APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

1885. *September* 3.

GANPATRA'V TRIMBAK PATWARDHAN, (ORIGINAL PLAINTIFF), APPELLANT, *v.* GANESH BA'JI BHAT, (ORIGINAL DEFENDANT), RESPONDENT.*

Saranjám—Resumption of saranjám by British Government, effect of, on position and rights of the saranjámdár—Occupancy rights of a saranjámdár—Inám, resumption of—Public and private property of an absolute chief—Landlord and tenant—Tenancy created by chief prior to resumption of land by Government—Effect of resumption on rights of landlord—Adverse possession—Recognition of tenant by Government officers, as occupant paying assessment, does not prejudice landlord's rights.

Apá Sáheb, the Chief of Kágvád, let certain land to the defendant for a term of twelve years by a lease dated 12th June, 1857. Apá Sáheb died in the same year without male issue, and his *saranjám* was resumed by the British Government. In 1858 the Collector treated the defendant as occupant of the land in question for the purposes of assessment, and again in 1860 entered his name as occupant in the Government books. In January, 1868, the widow of Apá Sáheb adopted the plaintiff as his son. In 1881 the plaintiff sued the defendant to recover possession of the land let to the defendant in 1857. The defendant contended that the land was not the private land of Apá Sáheb, but belonged to the State of Kágvád which was resumed on his death by the Government, and that the plaintiff's claim was barred by the law of limitation. The Subordinate Judge allowed the plaintiff's claim, holding that the land was the private property of Apá Sáheb, Chief of Kágvád, and that the claim was not barred. The District Judge, on appeal, held, that the land was not the private property of the chief, but was the property of the state, and that, on the resumption of the state by the British Government, the defendant's lease came to an end, and the relation of landlord and tenant, previously existing between the chief and the defendant, ceased. He also held that the plaintiff's claim was barred by limitation, and reversed the decree of the Subordinate Judge. On appeal to the High Court,

Held, that no distinction could be drawn between the public and private property of an absolute chief, which Apá Sáheb was.

That, in the absence of a contrary intention, the resumption by the British Government of a *saranjám* or *inám* leaves the occupancy rights of the *saranjámdár* or *inámdár* untouched.

That a *saranjámdár* or *inámdár* may acquire occupancy rights during the continuance of the *saranjám* or *inám*.

Held, also, that the fact that the revenue officers placed the defendant's name in the Government books as the occupant paying assessment, did not make the defendant's possession adverse, and could not prejudice the plaintiff's rights as landlord.

* Second Appeal, No. 592 of 1883.

1885.

GANPATRÁV TRIMBAK PATWARDHAN v. GANESH BÁJI BHAT.

THIS was a second appeal from the decision of C. F. H. Shaw, Judge of Belgaum, reversing the decree of Ráv Sáheb Vináyak Vithal, Subordinate Judge of Athni.

The plaintiff, Ganpatráv Trimbak Patwardhan, in 1881 sued the defendant to recover possession of certain lands let to the defendant under a twelve-years' lease dated 12th June, 1857. The plaintiff alleged that the said lands were the *sheri kuran* lands (private arable land of a chief cultivated by his tenants) of his adoptive father, Trimbakráv *alias* Apá Sáheb, Chief of Kágvád, a *jághírdár* and *inámdár*, who died in 1857, leaving no male issue.

The plaintiff was adopted as his son on the 31st of January, 1868, by his widow, Párvatibái.

The defendant contended that the lands were not the private lands of the late chief, but belonged to the State of Kágvád, which was resumed on his death by the British Government, which refused to sanction the plaintiff's alleged adoption, and that the plaintiff's claim was barred by the law of limitation.

The Subordinate Judge found that the plaintiff's adoption was proved, that the lands claimed were the private property of the Chief of Kágvád, and that the plaintiff's claim was not barred. The Subordinate Judge, therefore, awarded the claim. The District Judge concurred with the Subordinate Judge in holding the adoption proved, but differed from him as to the nature of the lands. He was of opinion that the lands were not the private property of the chief, but *kuran* or grass land reserved for the pasturage of the state, and that on the resumption of the state by the British Government the lease came to an end, and the relation of landlord and tenant, formerly existing between the chief and the defendant, ceased. The District Judge also held that the claim was time-barred, and rejected it, reversing the decree of the Subordinate Judge.

The plaintiff appealed to the High Court.

Macpherson, (with him *Máhádev Chimnáji A'pte*), for the appellant.—The case turns upon the nature of the resumption. We say the resumption did not affect the occupancy rights possessed by the late Chief of Kágvád, who was a *jághírdár* as well as an *inámdár*,

1885.

