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that the provisions of section 248, Civil Procedure Code, have not been complied with, but it is clearly shown that in the case of Nos. 68 and 69 there is no ground for this suggestion and we cannot on the record before us find anything which entitles us to say that the Judge has committed any error with regard to Nos. 70 and 75.

The result is that the rule must be discharged with costs.

Rule discharged.

APPELLATE CIVIL.

Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Aston.

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THE SECRETARY OF STATE FOR INDIA (ORIGINAL DEFENDANT) APPELLANT, *v.* HARBATRAO HARI AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Inámdár—Dasname Sanyasi and Gosavi Zundivale—Kadim (ancient) haks—Escheat—Corporate body—Fluctuating communities—Duty of the Court, if possible, to find legal origin of existing facts.

The plaintiffs, whose title as Inámdárs of a village dated back to 1762, sued on the strength of their title as Inámdárs to recover, on account of certain haks, a sum of money which they alleged was due to them and was wrongly taken by the defendant. The defendant alleged that the haks were *Kadim* (ancient, *i. e.*, which came into existence prior to the Inám grant of the village to the plaintiffs' ancestors) and had escheated to Government. The Court below allowed the claim.

On appeal by the defendant,

Held, confirming the decree, that in order to make out that the Government had become entitled to the haks (Dasname Sanyasi and Gosavi Zundivale) by virtue of an escheat three things must be established, namely, that (1) there was a heritable grant to individuals, (2) that the heirs of those individuals have failed, and (3) that on the happening of these two conditions the haks would escheat to Government.

The burden of establishing a title by escheat lies on those who assert it.

The expressions Dasname Sanyasi and Gosavi Zundivale do not indicate individuals. They indicate a group or community of Sanyasis or Gosavis.

The law of the country recognizes fluctuating communities as legal *persons* capable of owning property, as, for instance, the caste and the village, and the hakdars in the present case were communities composed of the religious elements their names indicate.

* Appeal No. 93 of 1901.

A corporate body is dissolved by the total loss of all its members, but on such dissolution there is no escheat to the Crown either of its lands or its rent-charges. On the dissolution of the corporation the cause of the grant fails, and the effect of a dissolution on the corporation's rent-charges is that they become extinguished. As in the case of the death of a grantee of an annual payment out of land to last during the term of his life the payment sinks into land on its determination, so where the grantee is a community and the grant is to last during the term of its existence on its dissolution a similar result follows.

Where there has been a well established user extending over a long series of years it is the duty of the Court, if possible, to find a legal origin of the existing facts.

APPEAL against the decision of R. Knight, District Judge of Sátára, in original suit No. 2 of 1898.

Suit to recover a certain sum on account of *Kadim* (ancient) haks in an Inám village.

The plaintiffs were the Inámdárs of the village of Mhavshi in the Sátára District, under a sanad dated 1762 A.D. In the village there were certain hakdárs, amongst whom were included Dasname Sanyasi and Gosavi Zundivale. The village accounts showed that Rs. 90-2-0 were debited in the names of the said two hakdárs, but the plaintiffs were in receipt of the said amount ever since their Inám grant. In the year 1898, Government having withheld the payment of the said amount, the plaintiffs brought the present suit, alleging as follows:—The revenues of the village were annually divided between them and Government, and Government wrongfully took Rs. 90-2-0 out of the amount due to the plaintiffs in January and March, 1898. The defendant took the said amount from plaintiffs' share under the Collector's order dated the 14th October, 1897. The plaintiffs appealed against the said order to the Commissioner, Central Division, but without effect. Thus the plaintiffs had made all possible appeals. The reasons assigned by Government for withholding the amount were not proper. Whatever alterations the officers of Government might have made in the village accounts in relation to the items of Dasname Sanyasi and Gosavi Zundivale (under which the amount in question was entered) there was no alteration in the amount which the plaintiffs were entitled to receive. Notice under section 424 of the Civil Procedure Code (Act XIV of 1882) was duly served on the defendant.

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The plaintiffs, therefore, prayed that they should be allowed to recover Rs. 90-2-0 from the defendant with interest thereon at 9 per cent. up to date of payment.

