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authorize a reference, except in a matter of litigation, and we must decline to entertain the one now made to us. The District Judge will act on his own view of the facts and the law.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nánábhái Haridás.

1887. *May 5.*

KRISHNA'JI AND ANOTHER, (ORIGINAL DEFENDANTS), APPELLANTS, *v.* VITHALRA'V AND OTHERS, (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Vatan deshmukhi—Grant of profits of such vatan in perpetuity—Hereditary gumástás—How far such grant valid after the death of the grantor—Limitation—Adverse possession—Decree, proceedings in execution of, against the original debtor—Such proceedings not binding upon persons not parties to them.

By a *sanad* duly executed on the 20th August, 1850, the plaintiffs' father, Yashvantráv, who was a *vatandár deshmukh*, appointed the defendants and their heirs hereditary *vatani gumástás*, and granted, by way of remuneration for their services, Rs. 201 and a quantity of grain out of the annual *vatan* income in perpetuity. In consideration of certain sums obtained from the defendants, Yashvantráv mortgaged the *vatan* property to the defendants, who subsequently sued Yashvantráv upon the mortgage. That suit was referred to arbitration, and an award was duly made, and a decree upon the award was obtained by the defendants against Yashvantráv. In 1859, execution of the decree was granted against Yashvantráv. In 1864 the services connected with the *vatan* were discontinued by Government. In 1871 Yashvantráv died. The defendants having kept the decree alive, sought in 1881 to execute the decree against the plaintiffs' eldest brother, who filed objections, but his objections were overruled, and execution was ordered to issue.

The plaintiffs brought this suit in 1883 for a declaration that the defendants were no longer entitled to the allowance under the *sanad*, and for an injunction restraining the defendants from execution of the decree against the *vatan*. The defendants contended *(inter alia)* that the *sanad* could not be cancelled, Yashvantráv having granted it as full owner; that the receipt, by the defendants, of the allowance had been adverse since 1864, when their services had ceased; and that the execution proceedings against the plaintiffs' father and their elder brother in 1859 and 1881, respectively, bound the plaintiffs. Both the lower Courts decided in favour of the plaintiffs. On appeal by the defendants to the High Court,

* Second Appeal No. 692 of 1885.

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Held, confirming the decree of the lower Courts, that the plaintiffs were entitled to the declaratory decree and to the injunction prayed for. Although the management of the *vatan* was vested by the *sanad* in the defendants and their heirs in perpetuity under the title of *gumástás*, nevertheless the remuneration attached to the office by Yashvantráv was in derogation of his successor's rights, and was, therefore, at any rate in the absence of proof of custom, invalid against them.

Held, also, that having regard to the terms of the *sanad* it was in the power of the original grantor, or any of his successors, to determine the office and the remuneration at any time after the *vatan* services ceased in 1864.

Held, also, that, assuming the grant by Yashvantráv to be invalid as against his successor, adverse possession would only run against the plaintiffs from the time of his death in 1871, and the present suit having been filed within twelve years from that date was not barred.

Held, further, that the proceedings in execution of the decree of 22nd June, 1859, including the order of the 18th June, 1881, did not bind the plaintiffs under section 244 of the Civil Procedure Code (Act XIV) of 1882, the plaintiffs not having been parties to them.

THIS was a second appeal from a decision of A. C. Watt, Acting District Judge of Poona.

In 1850 one Yashvantráv, the plaintiffs' father, who was a *vatandár deshmukh*, passed a *sanad* to the defendants, whereby he appointed them hereditary *vatani gumástás*, and assigned to them, in perpetuity, Rs. 201 and 15 maunds of grain out of the income of the *vatan* property, (the management of which was entrusted to the defendants), as remuneration for their services as such *gumástás*.

