holder obtains recognition by reason of his title by inheritance, there is no distinction between the two cases: the general principle stated by West J. at p. 224 is that a mode of devolution prescribed in particular cases does not make the property subject to it exempt from the effects of a judgment against the person in whom at the time the estate is vested.

Since the date of the decision in the suit of 1888 the defendants and their predecessors-in-title have been holding adversely. It was complained in the plaint in 1888 that the defendants' predecessors-in-title held the lands wrongfully without payment of assessment,

(1) (1885) 9 Bom. 198.

and it is not alleged that they have ever paid assessment since the decision of that suit. The claim, therefore, for payment of assessment is barred by limitation for neither a special mode of devolution nor an incapacity for alienation will prevent limitation from operating against an estate: see *Radhabai and Ramchandra Konher* v. *Anantrav Bhagvant Deshpande*.[1] For these reasons we affirm the decree of the lower appellate Court and dismiss the appeal with costs.

HEATON, J.:—There are one or two observations I wish to make in this case, and the first is, I think it would be much better and more convenient that in Saranjam cases like this, the Sanad or Government Resolution, whichever it may be, which provides for the succession to the estate, should be produced. The result of its non-production in this case is probably quite innocuous, but it is this: that we have had to conjecture where we ought to have had certain knowledge. We have had to conjecture that the succession to the Saranjam was allowed according to the Saranjam rules: a fairly safe conjecture to make no doubt. But where certain knowledge can be put before the Court I think it ought to be.

Then as regards the meaning of the words in section 11 of the Civil Procedure Code: "between parties under whom they or any of them claim, litigating under the same title," I think those words are intended to cover, and do cover, a case where the later litigant occupies by succession the same position as the former litigant. In this case the former litigant was the Saranjamdar for the time then being. The present litigant is the Saranjamdar at the present time and is the successor of the earlier Saranjamdar. I do not think that the words of the section are intended to

(1) (1885) 9 Bom. 198 at p. 231.

1916.

MADHAVRAO HARIHAR-RAO v. ANUSUYA-BAI.

make any distinction between different forms of succession. You may have a succession by the ordinary rules of inheritance, or you may have a succession by some very special rules as you have in the case of Saranjams. That, I think, is not intended to affect the operation of the section of *res judicata*. I agree with the decree which was made.

Decree confirmed.

J. G. R.

APPELLATE CIVIL.

1916.

June 16.

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

BAI DIWALI WIDOW OF JIWABHAI KALIDAS AND OTHERS (ORIGINAL DEFENDANTS NOS. 1, 2, 3), APPELLANTS *v.* UMEDBHAI BHULABHAI PATEL AND ANOTHER (ORIGINAL PLAINTIFF AND DEFENDANT NO. 4), RESPONDENTS.*

Civil Procedure Code (Act V of 1908), section 11—Prior suit to claim possession by virtue of the purchase of mortgagee's rights—Subsequent suit for repayment of the money advanced on mortgage—No bar of res judicata—*Bhagdari Act (Bom. Act V of 1862)—Mortgage of unrecognised share of a* bhag—*Mortgage void—Unlawful consideration—Indian Contract Act (IX of 1872), section 24—Indian Limitation Act (IX of 1908), Art. 62.*

One K mortgaged with possession an unrecognised share of a *bhag* with R on May 19, 1896, contrary to the provisions of the Bhagdari Act, 1862. The mortgage deed provided that after possession by the mortgagee for eleven years the mortgage amount was to be paid to him whenever he should demand it either out of the property or by the mortgagor or his heirs personally. In 1908 B obtained a money decree against the estate of R whose mortgage right was put up to sale and purchased by the plaintiff at a Court-sale for Rs. 577. In 1910 the plaintiff filed a suit No. 176 of 1910 against the representatives of R and K to obtain possession. No claim was made in that suit for payment of the amount of the mortgage-debt. The suit failed on the ground that the mortgage was invalid and therefore unenforceable. In 1911, another suit was filed by the plaintiff against the same parties to recover Rs. 788 from the estate of K and in the alternative to recover Rs. 577 from the estate of B. The defendants Nos. 1 to 3 contended that the suit was barred by *res judicata* and also pleaded limitation.

* Appeal from Order No. 27 of 1915.