

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Batchelor.

1912.
January 23.

SAPURLO SAESHETTI (ORIGINAL PLAINTIFF), APPELLANT, v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

Grant of occupancy by Government under a kabulayat—Condition as to resumption for Government purposes, that is, for Railway and other purposes—Sale by Government—Construction of the condition—Government full proprietors.

Under a kabulayat the occupancy of certain land had been granted to the plaintiff by the Collector subject only to the condition that it should be competent to Government to resume the land whenever it should be required by Government for Government purposes, that is, for Railway or other purposes. Afterwards the land was resumed and was sold to defendant 2 (from whose grandfather it was originally acquired for a Railway). The plaintiff, thereupon, brought the present suit against the Secretary of State for India in Council and defendant 2 for the recovery of the land on the ground that the sale to defendant 2 was not for Government purposes.

Held, dismissing the suit, that Government were the proprietors of the land and as such they could resume it whenever they required it for their proprietary purposes.

Government purposes must be construed as meaning that they were purposes of Government as the State proprietor, purposes which Government alone were entitled to prescribe in the exercise of their discretionary powers.

- FIRST Appeal against the decision of T. Walker, District Judge of Kanara, in Original Suit No. 1 of 1909.

The plaintiff alleged that—

The lands in dispute were acquired by Government from their owner in the year 1864 for an anticipated Railway project, and the said project having fallen through, Government let out the lands annually till 1890, in which year they were leased to plaintiff on condition that he should pay Rs. 208 to Government every year and surrender possession of the lands if they be required by Government for Railway or other purposes. A kabulayat to the said effect was taken from the plaintiff on the 1st May 1890. In the year 1906 the Commissioner, Southern Division, offered to plaintiff the continuance of the

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said lands on survey tenure on payment of Rs. 6,450. The plaintiff paid the said amount and a further sum of Rs. 403-2-0 and thus became owner on survey tenure. Government, however, on the 25th March 1909 returned to the plaintiff the above sums of money with 15 per cent. compensation and evicted the plaintiff from the lands in favour of defendant 2. Hence the suit for possession with mesne profits from the date of suit.

The kabulayat referred to in the plaint was as follows :—

Kabulayat.

To the Mamlatdar of Karwar Taluka.

I, Sapurlo Sabshetti, resident of Mouje Baad, in Karwar Taluka of the Kanara

The numbers shown in the margin (are given to me?) for temporary cultivation under Order No. 664, 14th April 1890, from the Fasli year 1300 (1890 to 1891 A.D.) on condition of my paying Rs. 208 and the anna cess every year and also on condition of my giving up the land			
Survey Number.	Acres.	Assessment.	
1295	12 30	58 0 0	
708	3 15	15 0 0	
	16 5	73 0 0	

for Railway and other purposes without claiming compensation whenever the same may in future be required for Government purposes.

District, do, by this kabulayat, accept the holding of the land comprised in the Survey numbers mentioned in the margin and situated in the village of Baad in the taluka of Karwar in Kanara District, on my behalf and also on behalf of my present and future (co) khatedars. And I pray that my name should be entered in the records of Government as the khatedar of the said land.

The said khata is subject to the Land Revenue Code of 1879 and to the decisions (rules?) made thereunder which are in force, and is given temporarily from the 1st of May 1890. And I agree to pay in time the revenue of the (said) land that may be payable in respect of the said khata according to law.

Dated 1st May 1890.

Written by Venkatrao Shanbhag.

Signature. (Mark) This mark is that of Sapurlo Sabshetti.

The form of the kabulayat was printed but the words in italics were added in manuscript.

Defendant 1, the Secretary of State for India in Council, contended *inter alia* that the lands had been acquired for a

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Railway under the Land Acquisition Act from the grandfather of defendant 2, that the plaintiff had no permanent right and that he was not entitled to any relief.

Defendant 2, Anant Ganap Habba, pleaded that the lands had been acquired for a Railway and that as the purpose for which they had been acquired fell through, defendant 1 was bound to restore them to the persons from whom they were acquired or their heirs.

The Judge found that the plaintiff had not by payment of Rs. 6,540 and Rs. 403-2-0 acquired *maliki* (ownership) right to the plaint lands, that under the kabulayat of 1890 Government were entitled to resume the lands at pleasure, that the Commissioner had no power to lease the lands on survey tenure without the sanction of Government and that the suit could not lie as Government acted under the statutory power conveyed in Land Revenue Code, section 211. The Judge, therefore, dismissed the suit.

The plaintiff appealed.

Weldon with *S. V. Palekar* for appellant (plaintiff).

G. S. Rao (Government Pleader) for respondent 1 (defendant 1).

N. A. Shiveshvarkar for respondent 2 (defendant 2).

CHANDAVARKAR, J. :—There were only two points urged by the learned Counsel in support of this appeal in his opening address, first, that there was a valid contract as between the Government and the plaintiff, who is the appellant, in consequence of his application to the Commissioner to purchase this land, and the acceptance by him of the conditions which were imposed by the Commissioner in consequence of that offer. It was urged that after the Commissioner had accepted the plaintiff's proposal to purchase this land by receipt of the money, it was not competent to Government to rescind the Commissioner's order, because, it was said, the acceptance vested the title in the appellant. It is not necessary to go at length into the reasons for disallowing this argument, because the learned Counsel has himself given it up in his rejoinder.

