PRIVY COUNCIL.

SECRETARY OF STATE FOR INDIA IN COUNCIL (DEFENDANT) *v.* LAXMIBAI (PLAINTIFF) AND ANOTHER (SECOND DEFENDANT).*

[On Appeal from the High Court of Judicature at Bombay.]

J. C.* 1922. December 8.

Saranjam—Grant of Revenue or of Land—Absence of Presumption—Right of Resumption.

A saranjam may be either a grant of the soil, and the whole revenue derived from it, or a grant of the royal share of the revenue only. It must be determined in each case upon the facts what was the quality of the original grant, although it may be that it is ordinarily a grant of the royal revenue only.

Suryanarayana v. *Patanna*[1] and *Sivaprakasa Pandara Sannidhi* v. *Veerama Reddi*[2], applied.

In the present case, in which the plaintiff's ancestor appeared to have been in possession of the land at the time of the original grant, it was held, having regard to the language of the documents and to other circumstances, that the grant was of the land; and that the Government, therefore, was entitled to eject the plaintiff, not merely to reassess the land. Although there was a certain onus upon the Government to justify its dispossession of the plaintiff, that was of little materiality, since a definite conclusion in fact could be drawn as to the quality of the estate granted.

Judgment of the High Court reversed.

APPEAL (No. 56 of 1921) from a judgment and decree of the High Court (December 22, 1916) reversing a decree of the District Judge of Dharwar (January 6, 1913).

The suit was brought by Gururao Shrinivas, since deceased and represented by the first respondent, against the appellant, the Secretary of State, and Vithalrao, the second respondent, to recover certain lands forming part of the Hebli Estate. The Government had dispossessed the plaintiff and put Vithalrao into possession.

Present :—Lord Phillimore, Sir John Edge, Sir Lawrence Jenkins, and Lord Salvesen.

(1) (1918) 41 Mad. 1012; L. R. 45, I. A. 269.

(2) (1922) 45 Mad. 586; L. R. 49 I. A. 286.

1922.

SECRETARY OF STATE FOR INDIA v. LAXMIBAI.

The facts appear from a report of the appeal to the High Court at 41 Bom. 408.

The plaint alleged that the Hebli Estate had been granted to the plaintiff's ancestor as a Sarva Inam, and that consequently the lands in suit were his absolute property. By an amendment the plaintiff raised an alternative case as follows :—"In case the plaintiff fails to prove that the property in suit is Sarva Inam, plaintiff's contention is as follows :—Saranjam grant is a grant of the revenue only and the Government cannot resume the Raitava rights which the plaintiff and his ancestors have been enjoying from ancient times. And even if the Saranjam grant be of the soil, Government has no right to resume it. And the estate in suit is partible."

Written statements of defence were put in, in which it was *inter alia* pleaded that the estate was a Saranjam holding, impartible and resumable by Government in accordance with the rules relating to Saranjams, and consequently that the jurisdiction of the Court was excluded by the Bombay Revenue Jurisdiction Act, (X of 1876), section 4. It was also denied that the plaintiff had acquired any rights of occupancy in the property claimed by him.

The District Judge found that the estate was a Saranjam and not a Sarva Inam, and that finding was not disputed upon appeal. He held that the grant was of the royal revenue only, but he was of opinion that the right to hold the lands was a part of the grant, not independent of it, and that they were consequently resumable with the Saranjam. He further held that under section 4 of the Revenue Jurisdiction Act, 1876, the Court had no jurisdiction to hear the suit, save so far as the plaintiff had acquired occupancy rights, apart from the grant and he found that the plaintiff

had not acquired any such rights. He accordingly dismissed the suit.

An appeal to the High Court was allowed, by Batchelor and Shah J.J., the former agreeing with the judgment delivered by the latter learned Judge. The judgment appears fully in the report at 41 Bom. 408, above mentioned. Shortly stated it was held that the grant was to be presumed to have been of the royal revenue only; the view of the District Judge that the right to provision of the land was a part of the grant was rejected. It was consequently held that although the Government could reassess the lands in suit, the plaintiff could not be dispossessed.

1922, November 6, 7 :—*Sir George Lowndes, K. C.* and *Kenworthy Brown*, for the appellant.—Having regard to the decisions of the Board in *Suryanarayana* v. *Pattanna*[1] and *Sivaprakasa Pandara Sannadhi* v. *Veerama Reddi*[2], it should not be presumed that the grant was only of the royal share of the revenue; the nature of the grant should be ascertained from the evidence. If, however, the grant was of the revenue, the District Judge rightly held that the Saranjam included the right to the possession of the land, and that that right could be resumed with the Saranjam. The view of the High Court proceeded upon a misapprehension of the judgments in *Ramchandra* v. *Venkatrao*[3] and *Ganpatrav Trimbak Patwardhan* v. *Ganesh Baji Bhat*[4], and upon the basis of "Seri" right, (see Wilson's Glossary "Seri"). *Rajya* v. *Balkrishna Gangadhar*[5], which was relied on, does not touch the present case. A Saranjamdar cannot, as Siridar or otherwise, become a permanent occupier adversely to Government. The

(1) (1918) 41 Mad. 1012; L. R. 45 I. A. 209.

