PRIVY COUNCIL.*

1924, April 7.

KODOTH AMBU NAYAR (PLAINTIFF), APPELLANT,

v.

SECRETARY OF STATE FOR INDIA IN COUNCIL (DEFENDANT), RESPONDENT.

[On Appeal from the High Court of Judicature at Madras.]

Kumri lands—South Kanara—Claim by wargdar against Government—Title of Government to forest tracts and old wastes—Permissive nature of kumri cultivation—Limitation Act (IX of 1908), Sch. I, art. 120.

There is an undoubted presumption that forest tracts and old wastes belong to the Government unless that presumption is displaced by positive evidence that the right in any particular tract or piece of land has been granted by the sovereign power, or adverse rights have consciously been allowed to grow up.

The plaintiff as karnavan of a Nayar tarwad in South Kanara sued the Government for a declaration that certain kumri lands in the forests belonged to his tarwad. He based his claim upon (*a*) long enjoyment, as part of his *muli wargs*, (*b*) acquisition by purchase and (*c*) adverse possession in proprietary or warg right; he further alleged that the Government was estopped in that the lands had been acknowledged to be warg kumris and had been so registered.

Held, on the facts, that the presumption had not been displaced, the enjoyment of the kumri lands being purely permissive, and that the suit failed. The plaintiff as licensee could not claim title only from possession without proof that the possession was adverse to the Government to its knowledge, and in any case the enjoyment had been for a period far less than the sixty years necessary to bar the Government by limitation.

Although kumri lands are held by *wargdars* whose property is transferable and inheritable, there is no relation or analogy between kumri lands so held and ryotwari holdings.

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* *Present*: Lord SHAW, Lord BLANESBURGH, Sir JOHN EDGE, Mr. AMEER ALI and Sir LAWRENCE JENKINS.

Held, further that the suit was barred by the Indian Limitation Act, 1908, Schedule I, article 120, which was the article applicable, since it was not commenced within six years of a definite rejection by the Government of the plaintiff's claim. *Bhaskarappa* v. *The Collector of North Kanara*, (1879) I.L.R., 3 Bom., 452 and *The Secretary of State for India* v. *Krishnayya*, (1905) I.L.R., 28 Mad., 257, approved.

APPEAL (No. 53 of 1923) from a judgment and decree (December 11, 1919) of the High Court affirming a decree of the District Judge of South Kanara (August 3, 1917) which affirmed a decree of the Subordinate Judge.

The questions for determination in the appeal were (1) whether the appellant was entitled to a declaration against the respondent that certain kumri lands in South Kanara belonged to his tarwad, and that the respondent was bound to issue to him pattas in respect thereof, and (2) whether the suit was barred by limitation.

The facts appear from the judgment of the Judicial Committee.

The trial Judge, the Subordinate Judge of South Kanara, passed a decree dismissing the suit, and that decree was affirmed by the District Judge. An appeal to the High Court was dismissed after further findings had been called for and submitted.

De Gruyther, *K.C.* and *Narasimham* for the appellant.

Dunne, *K.C.* and *Kenworthy Brown* for the respondent.

Reference was made by the appellant's counsel to *Vyakunta Bapuji* v. *Government of Bombay*(1), and to the Manual of South Kanara District (1894), Vol. I, pp. 123, 209, as well as to the two decisions as to kumri lands referred to in the judgment; also to *Baijnath Sahai* v. *Ramgut Singh*(2) and Act I of 1877,

(1) (1875) 12 Bom. H.C. (O.C.J.), 1.
(2) (1896) I.L.R., 23 Calc., 775 (P.C.); 23 I.A., 45.

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section 42, as to when time began to run against the appellant.

The JUDGMENT of their Lordships was delivered by

MR. AMEER ALI.

MR. AMEER ALI.—This appeal arises out of a suit brought by the plaintiff in the Court of the Subordinate Judge of South Kanara on the 25th November, 1913, as the Karnavan, or Manager, of a Nayar tarwad against the Secretary of State for India in Council for a declaration that certain lands situated in the forest tracts in the Kasaragod taluk belong exclusively to his tarwad, and for an injunction restraining the defendant from dealing in any manner with the said lands to the prejudice of the rights and possession of the plaintiff's tarwad.