The material portion of the *sanad* was as follows:—"You, Krishnáji and Parashrám, are in my *padre* (*i.e.* protection) for many days, and on account of a *deshmukhi vatan* you have taken a great deal of trouble, and I recognizing this * * * passed to you a *sanad* as respects the *vatani gumástáship* of seventeen villages at Niratir, and you are having *vahivát* (management) accordingly * * * Therefore in the said tarf Niratir you are to have the *deshmukhi vahivát*, and in terms of the former *sanad* Rs. 201 in cash and 15 maunds of grain of the Baroli measurement as remuneration (*vatan*), and respecting the *vahivát* of the said tarf Niratir, as to collecting money, giving answers, you and your descendants are to perform this work for the said remuneration * * * ."

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Subsequently, in consideration of certain sums advanced by the defendants to the plaintiffs' father, he mortgaged the *vatan* property to the defendants, who having sued him upon the mortgage, the suit was referred to arbitration. An award was duly made, and a decree was passed on the award in 1859. The defendants sued out execution of the decree in that year against the plaintiffs' father. In 1864 the *vatan* services were remitted under the Summary Settlement Act, and the defendant's office of *gumástá* became thenceforward a sinecure. The plaintiffs' father died on the 12th November, 1871.

In 1881 the defendants, who had kept alive their decree, sought execution against the eldest brother of the plaintiffs. He filed objections, but his objections were disallowed, and execution proceeded.

The plaintiffs brought the present suit on the 10th November, 1883, to have it declared that the defendants were no longer entitled to the allowance which they claimed under the *sanad*, and for a perpetual injunction restraining the defendants from executing the decree of 1859 against the *vatan* property.

The Subordinate Judge of Poona passed a decree in favour of the plaintiffs, and his decree was confirmed, on appeal, by the District Judge.

The defendants preferred a second appeal to the High Court.

Shántárám Náráyan for the appellants:—It was competent to Yashvantráv to make such a grant. A father represents the whole estate—see *Rádhábái* v. *Anantráv*[1]—and the decree obtained against him binds his sons. The *sanad* expressly granted the income; and the circumstance that the services subsequently ceased, would not affect the rights of the appellants to the emoluments of the office of hereditary *gumástas*. They have enjoyed them adversely for twenty-five years continuously. The sons of Yashvantráv cannot now object, having acquiesced until their father's death. The appellants' appointment was hereditary, and the fact that their services were dispensed with, does not affect the tenure.

[1] I. L. R., 9 Bom., at p. 217.

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Ráv Sáheb *Vásudev Jagannáth Kirtikar* for the respondents:—The lower Courts were right in deciding in the plaintiffs' favour. Yashvantráv could not create a right in derogation of the rights of his successors. Under the *sanad* nothing beyond a personal obligation was created, which obligation ceased on his death. The decree against Yashvantráv could not be executed against the respondents. The plaintiffs were not parties to the execution proceedings. No hereditary *gumástá* could be appointed: see *Rávji Raghunáth* v. *Mahádevráv Vishvanáth*[1]. The appointment of the appellants, therefore, cannot hold good after Yashvantráv's death. The possession of the emoluments cannot be adverse, as the suit was within twelve years after the death of Yashvantráv.

SARGENT, C.J.:—The plaintiffs, who are the sons of Yashvantráv, a *deshmukh*, pray for a declaratory decree that the defendants are not entitled to any portion of the profits of the *deshmukhi vatan*, and for a perpetual injunction restraining them from executing a decree of 22nd June, 1859, obtained by them against Yashvantráv against the *vatan* property. The defendants base their claim on a *sanad* executed in their favour by Yashvantráv on the 26th August, 1850, by which he appointed them hereditarily the *vatan gumástás*, and as remuneration for the performance of its services therein particularly specified, assigned to them Rs. 201 in cash and 15 maunds of grain, to be deducted from the income of the *vatan* coming to their hands. Yashvantráv died on the 12th November, 1871. It is not in dispute that the *vatan* services were remitted on 23rd January, 1864, under the Summary Settlement Act, and that the office of *gumástá* is now a sinecure.

