failure to prove that the building causes any inconvenience to him is no valid ground for depriving him of his property. His right to recover it arises out of his ownership and stands apart from any practical injury done to other property of the plaintiff by the defendant's act of continuous trespass.

We must, therefore, amend the decree of the District Judge by awarding to the plaintiff the relief claimed in prayer No. 3 of his plaint. Each party to bear his own costs throughout.

BATTY, J.:—I concur.

Decree amended.

APPELLATE CIVIL.

Before Sir L. H. Jenkins, Kt., Chief Justice, and Mr. Justice Chandavarkar.

THE HONOURABLE LAKHAMGAVDA BASAPRABHU (ORIGINAL PLAINTIFF), APPELLANT, *v.* KESHAV ANNAJI KULKARNI AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

1901. *December* 9.

Service Inám—Lands—Resumption.

The combination of an interest in land and an obligation as to service may fall under three heads, *viz.*: (1) there may be a grant of land burdened with service, (2) there may be a grant in consideration of past and future service, and (3) there may be the grant of an office the services attached to which are remunerated by an interest in land. In either of the first two classes of grants it may be made a condition that the interest in the land should cease when the services are no longer required, but in the absence of a provision to that effect lands held under those grants are not resumable at will.

Where a plaintiff Inámdár asserts that he has a right to resume, he has to establish that the combination is such as permits of resumption and where there has been long and undisturbed possession enjoyed by the defendant and his predecessors, it will require strong evidence on plaintiff's part to make out his case.

APPEAL against the decision of Gangadhar V. Limaye, First Class Subordinate Judge of Belgaum, in Suit No. 393 of 1893.

Suit by an Inámdár to resume lands alleged to be held by defendants on service tenure.

* Appeal No. 16 of 1898.

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LAKHAM-GAVDA v. KESHAV ANNAJI.

The plaintiff sued to recover possession of certain fields with mesne profits, alleging that the lands were given to one Venkatrao Shankar as remuneration for his services; that his services were dispensed with; that he was, in October, 1881, served with notice to restore the lands; that he died without issue; and that the defendants, 1—20 in all, were in wrongful possession of the lands.

Defendant 4, Bhimrav Apaji, contended *inter alia* that the lands were not given to Venkatrao for service, nor did he render service to the plaintiff's family on account of the lands. They were granted in inám to Venkatrao's ancestor, Narhar Balaji, about a century ago. The inám was enjoyed by Venkatrao's family as private property, and the *judi* (quit-rent) was paid for it by the same family all along. The lands were sold at auction for Venkatrao's debts and the defendant purchased them and got possession of the same in September, 1890. The claim was time-barred.

Defendants 6, 7 and 9, in addition to the contention of defendant 4, stated that the said Venkatrao Shankar had a brother Govindrao, who had separated from him and had his lands separately registered; that Govindrao's wife Mhalsabai, defendant 3, and Ramchandra Govind, the natural father of her adopted son, defendant 11, sold to the defendants a portion of the lands in dispute for Rs. 400; and that the aforesaid persons had also mortgaged with possession some land to defendant 9.

Defendant 11 appeared but presented no written statement.

The other defendants were absent.

The Subordinate Judge found that the lands in suit were not given to Venkatrao Shankar for service; that they were given in gift to Venkatrao's ancestor Narhar, to which no service was attached, and that Venkatrao did not render any service for the lands. He therefore dismissed the suit.

The plaintiff appealed.

Robertson (and *Setalvad* with *Ráo Bahádur V. J. Kirtikar*, Government Pleader, *S. S. Patkar* and *R. W. Desai*) for the appellant (plaintiff).

Branson (and *P. M. Mehta* with *B. A. Bhagavat*) for respondent 4 (defendant 4).

K. H. Kelkar for respondent 9 (defendant 9).

M. V. Bhat for respondent 12 (defendant 12).

JENKINS, C. J.:—The plaintiff has brought this suit to recover possession of certain lands and for incidental relief. He alleges that the lands were granted by his ancestors to the ancestors of Venkatrao Shankar in consideration of service; that as the services of Venkatrao were no longer necessary, they were dispensed with; and that notice requiring delivery of possession was given, which reached Venkatrao on the 18th October, 1881.

