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preliminary decree. We also think certain dicta in *Narayan Balkrishna* v. *Gopal Jiv Ghadi*[1], which are based upon *Sidhanath Dhondder* v. *Ganesh Govind*[2], go too far.

G. B. R.

(1) (1914) 38 Bom. 392. (2) (1912) 37 Bom. 60.

APPELLATE CIVIL.

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

1914.

November 26.

DATTAJIRAO ALIAS TATYASAHEB BIN SHIDHOJIRAO ALIAS ABASAHEB GHORPADE (ORIGINAL PLAINTIFF), APPELLANT, *v.* NILKANTRAO BIN SANTOJIRAO ALIAS BAPUSAHEB GHORPADE (ORIGINAL DEFENDANT), RESPONDENT.*

Pensions Act (XXIII of 1871), section 6—Saranjam—Grant of land revenue, Suit to recover—Collector's certificate—Admission of pleader binding on client—Preliminary decree—Appeal—Remand—Civil Procedure Code (Act V of 1908), Order XLI, Rule 23.

The grantee of a Saranjam filed a suit for the recovery thereof and at the trial a preliminary issue was raised as to the maintainability of the suit without the certificate provided for by section 6 of the Pensions Act. The grantee's pleader admitted a certificate was necessary but after several adjournments for the purpose failed to produce a certificate. A decree was thereupon passed on the preliminary issue dismissing the suit. On appeal by the grantee it was contended that he was not bound by the admission of the pleader and it was stated that such evidence could be produced as would render a certificate unnecessary.

Held, that the grantee was bound by the admission of his pleader and that even if he was not so bound there was no material before the Court to justify a reversal of the decree and therefore a remand under Order XLI, Rule 23 of the Civil Procedure Code (Act V of 1908) was impossible.

In the absence of evidence to the contrary the grant of a Saranjam must be presumed to be a grant of land revenue and not of the soil.

Ramchandra v. *Venkatrao*[1] and *Raja Bommadevara Venkata Narasimha Naidu* v. *Raja Bommadevara Bhashyakarlu Naidu*[2], referred to.

* First Appeal No. 197 of 1913.

(1) (1882) 6 Bom. 598. (2) (1902) L. R. 29 I. A. 76.

FIRST appeal against the decision of G. V. Patvardhan, First Class Subordinate Judge of Dharwar, in suit No. 20 of 1912.

The plaintiff sued to recover possession of the lands in suit together with mesne and future profits alleging that his father Shidhojirao *alias* Abasaheb Ghorpade was the full owner of all the lands of two villages, namely, Jigeri and Irapur of taluka Ron and of a house at Gajendragad, that the two villages were Saranjam Inams, that the said property was the joint ancestral property of the plaintiff and his father who died on the 17th December 1899, that the property was jointly managed by the plaintiff and his father up to his death, that afterwards the plaintiff alone managed and enjoyed the property till about the month of June 1900 when the defendant's father illegally and without any right took possession of all the said property and was in enjoyment of it till he died about five years before the suit, that since then the defendant had been in enjoyment of the property and that the cause of action arose in the month of June 1900. The plaintiff further alleged that his father had bequeathed the property in suit to the plaintiff in the year 1890 but he had not based his suit merely on the right which had accrued to him under the said will, but he also relied upon his right by survivorship and also upon the right to which he was entitled as the son of his father. The plaintiff prayed that the Saranjam lands in the above mentioned two villages be given over to him from the defendant, that he should be awarded Rs. 3,000 as mesne profits for the past three years and payment of future profits be ordered at the rate of Rs. 1,000 a year. The plaint was presented on the 16th December 1911.

The defendant contended *inter alia* that the suit was not maintainable without the Collector's certificate under section 6 of the Pensions Act.

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On the defendant's contention the Subordinate Judge, on the 13th September 1912, framed a preliminary issue, namely:—

"Whether the suit can lie without a certificate under the Pensions Act?"

The plaintiff's pleader agreed that a certificate was necessary and having asked for time to produce one, he ultimately failed to produce it after repeated adjournments and the suit was dismissed on the 1st April 1913.

The plaintiff appealed.

Nilkant Atmaram for the appellant (plaintiff). *Coyajee* with *N. V. Gokhle* for the respondent (defendant).

SCOTT, C. J. :—The plaintiff alleged that one Shidhojirao was the full owner of all the lands in two villages, namely, Jigeri and Irapur of Ron Taluka, and one house at Gajendragad, that the two villages were Saranjam Inams, that the plaintiff's father died in 1899, that the plaintiff and his father were joint and the properties above-mentioned were managed and enjoyed jointly by them up to the death of the plaintiff's father, that afterwards up to about June 1900, the plaintiff alone managed and enjoyed the property, and about the month of June 1900, the father of the defendant, without having any right thereto, illegally took possession of all the land and was in enjoyment of it until five years ago when he died, and since then the defendant had been enjoying the property. The plaintiff further alleged that his father bequeathed the property in suit to him by will in the year 1890, but the plaintiff brought the suit not merely relying upon the right which accrued to him under the will but upon his right by his survivorship and as the son of Shidhojirao, and he prayed that the Saranjam lands in the two villages of Irapur and Jigeri should be given over by the defendant; that mesne profits should be awarded, and further profits from the

date of suit until possession at the rate of Rs. 1,000 a year. The defendant by the sixth paragraph of his written statement pleaded that the suit was not maintainable without a certificate of the Collector under section 6 of the Pensions Act XXIII of 1871.