GANPATRÁV TRIMBAK PATWARDHAN v. GANESH BÁJI BHAT.

and who died in 1857—Major West's Memoirs on the States of the Southern Maráthá Country, page 149. The resumption was not an act of state, and the District Judge is in error in treating it as such. If the *jághirdár* was only a grantee of assessment, the resumption would in no way affect the relationship of the *jághírdár* and his tenants. Since the resumption the defendant has paid direct to Government the rent reserved by the lease, but that does not affect the plaintiff's relationship with the defendant. If the defendant alleges that he is no longer the tenant, he must prove it. It is not for the tenant to say his landlord has no title. The lands in question were the chief's private property, and he had a perfect right to let it to the defendant. The resumption does not extinguish the plaintiff's title—*Vishnu Trimbak* v. *Tátiá alias Vásudev Pant* (1). This was an *inám* case, but there is no distinction in the matter of resumption between an *inám* and a *saranjám*. The Government never interfered with the possession of the lands. The defendant had not a new lease from the British Government. He merely got his name registered on the Government books, which cannot prejudice the plaintiff's rights —*D. R. Bam* v. *The Survey Commissioner* (2). The defendant has been a tenant throughout, and, therefore, although the plaintiff has brought the suit more than twelve years after the defendant began to pay rent to the Government direct, it is not barred.

Inverarity, (with him *Shamráv Vithal*), for the respondent.—The Chief of Kágvád was only a life-tenant; and the plaintiff, whose adoption has not been recognized by Government, is not his heir. By the resumption the Government took back the lands as well as the assessment. The lands were not *sheri*, or private, but part of the chief's domain. The resumption may not have been an act of the state, but was, in fact, a resumption of the lands. There is a distinction between *jághírs*, *saranjáms* and *iináms*. The case of *Rámchandra Mantri* v. *Venkatráv* (3) shows that it is optional with Government to deal with occupancy rights as they please. A *saranjámdár* could not acquire occupancy rights during the existence of the *saranjám*,—the *saranjám* being only a grant of assessment. The suit is time-barred. Adverse

(1) 1 Bom. H. C. Rep., 22. (2) I. L. R., 3 Bom., 134.
(3) I. L. R., 6 Bom., 598.

1885.

GANPATRÁV TRIMBAK PATWARDHAN v. GANESH BÁJI BHAT.

possession has begun to run against the plaintiff from the time the defendant applied to the Collector to have his name registered as occupant on the Government books. This was in 1859, and the plaintiff's suit was brought in 1881—more than twelve years afterwards.

SARGENT, C.J.—The question in this case turns upon the effect of the resumption by Government, at the close of 1857, of the *saranjám* of the Kágvád Chief, Apá Sáheb, on his death without heirs. The District Judge held that this resumption was an act of state, and that, although the British Government might have restored the land in question to the family of Apá Sáheb, supposing it to have been *sheri*, or his private land, as an act of grace, yet that as it did not do so, but recognized the defendant as its tenant by placing his name on the record in 1860, when the revenue survey was introduced, the plaintiff could not, as the adopted son of Apá Sáheb, have any claim to it. But, further, the District Judge held that the land in question was not proved to be *sheri* land. The circumstances attending the resumption of this *saranjám* by Government are stated in Major West's Memoirs on the States of the Southern Marátha Country, from which it appears that Apá Sáheb died without male heirs, and that, the Government having refused to recognize a son adopted by Apá Sáheb during his life, the *saranjám* lapsed to Government for failure of male heirs.

It has been contended for the appellant that the District Judge was wrong in treating the resumption of the *saranjám* as an act of state, and that it was only the ordinary case of lapse to, or resumption by, the Government in default of male heirs, in pursuance of the well-established right of Government in that behalf, and that the effect of such lapse or resumption was to leave the private or *sheri* lands of the chief unaffected beyond making them *khálsat*, *i. e.*, liable to pay assessment to Government. For the defendant it was contended that, although the District Judge might be wrong in speaking of the resumption as an act of state, as a matter of fact the Government, when resuming the *saranjám*, did resume the private lands of the *rájá*, albeit it afterwards, as a matter of grace, restored some of them

1885.

GANPATRÁV TRIMBAK PATWARDHAN v. GANESH BÁJI BHAT.

for the maintenance of the widows, but that, in any view of the case, the District Judge was right in holding that the land in question was not *sheri* land.

Now, what the Government itself considered to be the nature of a resumption under the Inám Commission established by Act XI of 1852, is stated in a resolution of Government, dated 27th May, 1854, in answer to the question whether, in the event of resumption, the *inámdár* was to be left in possession of the *inámi* land. The Governor in Council say that "all that the law allows as regards resumption is the discontinuance of exemption from payment of public revenue, leaving the *inámdár*, who is in occupation of the land, to retain possession so long as he pays the assessment imposable on the land as *khálsat* land, according to the revenue survey settlement, or, in districts which have not been subject to the operations of a survey, according to the rates obtainable in the village in which the land is situated;" and the rule is so stated by Sausse, C. J., in *Vishnu Trimbak* v. *Tátiá alias Vásudev Pant*[1]. In the present case we are concerned with a *saranjám*, and not an *inám*; but no legislative enactment or Government resolution has been cited in support of there being any difference between the tenures as regards the effect of resumption by Government.