It is clear from the provisions of the Land Revenue Code, and from the correspondence which passed between the different officers of Government, at the time the proposal of the plaintiff to purchase this land was considered, that the Commissioner was acting under section 60 of the Land Revenue Code, and that there was a Resolution of Government, at that time in force, which required that in respect of land of this description the Commissioner and the Collector could sell it only after obtaining the sanction of Government. Plainly upon the facts this was Railway land, not required just then for Railway purposes, and therefore, according to the evidence of Exhibit 44 the Commissioner could not dispose of it, in the way he did, without obtaining the sanction of Government.

The point on which the learned Counsel has laid special emphasis is his second argument; it is this. He urges: If the plaintiff has not acquired any title in virtue of the Commissioner's order, he has a right to fall back upon his *kabulayat*, Exhibit 15. Under that *kabulayat* the occupancy had been granted to him by the Collector subject only to this condition that it should be competent to Government to resume the land whenever it should be required for Government purposes, *i. e.*, for Railway or other purposes. It is urged that the sale of the land to defendant 2, a private individual, is not such a purpose.

Now, the correspondence which had passed before the *kabulayat*, Exhibit 15, was executed makes it clear that what was intended by the contracting parties was that the land was to be resumed by Government whenever it was required by them for Railway or other purposes. The words in Exhibit 15 no doubt enlarge those terms, because in Exhibit 15 it is stipulated that the Government could resume the land whenever they liked, for their purpose, either for a Railway or other Government purpose. These words are not to be found in the previous correspondence upon the subject. But even assuming that these words embodied the terms agreed upon,

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they are consistent with what was the real contract between the parties. The words in Exhibit 15, on which Mr. Weldon has laid so much stress, do not mean more than that Government as proprietors of the land could resume it whenever they required it for their proprietary purposes. Any other construction would be inconsistent with the conditions of the tenure on which this land was held at the time by the plaintiff. This land was not held under the *kabulayat*, Exhibit 15, on the ordinary *rayatwari* tenure, because it was not subject to the thirty years' settlement. Government still remained proprietors of the land, like any private owner, and were not merely the State entitled only to the assessment and having the right to enhance that assessment at the end of the usual period of the thirty years' settlement. They were full proprietors who could deal with the land in any way they liked like any private owner. They granted this land under the terms of the *kabulayat*, Exhibit 15. They dealt with the plaintiff like any ordinary proprietor, with this difference that the provisions of the Land Revenue Code and the Rules made under it applied to the case so far as they could apply. But the provisions of the Land Revenue Code, and the terms of the *kabulayat* could not take away the proprietary character of the title of Government.

If, then, Government were proprietors, then Government purposes must be construed as meaning that they were purposes of Government as the State proprietor, purposes which Government alone were entitled to prescribe in the exercise of their discretionary powers.

On these grounds, I think, the decree must be confirmed with costs. There must be separate sets of costs.

BACHELOR, J.:—I agree. It seems to me that, so far as concerns the Commissioner's order of October 1906, upon which reliance was placed for the appellant, the appellant can get no advantage from that order seeing that it was first suspended by Government and then finally annulled under the power

vested in Government for that purpose by section 211 of the Land Revenue Code. It may be added that no kabulayat was given to the appellant in order to vest in him any right of occupancy. As to the old kabulayat (Exhibit 15), that must be read and interpreted by the light of the appellant's application (Exhibit 36) upon which it was based, and by the light of the local officers' reports and decisions connected therewith. So reading it, it appears to me quite clear that the manuscript phrase added to the margin of this kabulayat means only that the appellant undertook to surrender this land whenever Government in their discretion required him to do so.

Decree confirmed.

G. B. R.

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Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Russell.

GOVIND BALKRISHNA JOSHI (PLAINTIFF), APPLICANT, v. PANDURANG
VINAYAK JOSHI (DEFENDANT), OPPONENT.*

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March 1.

Provincial Small Causes Courts Act (IX of 1887), Schedule II, clause 35, sub-clause (l)—Threat to assault—"Injury to the person"—Exemption from the cognizance of the Court of Small Causes.

A suit to recover damages from the defendant who ran after the plaintiff with a shoe in hand threatening to beat him and using abusive language, but did not actually touch the plaintiff's person, is a suit for "injury to the person" within the meaning of clause 35, sub-clause (l) of the second schedule of the Provincial Small Causes Courts Act (IX of 1887) and is not within the cognizance of the Small Cause Court.

APPLICATION under the extraordinary jurisdiction (section 25 of the Provincial Small Causes Courts Act, IX of 1887) against the decision of C. Roper, District Judge of Poona, dismissing an appeal under Order XLI, rule (2) of the Civil Procedure Code (Act V of 1908) against the order of D. G. Medhekar, First Class

* Application No. 242 of 1911 under the extraordinary jurisdiction and Civil Reference No. 13 of 1911.