Their Lordships will have to refer more specifically in the course of their judgment to the allegations in the plaint, but it is sufficient at this stage to indicate the scope of the suit. The defendant denied the title which the plaintiff put forward; and the Subordinate Judge found that the plaintiff had totally failed to establish the grounds on which he based his claim, and accordingly dismissed the suit. The plaintiff preferred an appeal to the District Judge who came to the same conclusion as the Court of first instance and accordingly affirmed the decree of the Subordinate Judge, dismissing the suit. There was a second appeal by the plaintiff from the decree of the District Judge to the High Court of Judicature at Madras which, apparently being of opinion that the District Judge had not sufficiently considered the evidence of possession adduced on the plaintiff's behalf, remanded the case for a fresh finding.

When the case came before the District Judge the second time he again examined the evidence thoroughly, almost meticulously, and came to the conclusion, as on

the previous occasion, that the plaintiff had utterly failed to establish the three propositions on which he based his claim: firstly, long possession; secondly, prescription; and thirdly, recognition by the defendant of the tarwad's title working as an estoppel. He also found in concurrence with the Court of first instance that the suit was barred under the Statute of Limitation. If the suit is barred by limitation the question of title would not arise. But it appears to their Lordships that it will be more satisfactory to the parties that they should express their opinion on the question of title, before dealing with the question of limitation.

The case then went back to the High Court and the learned Judges accepted, on the 29th January, 1920, the findings of the District Judge and dismissed the suit. The present appeal is from this decree of the High Court.

In order to explain the nature of the present litigation and the contentions advanced on the plaintiff's behalf before the Board, it is necessary to describe as concisely as possible the character of the lands in respect of which the claim is made and how these lands have been dealt with until now. The district of South Kanara lies to the north of Malabar and to the west of Mysore and Coorg; in the north lies North Kanara and on the west the Arabian Sea. The whole district at a short distance from the sea is covered with immemorial forests. Mr. Sturrock, who was Collector of South Kanara in the eighties, describes the country thus in his Manual of the South Kanara District (at page 13):

"South Kanara is essentially a forest district. The slopes of the western ghats from north to south clothed with dense forests of magnificent timber and the forest growths, stimulated by the heavy rainfall, approach within a few miles of the coast."

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The lands in suit are situated south of the Chandragiri river, and, as already stated, in the Kasaragod taluk, formerly Bekal taluk. In the low lands below the forest ridges there lie the farms and holdings of the ryots, which are called "*wargs*." It appears from the record that the *wargs* the ryots hold in their own right are called "*muli wargs*." These ryots and farmers, it appears, are in the habit of going upon the forest lands, clearing a part of the jungle and raising a temporary crop on it. After the crop is reaped, this patch is abandoned and some other part is taken up. For the privilege, they have been paying a small fee to the Government. These patches are called "*kumries*," and the lands so desultorily cultivated are designated in the proceedings relating to the subject as "*kumri* lands." The *wargs* do not constitute a farm or an estate of a compact character, the component parts often lying apart from each other. The plaintiff's case is that he has a number of *kumri* lands in the forest, attached to the various plots or *wargs* which he holds and he claims that his tarwad has acquired an absolute title to these lands, partly by long possession, partly by adverse possession against the defendant, and partly by purchase and usufructuary mortgages. He also claims that the Government recognized his title and are now estopped from denying it.

The first question, then, that emerges from these allegations, is what is the nature of the forest tract, and secondly, what are the incidents of the *kumri* lands. It has been held in two cases, *Bhaskarappa* v. *The Collector of North Kanara*(1), and *The Secretary of State for India* v. *M. Krishnayya*(2), one decided by the Bombay High Court from North Kanara under not dissimilar conditions,

(1) (1879) I.L.R., 3 Bom., 452. (2) (1905) I.L.R., 28 Mad., 257.

the other decided by the High Court of Madras from South Kanara, in both of which the identical question arising in the present appeal was involved, that the Government had an absolute title to all the forest tracts which belonged absolutely to the Crown. Their Lordships consider it would answer no useful purpose to travel, as they have been invited to do, in the regions of ancient history. Whatever may have been the custom in ancient India, or under Muhammadan rule, what they have to see is how these lands were treated since the British acquired this part of the country. Ever since 1800, when South Kanara was conquered from Tippu Sultan, the Muhammadan ruler of Mysore, the British Government, in a series of documents which have been carefully examined in the cases referred to above, asserted and exercised their right in the forests. Their Lordships desire to refer only to two of these documents. On the 23rd of May, 1860, by a resolution of the Government of Madras (in the Revenue Department) it definitely pronounced in favour of checking the practice of *kumri* cultivation. Among the reports on which it rested its decision was a communication from the Conservator of Forests, dated 17th August 1859, in which he calls attention to what he describes as "the chief evils of this rude system of culture," viz.—

> "the destruction of valuable timber, at present urgently required for ship-building and railways, and rendering of land unfit for coffee cultivation."