Again, it is true that in 1858, when this *saranjám*, which was situated in the Sátára District, was resumed, the Regulations had not been introduced into that part of the country. But there is no reason to suppose that the Government, whose will was law at that time in the Sátára District, intended that their exercise of the right of resumption should have other consequences than those which would ordinarily flow from it in the Regulation Provinces. It was said, however, that whatever may be the general rule as to the effect of resumption, in the present case the Government departed from the rule, and intended to resume all the lands and make their own arrangement with the cultivators. The evidence doubtless shows that the Collector treated the defendant as the occupant, in 1858, for the purpose of

(1) 1 Bom. H. C. Rep. 22.

1885.

GANPATRÁV TRIMBAK PATWARDHAN v. GANESH BÁJI BHAT.

levying assessment, and also in 1860, when the revenue survey was introduced, entered his name as such in the Government books; but the fact that the Government, in 1873, on the application of Párvatibái to have certain lands, including those in question, described as *sheri* lands, entered in her name, instead of the rayats, granted her petition, except as to the disputed lands, can leave little doubt that the Government action throughout with respect to this land has proceeded on the supposition that it was not *sheri* land, and not from any intention to deny the right of Apá Sáheb's representatives, supposing the land to fall within that category. We think, therefore, that there is no reason for supposing that Government on the resumption of the *saranjám* in 1857 intended to interfere with the occupancy rights (if any) which Apá Sáheb had at the time of his death.

It was indeed contended that a *saranjámdár* could not acquire occupancy rights in the land during the existence of the *saranjám* —the *saranjám* being, it was said, only a grant of the Government assessment and not of the land itself, and the case of *Rámchandra Mantri* v. *Venkatráv*[1] was referred to in support of that view. That case is, doubtless, an authority for holding that a grant of an *inám* or *saranjám* does not, in the absence of appropriate words for the purpose in the *sanad*, confer a proprietary right on the soil as against the Government who granted it; but it is admitted in the judgment in that case that the "*saranjámdár* may deal with all unoccupied lands as may be best for the purposes of revenue, and may either cultivate them himself or through tenants;" in other words, that the *saranjámdár* may acquire occupancy rights which, as has been shown, remain unaffected by the resumption of the *saranjám*, except as to the assessment thenceforth payable to Government.

It has been contended, however, that the defendant's possession, although on his own admission he entered on the lands as a tenant of Apá Sáheb under a lease which did not expire until

(1) I. L. R., 6 Bom., 598.

1885.

GANPATRÁV TRIMBAK PATWARDHAN v. GANESH BÁJI BHAT.

June, 1869, became adverse to the representatives of Apá Sáheb in 1859, when he applied to Government to be allowed to cultivate the land, and not keep it as *kuran*, and that this suit, instituted in 1881, is barred by the Statute of Limitations. But that step on the part of the defendant was rendered necessary by the circumstance that the whole of the rent, which was presumably according to the ordinary rates, became payable to Government after the resumption, and was not one which the landlord was concerned in objecting to. Lastly, as to the proceedings of the revenue officers in placing defendant's name on the Government books as the occupant paying the assessment, it has long been held that they cannot prejudice the landlord's rights—*D. R. Bam* v. *The Survey Commissioner*(1).

The plaintiff, therefore, whose title as the adopted son of Apá Sáheb has been found proved, became entitled, on the expiration of the *kaul*, to recover the land if it was *sheri* land. The District Judge has held that the land was not *sheri*, because it was *kuran* or grass land, reserved for the pasturage of the state and the horses of the contingent, and also of unclaimed cattle; which, the District Judge considered, proved it to have been state domain and not the private estate of the chief. But it has long been settled—see note to *Elphinstone* v. *Bedreechund* (2), that no distinction can be drawn between the public and private property of an absolute chief, which Apá Sáheb was, albeit an insignificant one; and whether Apá Sáheb employed the land for feeding the horses of the cavalry contingent which he was bound to keep up, as the District Judge says was the case, or to feeding his own horses, it was equally occupied and cultivated by him as *kuran* land for his own advantage.

Under these circumstances, as it is clear that, apart from the distinction between state domain and private estate, the District Judge would have found the land to be *sheri* land, we must reverse the decree of the Court below, and restore that of the Subordinate Judge, with costs on the defendant in both Courts of appeal.

Decree reversed.

(1) I. L. R., 3 Bom., 136.

(2) Knapp's Reports, Vol. I, p. 329.