On the 13th September 1912, a preliminary issue was raised in the trial Court as follows :—"Whether the suit can lie without a certificate under the Pensions Act?" On the 22nd of October 1912, the Court passed its decision upon that issue, giving as its reason that "Mr. Kambli for the plaintiff agrees that a certificate is necessary and wants time to produce it." Time, accordingly, in accordance with the practice of Civil Courts in this Presidency was given to the plaintiff's pleader. On the 1st April 1913 the learned Judge disposed of the suit upon the preliminary issue, saying "after repeated adjournments for the production of the certificate, the plaintiff's pleader now informs the Court that the Collector has refused to grant the certificate. He appears clearly to have refused the certificate on the strength of Government Notification No. 1455, dated the 10th February 1912, published in the *Bombay Government Gazette*, Part I, page 192. The plaintiff's pleader wants time to appeal to the Commissioner, but no such remedy is given to him by law. The suit is, therefore, dismissed with costs."

Now the plea raised by the sixth paragraph of the written statement was based upon the provision of the Pensions Act, section 4, that "no Civil Court shall entertain any suit relating to any pension or grant of money or land-revenue conferred or made by the British or any former Government;" and the subsequent provision is that to which I have already alluded, contained in section 6, that a certificate by the Collector authorising to file the case must be produced. It is quite clear from the plaint that the plaintiff came

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to trial on the footing of the property which he seeks to recover being Saranjam, and it is equally clear that the plea contained in paragraph 6 of the written statement is based upon the established rule that, in the absence of evidence to the contrary, the grant of a Saranjam must be presumed to be a grant of land-revenue and not of the soil. That is laid down in *Ramchandra* v. *Venkatrao*[1], and reference is made in the judgment in that case to the definition by Professor Wilson in his Glossary of the term "Saranjam." He defines Saranjam as "temporary assignments of revenue from villages or lands for the support of troops, or for personal service, usually for the life of the grantee; also grants made to persons appointed to civil offices of the State to enable them to maintain their dignity. They were neither transferable, nor hereditary, and were held at the pleasure of the Sovereign." The judgment also quotes the statement of Mr. Steele in his "Hindu Castes" at page 207 that: "Grants by the Native Government in jaghir were either Fouj Saranjam, subject to the performance of military service, or Jat Saranjam, personal jaghir. The subject of those grants were the whole or particular portions of the revenues of villages belonging to the Sarkar . . . . Usually the grants depended on the pleasure of the Sovereign, and the fidelity of the grantee . . . . They were not, in general, hereditary."

There is, therefore, a strong presumption that the pleader for the plaintiff in agreeing that a certificate was necessary under the Pensions Act was taking a correct view of the position. But if that was not correct, it could only be shown to be incorrect by the production of evidence which would establish that the grant was not the usual grant of revenue but a grant of the soil. However, time was given for the production

[1] (1882) 6 Bom. 598.

of the certificate, and the reason for the refusal of the certificate appears to have been the rule laid down in the Government Notification cited by the Subordinate Judge that certificates shall not be given in the case of Saranjams, probably because Saranjams are not ordinarily hereditary in the usual sense of the word, that is to say, they do not pass except with the consent of the Ruling Power to the heir of the holder.

The plaintiff, however, has appealed from the decision, and his pleader, as far as we can ascertain, without any materials whatever before him, has positively asserted that he could prove by evidence, if he were given the opportunity, that the grant in this case is a grant of the soil and not of the revenue. He says that, for the purpose of arguing the appeal, he cannot be concluded by the admission of the plaintiff's pleader in the lower Court, because an admission of a pleader on a point of law is not binding upon the client in appeal. Whether that is a correct statement in its unqualified form, where the admission is the direct cause of the dismissal of the suit, it is not necessary now to consider; for, upon the statement of the appellant's pleader and upon the authorities to which I have just referred, it is clear that the plaintiff could only succeed in showing that the suit could be maintained without a certificate, if he called evidence to displace the ordinary presumption regarding the nature of Saranjam grants; and where a pleader in the lower Court makes an admission upon an issue regarding which evidence might be but is not given, we have the authority of the Privy Council for holding that the client will be bound: see *Raja Bommadevara Venkata Narasimha Naidu* v. *Raja Bommadevara Bhashyakarlu Naidu*[1]. Let us, however, assume that the appellant is not bound by the admission of the pleader in the lower Court, then we have before

[1] (1902) L. R. 29 I. A. 76.

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us an appeal where the lower Court has disposed of the suit upon a preliminary point. We cannot then remand the case under Order XLI, Rule 23, unless we reverse the decree in this appeal. But what materials have we to justify us in reversing the decree? The presumption based upon high authority is that the decree was perfectly right, but the appellant has come to this Court to have the decree set aside and the case remanded without a particle of documentary evidence, without any statement based upon affidavit, to induce us to hold that evidence is forthcoming which ought to have been produced in the lower Court in the interest of the plaintiff, and which would have been produced but for some grave error on the part of his pleader. We cannot presume that this is the case. We, therefore, hold that the decision of the lower Court was right. We dismiss the appeal with costs.

Appeal dismissed.

J. G. R.

APPELLATE CIVIL.

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

1914.
December 22.

JAVERBHAI JORABHAI (ORIGINAL PLAINTIFF), APPELLANT, *v.* GORDHAN NARSI AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Bhagdari and Narwadari Tenures Act (Bom. Act V of 1862), section 3—Unrecognised sub-division of a bhag*—Mortgage—Covenant in the mortgage-deed—Claim for compensation based on covenant maintainable—Indian Contract Act (IX of 1872), section 65—Specific Relief Act (I of 1877), section 38—Mortgagor holding as tenant of mortgagee for upwards of twelve years—Adverse possession of limited interest.*

In 1897, the house in suit and certain other properties were mortgaged to the plaintiff's father by the defendants they having purchased the properties from the bhagdar owner in 1893. In 1901, on accounts being taken, part

* Second Appeal No. 582 of 1913.