This document also speaks of the method of cultivation in vogue on *kumri* lands. There were other proceedings which similarly show that the Government claimed to exercise an absolute right in respect of these immemorial forest and waste lands, and constantly asserted its title. But the matter was clinched in 1884 when the Governor in Council passed an order, dated

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29th August 1883, finally stopping the right of the neighbouring farmers and ryots to go upon the forest lands for the purpose of clearing patches by destroying the trees, in order to cultivate crops on the clearings. The document is so important that it should be quoted in full.

After referring to the report with which it was concerned, it goes on as follows:—

"2. To survey and demarcate the lands in which kumri is now cut and impose upon it an acreage rate of assessment—which under the Board's proposal is to confer complete rights of dealing with the land and with the wood growing thereon—would in the opinion of His Excellency in Council tend to compromise the right of Government to deal with the lands as may seem advisable hereafter and to create notions of proprietary right in the wargdars which does not in fact exist. Forest settlement will probably not be undertaken for years in South Kanara and the forest officers cannot possibly indicate at present lands which will be wanted for reservation. Mr. Sturrock's proposed survey would doubtless cost more than he estimates and would probably be far from accurate when finished.

"3. His Excellency in Council accordingly directs that existing arrangements and restrictions (which are in fact those prescribed in G.O., 24th October 1861, No. 2032) in respect of kumri cultivation in question, shall continue, with the exception of a charge of a rate of one rupee an acre on extent actually felled. In lieu of this the Collector is authorized to compound the demand at his discretion for an annual payment, not exceeding seven times the shist and shamil in the case of a wargdar kumri, and in the case of other permitted kumri, of such amount as may seem to him just with reference to past average charges. At the same time a register should be prepared recording as accurately as possible the boundaries and descriptive particulars of the tracts within which each wargdar is allowed to cut kumri; and during the felling season, the revenue and forest subordinates should be on the alert to prevent felling outside

the authorized limits, in virgin forests and in jungle of twelve years' growth.

"4. Under the above arrangement no measurement need be made in the current season, and no orders are required on the second of the proceedings above read."

Pursuant to this order rules were framed for the regulation of *kumri* cultivation, which also are important and should be set out in full—

"1. The cultivation of kumri is strictly prohibited in—

1. Virgin forests.
2. Cardamom and pepper forests.
3. Forests which have not been kumried for 12 years or upwards.
4. All forests outside the tracts recognized as kumries attached to wargs.

"2. All parties contravening rule 1 will be criminally prosecuted.

"3. A Register will be prepared recording as accurately as possible the boundaries and descriptive particulars of the tracts within which each wargdar is allowed to cut kumri. In the preparation of this register care will be taken to exclude all tracts falling under rule 1.

"4. Every Potail in whose village there is warg kumri will report on the 1st April of each year whether the provisions of rule 1 have been strictly observed in the annual fellings and all Revenue and Forest Officers will take every opportunity of checking the correctness of these reports, and otherwise assisting the prevention of felling outside the authorized limits.

"5. Assessment will be collected at a fixed annual amount, irrespective of the annual clearings which will be left to the discretion of the wargdar concerned, subject to the provisions of rule 1.

"6. Nothing in the above rules shall be held to preclude Government from taking up for reservation under the provisions of the Madras Forest Act, 1882, any land now occupied for kumri."

In accordance with the rules, notices were issued by the Tahsildar apparently on all the *wargdars* who were

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in the habit of entering the forest and making *kumri* cultivation. About the same time a register was opened (Exhibit F) showing the details of the boundaries, etc., of the *kumri* lands with regard to which permits had been issued previous to the Government Order. It shows to the *wargdars*, who had been in the habit of promiscuously entering the forests and making clearings, the exact limits which they were permitted to enter for raising temporary crops.