The defendant replied that the claim was time-barred, that the amount in suit was not unlawfully deducted from plaintiffs' dues, inasmuch as by the terms of their sanad it lapsed to Government, that the plaintiffs were estopped by section 115 of the Evidence Act (1 of 1872) from pleading that the sum in suit was not *Kadim* (ancient) Inám, and that the claim was barred by section 11 of the Revenue Jurisdiction Act (Bom. Act X of 1876).

The sanad in suit is embodied in the High Court's judgment.

The Judge found that the plaintiffs having exhausted all possible appeals under section 204 of the Land Revenue Code (Bom. Act V of 1879) against the order of the Collector the suit was not barred by that Act, that the plaintiffs were not estopped from pleading, that the allowance in suit was not *Kadim* Inám, and that the plaintiffs had acquired prescriptive title to the allowance. The Judge therefore allowed the claim.

The defendant appealed.

V. J. Kirtikar (Government Pleader) for the appellant (defendant):—We contend that plaintiffs have not exhausted all the remedies contemplated by section 11 of the Revenue Jurisdiction Act. Only one appeal was preferred against the Collector's order, namely, an appeal to the Commissioner, Central Division, but section 204 of the Land Revenue Code allows one more appeal, that is, an appeal to Government.

[The Court over-ruled the objection on hearing *R. P. Karandikar* for the respondents, who pointed out that the original order was passed by the Mámlatdár, against that order there was a first appeal to the Collector, who having confirmed the order, there was a second appeal to the Commissioner, Central Division.]

Next we contend that the two haks in dispute are *Kadim* grants, that is, they have been in existence prior to the grant of the Inám to the plaintiffs' ancestors. A reference to the settlement sanad of 1888 will show that the plaintiffs' Inám is exclusive of those haks, which are included in the item of Rs. 213-10. There is no evidence to show that they were subsequently created by the Inámdár plaintiffs, but on the contrary they seem to

admit that the haks are *Kadim* because they say that they never made any payment on account of those haks. We contend that under the terms of the sanad we became entitled to those haks as soon as the individuals representing the haks disappeared. We further contend that each of the two sects, though composed of several individuals, should be considered to be one legal *persona*.

R. P. Karandikar for respondents 1—4, 6—8 and 10—13 (plaintiffs):—We rely upon our long practice and recognition of title by the Inám Commission in 1859-61: *Vasudev Pandit* v. *The Collector of Puna*.[1] The claim of Government, if it was ever in existence at all, long ceased to exist and is barred by limitation. A solitary entry in the village accounts of payment to hakdárs in the year 1818 was explained away by us in the statements made in the old revenue inquiries.

Dasname Sanyasis and Gosavis Zundivale are not particular individuals but sects (Steele on Hindu Law and Customs, Edition of 1868, p. 435 *et seq.*).

Government claim by escheat, but they have neither proved escheat nor that it occurred within the statutory period.

It is admitted by Government that we have not made any payment to the Sanyasis or to the Gosavis since 1818. There is nothing to show that the payment was made in 1818 as of right. Our user and enjoyment have, therefore, ripened into ownership supposing we had none before. But we claim the money as our own, inasmuch as neither the Sanyasi nor Gosavi item has been proved to be *Kadim*, that is, existing before the grant to the plaintiffs' ancestors in 1762 A.D. The older account of 1759 A.D. mentions no such items.

The grant of the fresh sanad in 1888 does not alter the situation because we had enjoyed the money for more than sixty years after the solitary entry in 1818. A much shorter period would have been sufficient as Sátára District was brought under regulation only by Act III of 1863. The acceptance of the British sanad in 1888 by some of the plaintiffs only does not bind all the plaintiffs, nor do any incorrect figures in the sanad operate as estoppel having regard to the circumstance that long

(1) (1873) 10 Bom. H. C. R. 471.

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before the fresh sanad was granted the true facts with respect to the allowance in suit had been brought to the notice of Government. The sanad creates no right in favour of Government, nor does it revive any such right if it ever existed. The sanad cannot be considered to be a new agreement between the parties, there being no consideration for it.