(2) (1922) 45 Mad 586; L. R. 49 I. A. 286.

(3) (1882) 6 Bom. 598.

(4) (1885) 10 Bom. 112.

(5) (1905) 29 Bom. 415.

1922.

SECRETARY OF STATE FOR INDIA v. LAXMIBAI.

right as Siridar is not independent of the right as Saranjamdar, but part of that right; it ceases upon resumption of the Saranjam. The principle to which section 90 of the Indian Trusts Act (II of 1882) gives effect applies. If there is any presumption as to the nature of the grant it is displaced in this case by the evidence as to its nature. The history of the Saranjam and the terms of the documents appearing from the proceedings before the Inam Commission show that the grant was of the soil. The original Sanad, as there recorded, grants the land in Inam with any hidden treasures. That the documents showed a grant of the soil is supported by the judgment of the Board in *Shekh Sultan Sani* v. *Shekh Ajimodin*[1]; the Sanad in that case is set out in *Trimbak Ramchandra* v. *Shekh Gulam Zilani*[2]. On this point see also *Vasudev Pandit* v. *The Collector of Puna*[3] and *Ravji Narayan Mandlik* v. *Dadaji Bapuji Desai*[4]. If the Saranjam was a grant of the soil it is clear that the Court has no jurisdiction [*Ramrav Govindrao* v. *Secretary of State*[5], referred to.]

De Gruyther, *K. C.* and *Parikh*, for the first respondent:—The burden of proof was on the Government to establish that it had the right, not merely to reassess the land, but to dispossess the plaintiff. There is a presumption that a Saranjam is a grant of revenue only; the decisions in India to that effect are not touched by the recent decisions of the Board referred to. The plaintiff's ancestors had been in possession since before 1775, at which period the Government had not any property in the land. A Saranjam is partible only by consent of the Government, but in the present

(1) (1892) 17 Bom. 431; L. R. 20 I. A. 50.

(2) (1909) 34 Bom. 329.

(3) (1873) 10 Bom. H. C. 471 at p. 474.

(4) (1875) 1 Bom. 523 at p. 527.

(5) (1909) 34 Bom. 232.

case there were divisions of the land without any consent. If the grant was merely of the revenue the plaintiffs have the right to possession, although the Government can reassess. The terms of the grant so far as they appear from the record do not show that the grant was of the soil; see Elphinstone's Report on Territories conquered from the Mahrathas, pp. 22, 129 [reference was also made to Etheridge's Narrative of Bombay Land Commission, and to the Inam Rules (Bombay) 1898, rr. 5, 6].

Sir George Lowndes, K. C. in reply:—The District Judge found that there was no right of occupancy, and in the High Court it was not contended that that finding was wrong.

December, 8:—The judgment of their Lordships was delivered by

LORD SALVESEN:—This is an appeal against a decree of the High Court of Judicature at Bombay, dated 22nd December 1916, which reversed a decree of the District Judge of Dharwar, dated 6th January 1913. The suit relates to a part of the Hebli Estate, from which the plaintiff was evicted by the Government on the death of his grandfather, Pandurangrao. Their object in doing so was to prevent partition of what they regarded as an impartible estate held under a grant of Saranjam.

It is not necessary to recapitulate the facts which have been very fully stated in the judgment of the District Judge of Dharwar or to consider the majority of the points which were disposed of by him and on appeal by the High Court at Bombay. The sole issue which remains for determination is whether the Saranjam grant made by the British Government in favour of an ancestor of the plaintiff was a grant of the royal revenue only, or was a grant of the land itself, or of

1932.

SECRETARY OF STATE FOR INDIA v. LAKSHMAN.

the whole revenue of the land coupled with a right to hold it. The learned District Judge held that the original grant by the British Government was a grant of the whole revenue of the land, and that this carried with it the right to make the best possible use of unoccupied land. The High Court at Bombay in reversing his decision held that the grant was one of the royal share of the revenue only and not of the soil. In reaching this conclusion it is impossible to resist the view that the judges of the High Court were much influenced by their view that there is a presumption that a grant of Saranjam is a grant of royal revenue only, and accordingly that the burden of proving that, in any particular case of Saranjam, it is a grant of the soil, lies upon the party alleging it. They relied upon various cases cited and which at that time seemed to establish this proposition. They had not, however, the benefit of two recent decisions of this Board, viz., *Suryanarayana* v. *Patamma*[1] and *Sivaprakasa Pandara Sannadhi* v. *Veerama Reddi*[2] in both of which it was held that there is no such presumption.