It is quite clear from these records that throughout, wherever *kumri* cultivation was allowed, it was permissive. The people who cultivated these patches of land had to pay a fee for the permits which they obtained for purposes of cultivation and nothing more than these fees were entered in the registers, but they do not indicate any right in the persons who paid fees for the permits.

The right of the Government has been carefully examined and precisely set forth in the two judgments to which reference has already been made. Their Lordships, therefore, do not think it necessary to discuss further the question, beyond expressing their general concurrence with the conclusions arrived at by the learned Judges of the two High Courts, namely, that there is an undoubted presumption that forest tracts and old wastes belong to the Government unless that presumption is displaced by positive evidence that the right has, in any particular tract or piece of land, been granted by the sovereign power to any individual or bodies of individuals; or rights have been consciously allowed to grow up adversely to the Government.

Bearing this principle in mind their Lordships have to examine what evidence the plaintiff has adduced in this case to establish the right he claims. The grounds on which he bases the claim of his *tarwad* are set out

in paragraphs 4, 5 and 6 of the plaint. In paragraph 4 he says as follows :—

"That the properties particularized in the annexed schedule are ancient warg kumries situated in the village of Panathadi and Bedadka in Kasaragod taluk (formerly Bekal taluk) and lying to the south of the Chandragiri river."

Paragraphs 5 and 6 are in these terms :—

"That the plaint kumries belong to the plaintiff's tarwad, some as portions of their ancient muli wargs, some on right of purchase from their original proprietors, some, though acquired in the first instance on mortgages from previous wargdars, now belong to the tarwad on muli right acquired by prescription and a few on mortgage right."

"That the plaint kumries have been in the exclusive possession and enjoyment of the plaintiff and his predecessors in interest for more than a century in their own proprietary or warg right."

In other words he bases his title to the plots of land in respect of which the suit is brought on long enjoyment as parts of his *muli wargs* ; secondly, on rights acquired by purchase and mortgage ; and thirdly, on adverse and exclusive possession for more than a century in proprietary or *warg* right. In paragraph 9 of the plaint he puts forward a claim by estoppel against the Government : his statement is to the effect that the lands in suit have been acknowledged to be *warg kumries* and included as such in the register of Government *kumries*. The onus of establishing these allegations rests on him.

The last contention requires some explanation. It appears that the Government, for the purpose of clearing the undergrowth in the forests, have been in the habit of allowing the forest tribes who sparsely inhabited the forest to make clearances, and grow such cereals as they were capable of. These primitive tribes cultivated certain spots, reaped the crop and then moved off to some other patches of land. These apparently were called Government *kumries*. The Government also

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allowed some of the neighbouring *wargdars* to take the leaf manures from the forest and clear the undergrowth for the desultory cultivation, called *kumri*. These apparently are designated *warg kumries*. In all these cases, dealings with forest lands appear to have been by distinct permission of the Government. Has the plaintiff been able to show either old possession of the *kumri* lands, which he says have become attached to his *wargs* by long enjoyment, or has he been able to show that he has acquired a right by adverse possession to the exclusion of the Government? Both the Subordinate Judge as well as the District Judge, whose judgments on appeal on questions of fact, properly and regularly arrived at, are conclusive, have held, upon a careful examination of the evidence, that the plaintiff has failed to establish a continuous enjoyment beyond 35 or 40 years from the date of the suit. The period of limitation against the Government is 60 years. Assuming that a licensee can convert a permissive occupation into an absolute title by long possession, the period of possession proved by the tarwad falls short of the period of prescription. Their Lordships think that a licensee cannot claim title only from possession, however long, unless it is proved that the possession was adverse to that of the licensor, to his knowledge and with his acquiescence. The plaintiff produced no evidence to show that the Government either acquiesced in his exclusive possession or did, in fact, evince that consciously they acquiesced in the tarwad's adverse possession.

Apart from this, the Courts in India, who were Judges of fact, have held that the boundaries which the plaintiff has set up are unidentifiable. As regards title by transfer, they have found that in no case has the knowledge been brought home to the officers of

Government that any of these lands were sold or mortgaged with their consent.

As regards a grant emanating from the Government, there is absolutely no evidence. No patta has been produced showing a grant by the Government. The inference is inevitable that the plaintiff possessed no such patta.