S. R. Bakhle for heirs of respondent 5 and for respondent 9 :— We have held adversely to the intended donees. Government have not proved escheat.

V. J. Kirtikar (Government Pleader) was heard in reply.

JENKINS, C. J.—The plaintiffs are the Inámdárs of the village of Mhavshi in the Wái Taluka of the Sátára District, and on the strength of the title this implies they seek in this suit to recover a sum of Rs. 90-2-0 which they allege was due to them but was wrongly taken by the defendant.

The plaintiffs' title as Inámdárs dates back to 1762, for in that year an Inámpatra was passed to the plaintiffs' predecessor in the following terms :—

"To Rajashri Narsingrao Janardhan surnamed Wagh, of the Bharadwaj Gotra, Ashwalayana Sutra, Astrologer and Kulkarni of Mauze Morve, pargane Sirval.

"Compliments of servant Madhavrao Ballal Pradhan. The Inampatra given in writing in the Soor year Sallas, Shitain, Maya and Alaf, Shake 1684, in the cyclical year called Chitrabhanu, is as follows :—You, having come to the camp in Kasba Poona, represented to the Huzur that you were a family-man, that you should be maintained, that therefore the liege lord may be graciously pleased to settle and grant a village as a fresh Inam and that letters may be executed in your favour as authorities for enjoyment. Thereupon, considering that you rendered service to the liege lord for a long time and that you are a family-man and that it is necessary to provide for your maintenance and out of kindness towards you, the village of Mhavshi, in Taraf Nirthadi, Prant Poona including the dutarfa that is the Swarajya and the Moglai (shares of the revenue) together with the Sardeshmukhi and all cesses and taxes and with all the present and future cesses exclusive of Hakdars and Inamdars and together with water, trees, grass, wood, stones, mines and buried treasure, etc., is settled and granted as fresh Inám. Therefore you are to get the village aforesaid transferred to you; and you, your sons, grandsons, and descendants from generation to generation are to enjoy the Inám and live in peace. Be this known. The 26th Moon of Safar. This mandate is final."

By this document the property in the soil passed: *Ravji Narayan Mandlik* v. *Dadaji Bapuji Desai.* (1)

In 1859 there was an award by the Assistant Commissioner in relation to this village, and by it the Inámdár's property in the soil was confirmed: *Vasudev Pandit* v. *The Collector of Puna* (2).

In 1888 a sanad was passed under the Summary Settlement Act in the following terms:—

"Whereas the village of Mhavshi in Taluka Wai of the Sátára Collectorate is held as an hereditary Inám, under the authority of the British Government, as shown below:—

Continuable for ever as transferable private property on payment of annual Nuzarana.

Name of person to whose lineage the village is continuable and name of present holder.	Authority for hereditary continuance.	Area of the village.		Assessment of the village.	Amount payable to the British Government as Jooree or other Tax.	Deductions.			
						Alienations more ancient than the grant of the Village.			
						Lands.		Cash.	Total amount payable out of the revenues of the village.
						Total Measurement.	Total assessment.		
To be continuable to the lineage of Narsingrao Janardan ——— Present holders— Haibatrao Hari and Raghunathrao Narayan.	Inam Commissioner's decision, No. 345, dated 30th April 1861.	Unarable.	233-36	845	8 4 0	Arable 143-33 Unarable 10-16 159-9	117	2 0	213 10 0
		Arable.	1,294-17						
		Total.	1,528-13						1885-6

(1) (1875) 1 Bom. 523.

(2) (1873) 10 Bom. H. C. R. 471.

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"It is hereby declared, that the said village shall be continued for ever by the British Government, under section IV and section XVI, clause B, of Act II of 1863 of the Bombay Legislative Council, as the private property of the persons who shall, from time to time, be its lawful holders, on the following conditions:—

"*Firstly.*—That the said holders shall continue faithful subjects of the British Government, and shall pay to the same a fixed annual sum of Rs. 31-9-0 as Nazarana, in addition to any Jooree or other tax heretofore payable.