The 4th defendant (who has been throughout the plaintiff's principal opponent, and to whom we will hereafter refer as the defendant) in his written statement denied that the lands were given for service, and asserted that they were granted in inám more than a century ago. This suit was commenced on the 6th October, 1893, and resulted in a dismissal; hence this present appeal.

The case was heard by the First Class Subordinate Judge of Belgaum, who has delivered a most careful and critical judgment, discussing in minute detail the various items of evidence submitted for his consideration. Mr. Setalvad, who has appeared before us for the appellant, has designedly not attempted to deal in detail with the judgment under appeal; he has simply placed before us what he considered to be the strongest points in his favour, conceding that if they did not satisfy us as to the merits of his case, it would be useless to answer *seriatim* the several points adverse to his claim formulated by the Subordinate Judge. Therefore we will deal with the case as it was presented before us. It is established by the evidence that for upwards of a century the plaint lands have been enjoyed by the defendant and his predecessors in title, and we have no doubt that this enjoyment has been under a sanad conferring a title to the lands. The question is what that title is? The plaintiff contends that the lands were given for service; that the service has been dispensed with and that, as a result, he is entitled to resume the land. The defendant, on the other hand, maintains that it was given as Sarv Inám to be continued to the grantee and his heirs from generation to generation. Under these circumstances the

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Subordinate Judge thus formulated the matter in contest between the parties: "The main issue involved in the case is whether, as alleged by the plaintiff, the lands were given for service and are therefore liable to be resumed at will." The conclusion at which the Subordinate Judge arrived was that the grant was a free gift. In the view we take of the case it is unnecessary to hold that the tenure is unconnected with all service; for we think that service may be so connected with the tenure of land as that the power of resumption does not exist.

This is very clearly illustrated by the decision of the Privy Council in *Forbes* v. *Meer Mahomed Tuquee*[1]. There the plaintiff sought to resume the land on the ground that the services in respect of which it was granted were no longer required.

In the course of the judgment their Lordships, in reference to a passage cited from the report of *Bhugoo Rae* v. *Azim Alli Khan*,[2] say:—

"To this ruling, if it be understood to mean only that where the continued performance of certain services is, upon the true construction of the grant, the condition on which the lands are to be held, their Lordships conceive no exception can be taken; but if it means that whenever service enters into the motive or consideration for a grant, the grant will become void if for any reason the service ceases to be performed, their Lordships think that the proposition is far too wide.

"The conclusion which they would draw from the decided cases, as well as from the reasons of the thing, is, that in every case the right to resume must depend in a great measure upon the nature of the particular tenure, or the terms of the particular grant.

"They agree with the observation of Mr. Justice *Jackson*, Weekly Reporter, Vol. 6, p. 209, that there is a clear distinction between the grant of an estate burdened with a certain service and the grant of an office the performance of whose duties are remunerated by the use of certain lands.

"They have already stated that, in their opinion, the grant in question does not fall within the latter cotegory.

(1) (1870) 13 Moore's I. A. 438. (2) (1858) Sudder Dewani Adt. p. 84.

"Assuming it to be a grant of the former kind, their Lordships do not dispute that it might have been so expressed as to make the continued performance of the services a condition to the continuance of the tenure. But in such a case, either the continued performance of the service would be the whole motive to, and consideration for, the grant, or the instrument would, by express words, declare that, the service ceasing, the tenure should determine."(1)

Their Lordships also refer with approval to what has been laid down by the Chief Justice Sir Barnes Peacock in *Baboo Koolodeep* v. *Mahadev Sing*(2). The cases appear to us to establish that the combination of an interest in land and an obligation as to service may fall at least under three heads; there may be a grant of land burdened with service, there may be a grant in consideration of past and future services, and there may be the grant of an office the services attached to which are remunerated by an interest in land.

It may no doubt be made a condition of either of the first two classes of grants that the interest in the land should cease when the services are no longer required, but in the absence of a provision to that effect lands held under those grants are not resumable at will. The plaintiff here asserts that he has a right to resume, therefore, he has to establish that in this case the combination (for we will assume in his favour a liability to service) is such as permits of resumption, and in view of the long and undisturbed possession enjoyed by the defendant and his predecessors, it will require strong evidence on his part to make out his case.

[The Court then proceeded to dispose of the case on its merits and on the whole arrived at the same conclusion as the Subordinate Judge.]

Decree confirmed.

(1) (1870) 13 Moo. I. A. p. 464. (2) (1866) 6 W. R. (Civ. Rul.) 199.