The order of the 23rd May 1860, No. 830, made clear the position in which the people who were licensed to enter the forests for the purpose of desultory cultivation, stood in relation to the Government. Paragraph 8 of this order runs as follows:—

"The Board give their decided opinion against the validity of any claim to proprietary rights in forest, based on the entry of 'kumri sist' in the patta or the account of any estate. They regard it as simply a rent or farm of the privilege of cutting kumri in the tract in question; the continuance of which must depend on the pleasure of the Government. The facts detailed in their proceedings seem fully to bear out this view."

In the proceedings of the Board of Revenue, dated 24th July 1860, the Government's rights as regards the *wargdar kumries* are placed on the same basis as the Sirkar or Government *kumries*:—

"The Board understand the Government proposal to raise the rate of assessment on the kumri cultivation of the Bekal taluk, to apply to 'wargdar kumri' so called, as well as to Sirkar kumri as the Government do not admit that the rights of the former are in any way superior to those of the latter, or that the entry of that item, among others in the warg, originally denoted anything more than that the wargdar was also the temporary renter of certain jungle farms or privileges, which the Sirkar was competent to modify or discontinue at will; and it is solely as an act of grace that in the Bekal taluk the wargdar, whose warg includes the item, is in consequence of the more systematic nature of the cultivation still to be recognized as the party with whom Government have to deal for the

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realization of the assessment, which elsewhere will be made directly with the kumri ryots."

On behalf of the appellant an argument was put forward before the Board which does not appear to have been advanced in any of the Courts in India. Their Lordships do not desire to rule out summarily on that ground the contention which has been so strongly urged before them. It is contended that the incidents attached to these *wargdar kumries* stand on the same footing as *ryotwari* holdings. The chief ground on which this analogy appears to be founded, as learned Counsel admitted, were two facts, namely, that the *wargdar* possessed in these *kumri* lands a heritable and transferable interest.

In order to prevent future confusion their Lordships desire to say that there is absolutely no relation or analogy between the nature of these *kumri* lands and ryotwari holdings. The latter belong to a totally different category of tenures. Ryotwari holdings relate to arable lands for fixed periods—ordinarily 30 years—and are subject to periodical surveys and assessments. No inference, therefore, can be derived from the fact that *kumri* lands, cultivated on the *kumri* system, were held by *wargdars* whose property is transferable and heritable.

Coming now to the question of limitation it appears that in 1903 the Government officials marked off the lands in suit and issued to the plaintiff as the *karnavan* of his tarwad, what is called a rough patta, showing the lands to which Government admitted his right to obtain a grant subject to the usual conditions. The plaintiff preferred objections to the exclusion from the rough patta of the lands in suit. His objections were definitely rejected in 1905.

The present suit to set aside that order and to obtain a declaration of his right was not brought until 1913. Article 120 of the first schedule of the Limitation Act (IX of 1908) applied to this case. It provides that the period of limitation for a suit "for which no period of limitation is provided elsewhere in this schedule" shall be six years. No period of limitation is specifically provided elsewhere for the assertion of a claim of this kind. Their Lordships think that the lower Courts rightly applied article 120 to this suit.

On the whole their Lordships are of opinion that the appeal fails and should be dismissed with costs and they will so humbly advise His Majesty.

Solicitor for appellant :—*Douglas Grant.*

Solicitor for respondent :—*Solicitor, India Office.*

A.M.T.

APPELLATE CIVIL.

Before Sir Walter Salis Schwabe, Kt., K.C., Chief Justice, and Mr. Justice Wallace.

1923, January 11.

SARVOTHAMA RAO (RESPONDENT, PETITIONER), PETITIONER,

v.

THE CHAIRMAN, MUNICIPAL COUNCIL, SAIDAPET (PETITIONER, RESPONDENT), RESPONDENT.*

Madras District Municipalities Act (V of 1920), sec. 352—Proposed election—Wrong rejection of election papers—Remedies available according as elections held or not held—Returning Officer, whether a Judge—Right of suit—Suit against Chairman, maintainability of—Specific Relief Act, sec. 42.

If a nomination paper of a certain candidate for a municipal election under the Madras District Municipalities Act (V of 1920)

* Civil Revision Petitions Nos. 705, 758 and 828 of 1922.