Secondly.—That the said holders shall have no present or future claim to any alienations, whether land or cash, more ancient than the grant of the village, all which shall be permitted to be enjoyed under such orders as the British Government may from time to time issue, till such time as they may finally escheat to the British Government.

"*Thirdly.*—That if in any case the existing assessment of occupied lands has been guaranteed by the Revenue Survey, such guarantee shall be respected in its integrity until the expiration of the period of the guarantee, after which the holders of the village shall be at liberty to revise the assessment, all lawful rights and privileges of minor Inámdárs, cultivators, sub-tenants, or others being maintained.

"In consideration of the fulfilment of which conditions the said village of Mhavshi shall be continued for ever, without increase of Land-tax or Nazarana over the said fixed amount, and without objection or question on the part of Government as to the rights of any lawful holders thereof, whether such rights shall have accrued by inheritance, adoption, assignment, or otherwise."

The sum of Rs. 213-10-0 mentioned in the column of cash deductions includes two items, one a hak in favour of Dasname Sanyasi, the other a hak in favour of Gosavi Zuudivale, and it is in connection with these two haks that the plaintiffs' claim is made.

Stated shortly the rival contentions are these: the plaintiffs maintain that they are entitled to receive the amount of these two haks, that it always has been received by them, and that since 1818 they have not paid the hakdárs indicated and so have gained a prescriptive title to the haks.

The Secretary of State in Council on the other hand alleges that the haks are *kadim*, and have escheated to the Government.

We think the evidence establishes that the haks are *kadim*; they certainly are ancient, and according to the sanad of 1888 they are more ancient than the grant of the village, for admittedly they are included in the Rs. 213-10. It is urged that this sanad is of no value as it was not signed by all the Inámdárs;

but, though it may not have been signed by all, it was accepted by all as the basis of the settlement arrived at. We do not think this conclusion is shaken by the account of 1759, for in the first place it is three years earlier than the original sanad, and in the next place it is not clear that we have in it a complete statement of all the haks then existing.

We will therefore deal with the case on the footing of the haks being *kadim*, and consider what under the circumstances are the legal consequences of the non-payment of these haks to the proper hakdárs since 1818.

First then, has the defendant made out that the Government has become entitled to the haks by virtue of an escheat? For this at least three things must be established: (1) that there was a heritable grant to individuals, (2) that the heirs of those individuals have failed, and (3) that on the happening of these two conditions the haks would escheat to Government.

Now it is clear that the burden of establishing a title by escheat lies on those who assert it, so that we must be satisfied that the burden has been discharged: *Gridhari Lall Roy* v. *The Bengal Government*.[1] The evidence (in our opinion) falls short of establishing the first of these conditions, for it is not shown that the grant was to individuals; no one is able to say that the expressions Dasname Sanyasi and Gosavi Zundivale indicate individuals, and there is very good reason to believe that they do not.

In Steele on Hindu Law and Custom there is an appendix which deals with the custom of Gosavis, and it is there said that "all questions relating to the internal administration and discipline of the order are decided by an assembly called the *Dusname* which should consist of the disciples of the ten founders from whom they take their names." It appears to us therefore that the grant was to an assembly or community of Sanyasis. In the same way Gosavi Zundivale does not point to any particular individuals as such, but to a group or community of Gosavis.

There can be no doubt that the law of the country recognized fluctuating communities as legal *personæ* capable of owning

(1) (1868) 12 Moo. I. A. 448 at p. 454.

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property, as, for instance, the caste, and the village, and in our opinion the hakdárs here were communities composed of the religious elements their names indicate.

What then is the reasonable inference to draw from the fact that no payment has been made to either of these bodies since 1818 and that no trace can now be found of them?

It is a sound principle that, where there has been a well established user extending over a long series of years, it is the duty of the Court, if possible, to find a legal origin of the existing facts; and in accordance with this principle it has been laid down in *Sumbhoolall Girdhurlall* v. *The Collector of Surat*,[1] where a question arose as to the title to *Tora Garas*, that "long enjoyment is itself a title as well in favour of the recipient of an annual payment out of land as of the possession of land itself."