With respect to the objection taken to the value of the suit being more than Rs. 5,000, and, therefore, beyond the jurisdiction of the Second Class Subordinate Judge, we think the reasons given by the lower Court of appeal conclusive. There were not materials before the Subordinate Judge to show that the value exceeded Rs. 5,000, nor was the point taken before him; and,

(1) 2 Bom. H. C. Rep., 237.

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lastly, there is no evidence before us to enable us to say that the Subordinate Judge had not jurisdiction.

Passing to the merits of the case, the first question is, whether Yashvantráv could appoint an hereditary *vatani gumástá* and assign to the office a remuneration, in perpetuity, payable out of the income of the *vatan*. In *Rávji Raghunáth* v. *Mahádevráv Vishvanáth*[1], it was held that the holder of a *deshpánde vatan* cannot create an hereditary deputy, and that no such appointment could have effect beyond the incumbent's life, being beyond the competency of the holder of the *vatan*.

In the present case the management of the *vatan* is vested by the *sanad* in the defendants and their heirs in perpetuity under the title of *gumástás*, but the remuneration attached to the office is equally in derogation of the successors' rights, as in the case of a deputy, and is, therefore, at any rate in the absence of proof of custom, invalid against such successors; but in any case we think that, having regard to the terms of the *sanad*, it was in the power, whether of the original grantor or any of his successors, to determine the office and the remuneration at any time after the *vatan* services ceased, as was the case in 1864. The *sanad* is, in terms, the grant of an office the performance of whose duties are remunerated by a portion of the income of the *vatan*, and which in *Forbes* v. *Meer Mahomed Tuquee*[2] is treated by the Privy Council in discussing the general question as liable to resumptions when the services cease.

It was said, however, that the defendants must be deemed to have been in adverse possession of the 201 rupees and the 15 maunds of grain since 1864, when the services ceased. Assuming the grant to be invalid, as we have held, as against the successors of Yashvantráv on his death, adverse possession would only run from that time as against them, and twelve years had not elapsed before the present suit was filed; and although the grant might have been cancelled by Yashvantráv in 1864, there is no evidence to show that it was so cancelled by him, or that the defendants ever claimed or enjoyed the Rs. 201 and 15 maunds of grain during Yashvantráv's life otherwise than in virtue of the office.

(1) 2 Bom. H. C. Rep., 237. (2) 13 Moore's I. A., 438.

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As regards the latter view of the plaintiffs' rights, although there has been no formal resumption by them of the *sanad*, the present suit may be treated as having that effect, without prejudice to the defendants, who, if they could have proved a custom, would have done so to establish their right to create an hereditary *gumástá* notwithstanding the inalienability of the *vatan*.

With respect to the proceedings in execution of the decree of the 22nd June, 1859, the surviving plaintiffs were not parties to any of them, including Mr. Ranade's order of the 18th June, 1881, and are, therefore, not bound by them under the provisions of section 244 of the Code of Civil Procedure.

In either view, therefore, of the *sanad* we are of opinion that the plaintiffs are now entitled to the declaratory decree and injunction as prayed for, and the decree of the Court below should be confirmed with costs.

Decree confirmed.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Birdwood.

PA'LLONJI MERWA'NJI, (APPLICANT), *v.* KA'LLÁBHA'I LALLUBHA'I AND ANOTHER, (OPPONENTS).*

1887. *June* 13.

Pleader and clients, their rights and obligations inter se—Regulation II of 1827.—*Confidential communications made in the course of professional employment.*

The rules prevailing in England with regard to the rights and obligations of solicitors in relation to their clients apply, with slight difference, to pleaders practising in India. The principles deducible from the English cases are as follows :—

1. A party to a judicial proceeding is entitled to such professional assistance as he thinks will best suit him.

2. A pleader is free to place his services at the disposal of any such party upon such terms as he may think most advantageous to himself consistently with the honour of his profession and the due administration of justice.

3. A pleader who receives any confidential information from his client in the course of his professional employment is not at liberty to carry that information

* Application under Extraordinary Jurisdiction, No. 191 of 1886.