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well be doubted, but it is not necessary to express an opinion on the question, as it was no part of the plaintiff's case in either Court that he had acquired the easement under the Regulation by enjoyment for thirty years, and we cannot, therefore, say, on second appeal, that there has been any miscarriage in the lower Court in not considering the plaintiff's claim with reference to the Regulation.

We must, therefore, confirm the decree with costs.

Decree confirmed.

APPELLATE CIVIL.

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

1891. *November* 16.

KESHAVRAV *ALIAS* RÁO BAHÁDUR RA'VJI TRIMBAK NAGARKAR, (ORIGINAL PLAINTIFF), APPELLANT, *v.* GANPATRA'O NILKANTH NAGARKAR, DECEASED, (ORIGINAL DEFENDANT), RESPONDENT.*

Saranjám—Lands—Right of management—Pensions Act (XXIII of 1871).

Where a suit was brought in relation to the management of *saranjám* lands,

Held, that the suit was *primâ facie* one not included in the Pensions Act.

THIS was an appeal from the decision of W. H. Crowe, Agent for the Sardárs in the Deccan.

Suit for a declaration and injunction.

The plaintiff, Keshavráv *alias* Ráo Bahádur Rávji Trimbak Nagarkar, alleged that he and the defendant, Ganpatráo Nilkanth Nagarkar, a Third Class Sardár, were cousins; that there were certain "*shetsanadi*" lands situate at the village of Sonegaum, in the Ahmednagar District, which formed part of the property acquired by the ancestors of the parties, and which had been in the joint possession of the plaintiff's father, who died recently, and the defendant since the last forty-seven years; that the leases of the said lands were taken in the names of the fathers of the parties; that after the death of the defendant's father in the names

* Appeal No. 58 of 1890.

of the plaintiff's father and the defendant, and that the plaintiff having learnt that the defendant had obtained leases for the said lands in his name alone in collusion with certain tenants, and was trying fraudulently to convert joint possession into his exclusive possession, he brought the present suit. The plaintiff, therefore, prayed that the said lands may be declared to be in the joint possession of the parties; that the rent-notes obtained by the defendant in his own name to be invalid; and that he be permanently enjoined against doing anything likely to affect the nature of the joint possession of the lands.

The defendant, Ganpatráv Nilkanth Nagarkar, answered *(inter alia)* that the lands in dispute being *saranjám* the suit could not lie without a certificate from the Collector under the Pensions Act, and that he did not admit the practice of jointly leasing the lands in question.

The Agent for the Sardárs held that a certificate under the Pensions Act was an indispensable preliminary to filing the suit, and, as no certificate was produced, he rejected the claim with the following remarks:—

"Section 4 of the Pensions Act provides that no Civil Court shall entertain any suit relating to any pension or grant of money or land revenue conferred by the British or any former Government, except under the provisions of this Act.

"The plaintiff seeks for a declaration that certain lands are in the joint possession of himself and defendant, and to have certain rent-notes, passed by the tenants to defendant alone, cancelled. It is admitted that the land in question, situated in Sonegaum, forms part of a *saranjám* granted to the Nagarkar family; and Exhibit No. 54, a selection from the records of the Bombay Government, is put in to show the genealogy of the family and nature and extent of the *saranjám.* At page 20 will be found the resolution passed by Government under date the 30th April, 1855, in which the orders of Government regarding the continuance of the *saranjám* are contained.

"Paragraph 6 runs: 'Nilkanth Ráo Yeshwant died in July, 1852. The *saranjám*, therefore, is continued, under the *saranjám*

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rules, to his eldest son, Ganpatráo Nilkhant, *on whose death it will be resumed;* and a pension granted to the next generation.' In the case of *Rámchandra* v. *Venkatráv*[1] the whole history and nature of *saranjám* was discussed in an exhaustive and learned judgment by the late Sir M. Melvill. In the course of his remarks he writes, 'the authorities which we have quoted * * may, we think, be taken as at least establishing that a grant in *jághir* or *saranjám* is very rarely a grant of the soil, and that the burden of proving that it is so in any particular case lies very heavily upon the party alleging it.' No evidence is cited here to show that anything more was granted here than the revenue arising from certain land, and the resolution quoted above supports this view."

The plaintiff appealed to the High Court.

Ganesh Rámchandra Kirloskar for the appellant:—A portion of the lands in dispute is service *inám*, and with respect to it no certificate under the Pensions Act is necessary for the maintenance of the suit. In connection with the *saranjám* property, also, we contend that no certificate was necessary in the present case, because it did not relate to the recovery of the land revenue, but to the leases of the lands. The respondent took leases in his own name, and thus violated the practice which had been prevailing in the family since a very long time. We, therefore, submit that we are entitled to maintain the present suit, and insist upon the respondent's taking leases jointly in his and our names. Our prayer is for a declaration that the lands are joint, and for an injunction.

Mahádev Chimnáji Apté for the respondent:—*Saranjám* is nothing but land revenue, and, instead of mentioning the amount of the revenue, the lands from which it is recovered are mentioned; the mere fact that the lands are mentioned, instead of the revenue, cannot dispense with the necessity of a certificate under the Pensions Act.

SARGENT, C.J.:—The questions raised by the pleadings in this case related exclusively to the management of the lands in dispute. The suit was, therefore, *primâ facie*, one which was not included

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

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in the Pensions Act, although the property was held, as the parties have considered, in *saranjám*—*Rávji Náráyan Mandlik* v. *Dádáji Bápuji Desái*[1]. Again, if the lands were not, as the Agent thinks was possibly the case, the subject of the *saranjám*, the question of the Pensions Act cannot arise, although the Government may possibly have a right to the lands as against both the parties. We must, therefore, reverse the decree and send back the case for a decision on the merits. Costs to abide the result.

Decree reversed.

(1) I. L. R., 1 Bom., 523.

APPELLATE CIVIL.

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

1891. *November* 23.

TRIMBA'K JIVA'JI DESHAMUKHA, (ORIGINAL DEFENDANT No. 1) APPELLANT, *v.* SAKHA'RA'M GOPA'L, (ORIGINAL PLAINTIFF), RESPONDENT.*

Mortgage—Undertaking not to alienate the equity of redemption—Void undertaking—Assignment of the equity of redemption—Redemption suit by assignee—Co-heir having no interest in the mortgaged property at the time of the suit not necessary party—Currency in which the debt was contracted—Repayment.

Where a mortgagor undertook that he would not alienate the equity of redemption, and that the mortgagee should not be obliged to receive the money from any one but the original mortgagor,

Held, that as the undertaking absolutely forbade alienation, and thus deprived the mortgagor of a right which was an essential incident of the estate he had in the property by virtue of his equity of redemption, it could not be given effect to.

A co-heir of the plaintiff, having an interest in the mortgage at the time of the redemption suit, is a necessary party to the suit, but not otherwise.

When a mortgage-debt is contracted in a particular currency, it should be repaid in that currency.

THIS was a second appeal from the decision of W. H. Crowe, District Judge of Poona.

Suit to redeem.

* Second Appeal, No. 692 of 1890.