The receipt therefore by the plaintiffs and their predecessors since 1818 of the annual payment clearly affords the basis of a title founded on long possession. The Government would account for the non-payment to the hakdárs by the failure of their heirs, but if (as we have held) the hakdárs were communities, that is obviously an incorrect description of the position. Accepting, however, the facts this description implies, the position would be that the hakdárs have determined by the loss of the constituent members, and, as a result, the haks have become extinguished. This view of the facts would furnish a complete explanation of all that has occurred and would be in harmony with the principle that long possession is a title, for as the haks were presumably payable out of the land, when they ceased, the profits representing them would go to the owner of the land; and this is in accordance with the actual enjoyment.

The statement that the haks have become extinguished demands a word of explanation.

According to the law of England a corporate body is dissolved by the total loss of all its members, but on such dissolution there is no escheat to the Crown either of its lands or its rent-charges. And the reason is that on the dissolution of the corporation the cause of the grant fails. The effect of a dissolution on the corporation's rent-charges is that they become

(1) (1859) 8 Moo. I. A. 1 at p. 40.

extinguished: Viner's Abridgment, Rent, B. b, plac. 2. It is no doubt true that so far as the English law of escheat is founded on the principles of feudal law it furnishes no conclusive clue to the operation of the law of escheat in India (*Ranee Sonet Kowar* v. *Mirza Himmut Bahadoor*[1]), but this rule as to the property of dissolved corporations appears to us to be founded on a broader basis than that furnished by the technicalities of the feudal law, and to furnish a useful guide in the circumstances of the present case.

The applicability of this doctrine becomes the more apparent if we consider the result that follows on the death of one who is the grantee of an annual payment out of land to last during the term of his life; clearly it sinks into the land on its determination. So if the grantee is a community, and the grant is to last during the term of its existence, on its dissolution a similar result follows.

But the case cannot be disposed of without considering the effect of the sanad granted under the Summary Settlement, wherein these haks are included among the deductions to be made in respect of cash allowances.

By the second condition of the sanad it is provided that the holder shall have no claim to any alienations whether land or cash more ancient than the grant of the village, all which shall be permitted to be enjoyed under such orders as the British Government may from time to time issue till such time as they may finally escheat to the British Government, but in our opinion this makes no difference in the result; for if the hak had prior to the Summary Settlement become extinguished, as on the facts, we think, should be held, then this sanad could not operate to revive the hak; for, apart from all other reasons, the hakdars whose continuance was a necessary condition of the haks were no longer in existence.

The objection that the suit is barred by the Revenue Jurisdiction Act has been overruled by the District Judge, but for the Government it is argued that he has misapprehended the requirements of the law. The governing section is the 11th of that Act which provides that "No Civil Court shall entertain

(1) (1876) 3 I. A. 92.

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any suit against Government on account of any act or omission of any Revenue officer unless the plaintiff first proves that, previously to bringing his suit, he has presented all such appeals allowed by the law for the time being in force, as within the period of limitation allowed for bringing such suit, it was possible to present." By section 204 of the Land Revenue Code it is provided "An appeal shall lie to the Governor in Council from any decision or order passed by a Commissioner or by a Survey Commissioner, except in the case of any decision or order passed by such officer on appeal from a decision or order itself recorded on appeal by any officer subordinate to him."

There has been no appeal to the Governor in Council here, but there has been to the Commissioner, so we have to see whether the Commissioner's order was on appeal from an order itself recorded on appeal.

It seems that there have been successive orders in this matter by the Mámlatdár, the Collector, and the Commissioner.

The Commissioner's order was undoubtedly on appeal from one of the Collector, but the difficulty has been to determine whether the Collector's order was on appeal from the Mámlatdár. Unfortunately the record is meagre on this point, but under the circumstances the safer inference would appear to be that the Collector's order was passed on appeal, and in this view of the case the plea must be overruled.

For these reasons we affirm the decree of the District Judge with costs.

Decree confirmed.