In conformity with these decisions their Lordships are of opinion that a grant of Saranjam may be either of the soil and the whole revenue derived from it, or a grant of the royal share of the revenue only. It must be determined in each case upon the facts what was the quality of the original grant, although it may well be that it is ordinarily a grant of the royal revenue only. It may be that as the plaintiff was dispossessed by the British Government in 1901 there is a certain *onus* upon the appellant to justify his dispossession, but this becomes of little materiality when evidence is adduced from which a conclusion in fact may be legitimately drawn. In the present case the oral evidence is of no

(1) (1918) 41 Mad. 1012 ; L. R. 45 I. A. 209.

(2) (1922) 45 Mad. 586 ; L. R. 49 I. A. 286.

value as supporting the plaintiff's case, and an inference must be drawn one way or the other from the documents that have been produced in the case. These have been examined in detail by the District Judge on pages 35 and 36 of the record, and their Lordships concur generally in the result of his analysis. It is plain that the original grant was made in respect of political services; and while it is no doubt possible that the grantees were at that time the owners of the estate, and that all that the grant was intended to give them was a release from payment of the royal share of the revenue, there is nothing in any of the documents produced which suggests such a limitation. On the contrary in one of the early documents founded on the grant was made expressly of the Kasba Hebli with its hamlets and Watnhal, with the Mahal Jukath and Mokassa "with the whole of the dues and cesses and hidden treasures, exclusive, however, of the dues of Huckdars and Inamdars", and the language of the other documents is in similar terms. It is significant also that in the deed of partition executed by Pandurangrao in 1879, the property partitioned is described as the Jahagir villages of Kasbe Hebli and Majre Watnhal and the Mouza of Talvai and Kurdapur "obtained from the British Government". Throughout the documents there is no suggestion that what was conveyed was merely the royal share of the land revenue. They assume throughout that the whole revenue of the lands was conveyed to the grantees and the amount of the Nazarana which has been levied from time to time appears to have been based on the yearly revenue of the estate, "there being no suggestion (as the learned District Judge says) that revenue derived by the holder as occupant, as distinct from Saranjamdar was not liable to Nazarana". All these considerations are sufficient in their Lordships' opinion, to

1922.

SECRETARY OF STATE FOR INDIA v. LAXMIBAI.

justify the inference that the original grant was a grant of the soil.

It is significant as bearing on the result at which their Lordships have arrived, that the plaintiff in his original plaint nowhere maintained the view upon which the learned Judges of the High Court proceeded. His main claim was that he was a full owner of the property in dispute, and that the estate in question was granted as Sarva Inam hereditarily in recognition of the services which his ancestors had rendered in assisting the British in settling the country conquered from the Peshwas. This claim was rejected by the District Judge and has now been admitted by the plaintiff to be untenable. As an alternative to this claim, based on the grant by the British Government, the plaint proceeds as follows :—"Saranjam grant is a grant of the Revenue only, and the Government cannot resume the Raitava rights which the plaintiff and his ancestors have been enjoying from ancient times. And even if the Saranjam grant be of the soil, Government has no right to resume it. And the estate in suit is partible".

It is not clear what is meant by "Raitava rights", but the statement sufficiently discloses that they are rights of occupancy only and not of ownership, and a claim of this kind was strenuously maintained in the lower Court with regard to the occupation of lands which were unoccupied at the date of the original grant. This latter claim has now been abandoned. In no part of the plaint is it possible to find a claim that the Saranjam grant was a grant of the royal share of the revenue only. It appears, however, that this point was argued, and it has not been the practice of their Lordships to construe the pleadings too strictly, or to exclude a plea, which was not embodied in the plaint, from being made an issue in the case. The fact, however, that it did not occur to the plaintiff's advisers to

propound this contention on the evidence which he adduced has a bearing on the question as to the proper inference to be drawn in fact from that evidence.

As the case was framed, the jurisdiction of the Civil Courts in India was apparently not ousted. But in the view which their Lordships now take, the right of the Government to resume these lands could not be questioned in the Civil Courts.

In the result their Lordships will humbly advise His Majesty that the decree of the High Court at Bombay should be set aside and the suit dismissed with costs, here and in the Courts below.

Solicitor for appellant: *Solicitor, India Office.*

Solicitor for first respondent: Mr. *Edward Dalgado.*

Appeal allowed.

A. M. T.

PRIVY COUNCIL.

HARICHAND MANCHARAM (DEFENDANT) *v.* GOVIND LUXMAN GOKHALE SINCE DECEASED (PLAINTIFF).

J. C.* 1922. December 20.

[On Appeal from the High Court of Judicature at Bombay.]

Vendor and purchaser—Specific performance—Agreement for sale—Stipulation for preparation of contract by Vakil—"Condition"—Construction.

Documents may upon their true construction constitute a binding contract for the sale and purchase of immovable property, enforceable by specific performance, although they stipulate for a contract to be prepared by a Vakil, and that stipulation, together with others, is described in the documents as a condition.

Von Hatzfeldt-Wildenburg v. *Alexander*[1], distinguished.

Judgment of the High Court affirmed.

* *Present*:—Lord Atkinson, Lord Sumner, Lord Carson, and Mr. Ameer Ali.

(1) [1912] 1 Ch. 284.