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that the permanent tenancy, as alleged by defendant No. 3 was not proved, and we must reverse the decree and substitute that of the Subordinate Judge.

Appellants to have their costs.

Decree reversed.

APPELLATE CIVIL.

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

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December 17

IRA'PA BIN MA'LA'PA NÁIK, (ORIGINAL PLAINTIFF), APPELLANT, *v* ÁPA'SÁHEB IRBASÁPA DESÁI, (ORIGINAL DEFENDANT), RESPONDENT.*

Act XI of 1852, *Sec.* 7—*Suit for a declaration—Kadim náik—Inámdár of the village—Government not a necessary party—Jurisdiction.*

In a suit for a declaration that the plaintiff was the *kadim náik* of a particular village and that the defendant, who was the *inámdár* of the village, was not entitled to levy any contribution from the plaintiff in respect of the sum which the defendant had to pay to the Government as agreed upon between him and the Government, the lower Court dismissed the claim for want of jurisdiction under section 7 of Act XI of 1852, and for non-joinder of Government as a party.

Held, reversing the decree of the lower Court, that the question involved in the case being whether the plaintiff was a *kadim náik* as regards the defendant the suit was not barred by section 7 of Act XI of 1852, the object of which is confined to providing a summary mode of disposing of claims to exemption from payment of the revenue as against Government.

Held, further, that Government was not a necessary party to such a suit.

THIS was a second appeal from the decision of T. Hamilton, Acting District Judge of Belgaum.

Suit for a declaration.

The plaintiff, Irápa bin Málápa Náik, alleged that he was the *kadim vatandár náik* of the village of Mutvád; (that is, the grant of the *náik vatan* to his ancestors was anterior to the grant of the village in *inám* to the ancestors of the defendant); that he was liable to pay to the Government only the *mámul jud* (customary quit-rent) on his *vatan* lands; that the defendant Ápásáheb Irbasápa Desái, by false representation before the Inám Commission and without the knowledge of the plaintiff, got his name entered as *jadid* (subsequent) *vatandár* in Government records; and that plaintiff having become aware of his rights in

* Second Appeal, No. 309 of 1890.

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the year 1888 filed the present suit. The plaintiff prayed, among other things, for a declaration that he was the *kadim vatandár náik* of the village of Mutvád, and that the defendant was not entitled to recover from him any contribution in connection with *chauthái* (four annas in a rupee) and *nazrána* (one anna),—that is, five annas in a rupee—which he (defendant) had to pay to Government for commutation of services under an agreement entered into by him with the Government in the year 1864.

The defendant, Ápásáheb Irbasápa Desái, of Mutvád, replied *(inter alia)* that the Court had no jurisdiction to entertain the suit, as Government had in the year 1858 declared the plaintiff's *vatan* to be *jadid*; that the suit was time-barred; that as the *jadid vatandár* the plaintiff was liable to contribute to the *chauthái* and *nazrána* (five annas in a rupee) which he had to pay to the Government.

The Subordinate Judge (Ráo Sáheb G. N. Kelkar) found that the plaintiff was entitled to the declaration prayed for, and awarded the claim.

The defendant appealed to the District Court, which held that the suit would not lie, and reversed the decree.

In his judgment the District Judge made the following observations:—

"This suit for a declaration that the plaintiff is a *kadim inámdár* is, in effect, a suit for a declaration that defendant is not alienee of the whole village, or, in other words, it is a suit for an amendment, not only of the decision of the Inám Commission, but of defendant's *sanad*. It is thus, even in the form laid, clearly barred by section 7 of Act XI of 1852, and, moreover, as Government is a necessary party there is a further bar in sections 4 and 11 of Act X of 1876."

Against the decree of the District Court the plaintiff appealed to the High Court.

Branson (with *Ganesh Rámchandra Kirloskar*) for the appellant:—The lower Court has dismissed our claim for want of juris-

diction and for non-joinder of Government as a party. We say that Government was not a necessary party. The dispute relates to the position of the parties as regards each other, with which Government has no concern. Secondly, as to jurisdiction: the same point arose in two former cases in which the District Judge, Dr. Pollen, held that the Court had jurisdiction to entertain the suit. Neither Act XI of 1852 nor Act X of 1876 can affect the present suit, because the point to be determined is whether the plaintiff is entitled to have, as against the defendant, the declaration he seeks, while the above enactments relate to the title of the persons who with respect to their estate seek exemption from Government dues. We, therefore, submit that the lower Court was wrong in not going into the merits of the case.

Starling (with *Dáji Ábáji Khare*) for the respondent:—The Inám Commissioner decided that the plaintiff was not a *kadim inámdár*, but a *jaid*. We, therefore, contend that Government having recognized our superior right, the lower Court properly held that it had no jurisdiction to entertain the suit, and that the suit was defective, as Government was not joined as a party to it.

SARGENT, C. J.:—This was a suit by the plaintiff for a declaration that he is a *kadim naik* of the village of Mutvád, and, further, that the defendant, who is the *inámdár* of the village, is not entitled to levy any contribution from him in respect of the 5 annas in the rupee which he has to pay Government in commutation of the services as agreed upon between him and the Government in 1864. The lower Court of appeal has held that the suit is barred by section 7 of Act XI of 1852, and also that Government is a necessary party to the suit. No order of the Inám Commissioner, as contemplated by that section, is forthcoming; but in any case, it could not decide the present question between the plaintiff and defendant, *viz.*, whether the plaintiff is a *kadim náik* as regards the defendant, the object of the above Act being confined to providing a summary mode of disposing of claims to exemption from payment of revenue as against Government. We must, therefore, reverse the decree of

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the Court below and send back the case for a decision on the merits. There is no necessity for making Government a party to the suit, as the Government have no interest whatever in the dispute between the parties. Costs to abide the result.

Decree reversed and case sent back.

APPELLATE CIVIL.

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

1891. *December 22.*

PA'NDURANG HARI VAIDYA AND OTHERS, (ORIGINAL OPPONENTS), APPELLANTS, *v.* VINA'YAK VISHNU KA'NE, (ORIGINAL PETITIONER), RESPONDENT.*

Will, blank spaces in the body of—Alterations and erasures—Presumption—Pencil writing subsequent to the execution of the will—Intention of testator.

The circumstance that blank spaces are left in the body of a will is no objection to its being a valid will.

If a will contains alterations and erasures, the presumption will be that they were made after the will was executed; and, if there is no evidence rebutting that presumption, they will form no part of the will.

The lower Court having declined to grant probate of a will, (which it held to be proved), on the ground that it was an incomplete will, being of opinion that the blanks, alterations and cancellations in the will showed that the deceased intended it to be a draft, and not the final expression of his wishes,

Held, that the will being one which did not require to be signed by the testator, probate should be granted to include a pencil addition proved to have been made by the attesting witness at the desire of the testator, but excluding all other additions, erasures or cancellations.

THIS was an appeal from an order passed by Dr. A. D. Pollen District Judge of Poona.

Application for grant of probate.

One Mahádeo Vishnu Káne died after having made a will of his property. In the will there were three executors mentioned, namely, Pándurang Hari Vaidya, Gopál Balvant Nene and Nilkanthráo Govind Gokhale, who having applied for probate of the will, the District Judge granted it on the 22nd December, 1890. Subsequent to the grant, Vináyak Vishnu Káne, the younger brother of the testator, made an application to the District Judge to revoke the probate, and the Court having found that no notice of the proceedings in which the probate was granted was served

* Appeal No. 126 of 1891.