APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

1921.

December 23.

CHANDANMAL KESARMAL AND ANOTHER (ORIGINAL DEFENDANTS NOS. 3 AND 4), APPELLANTS *v.* VISHVANATH BALVANT SOHONI, SECRETARY OF THE IMARAT COMPANY, LIMITED, OF AHMEDNAGAR AND ANOTHER (ORIGINAL PLAINTIFF AND HEIR OF DEFENDANT NO. 2), RESPONDENTS*.

Construction of lease—Lease for a term of years to the lessee and his putra pautradi santati*—The expression used conveys an absolute interest descendible to collaterals.*

The plaintiff leased his property to one Pemraj, his wife, and his *putra pautradi santati* (sons, grandsons and lineage) for a period of forty years. Pemraj having died before the expiry of the period without leaving wife or children, the property was taken possession of by his sister's sons. The plaintiff sued to recover possession of the property, alleging that in the events that had happened, the lease was determined :—

Held, over-ruling the contention, that the premises were leased absolutely to Pemraj for a period of forty years, and that on his death his heirs, including his sister's sons, were entitled to succeed.

Ramlal Mookerjee v. *Secretary of State*(1) and *Perkash Lal* v. *Rameshwar Nath Singh*(2), followed.

SECOND appeal from the decision of C. V. Vernon, District Judge of Ahmednagar, confirming the decree passed by G. Davis, Assistant Judge at Ahmednagar.

Suit to recover possession of property.

The property in dispute was leased by the plaintiff to one Pemraj on the 1st October 1905 for a period of forty years. The lease in question was made subject to the following conditions :—

We shall pay you the rent as stated above and reside in the shop for the period of forty years. On the expiry of the period we shall vacate your shop as written above. We and after us our wife or *putra pautradi santati* (i.e., son, grandson and our lineage) will reside in your house and conduct the

*Second Appeal No. 74 of 1921.

(1) (1881) 7 Cal. 304. (2) (1904) 31 Cal. 561.

trade....We, ourselves or our *putra pautradi santati* (son, grandson and our lineage) themselves will use the said shop and will not let the same to others on rent, or on any other condition. If a partition may effect amongst our *putra pautradi santati* and if they think of conducting their business separately in this shop, they will divide the shop by putting temporary thin walls at their own expenses. But they should not cause any damage to your building nor should they cause any changes to be made in the present form of the building. If they divide the shop in that manner and use the same the company should give them a notice and each of them should get his name entered in respect of the respective portions. Till this happens our *putra pautradi santati* are responsible jointly and severally for your rent. If we or our *putra pautradi santati* will take any partner in their trade and the shop be conducted in his (i.e., the said partner's) and our names then we shall stay in the shop as long as we are partners in the said shop (trade).

Pemraj having died without wife or children, the property was taken possession of by defendants Nos. 3 and 4, who were his sister's sons.

The plaintiff sued to recover possession of the property alleging that Pemraj having died without wife or children the lease had come to an end.

The lower Courts decreed the suit.

Defendants Nos. 3 and 4 appealed to the High Court.

S. S. Patkar, Government Pleader, for the appellants.

Coyajee, with *G. S. Mulgaonkar*, for the respondent.

MACLEOD, C. J.:—The plaintiff company sued to recover land which was originally leased to one Pemraj under a rent-note passed by him on the 1st October 1905. The defendants Nos. 3 and 4 who resist the plaintiff's claim are the sister's sons of Pemraj. The case for the plaintiff is that the lease was only to Pemraj and his wife and his direct descendants, thus excluding the collaterals. This construction of the document has found favour in both the lower Courts. But I do not think that that is the way to look at this

1921.

CHANDANMAL KESARMAL v. VISHVANATH BALVANT.

particular document which amounts to a lease of particular premises for forty years to Pemraj, and if there had been no words of limitation the lease-hold interest would pass to his heirs. The question is whether we can extract from the document any intention that the lease on the death of Pemraj and his wife should descend in a particular manner. The words are "पुत्र पौत्रादि संतति" which are translated "sons and grandsons and our lineage." It is clear from the decision in *Ramlal Mookerjee* v. *Secretary of State*[1] that those words when found in a will convey an estate of inheritance, and the same conclusion was arrived at in *Perkash Lal* v. *Rameshwar Nath Singh*[2], where their Lordships recognised that these words had been held to convey absolute estates of inheritance, alienable and never resumable, unless in a particular case some custom were proved which would exclude the ordinary law, for instance, if it were found that these words were applied to a devise of an estate which by custom descended only in the male line, then they could not be held to convey an absolute estate of inheritance. There is no difference whether such words be found in a will or lease, and there is nothing in this particular document on the facts proved which would show that the period of forty years for which the rent-note was to run, was to terminate before the expiry of forty years, in the event of the line of the direct descendants to Pemraj coming to an end. In my opinion this document should be construed as leasing the premises absolutely to Pemraj for a period of forty years, and the result would be that on the death of Pemraj it would go to his heirs. No doubt the fact that the wife is mentioned in the document might create a difficulty, since in the event of Pemraj dying before his wife, she might claim a life-estate in

(1) (1881) 7 Cal. 304. (2) (1904) 31 Cal. 561.

the lease to the exclusion of his heirs. However that question need not be considered. Taking a general view of the lease, and in the absence of any claim by the wife, we are entitled to come to the conclusion that it was a lease to Pemraj for forty years without any limitation. Therefore the appeal should be allowed and the plaintiff's suit dismissed with costs throughout. The direction that the plaintiff should get possession should be struck out. The direction with regard to payment of rent should stand.

Appeal allowed.

R. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Coyajee.

JAYANT BAPSHA SAVANT (ORIGINAL DEFENDANT), APPELLANT *v.* ABDUL RAHIMAN VALAD MAHOMED IBRAHIM HARJUK (ORIGINAL PLAINTIFF), RESPONDENT*.

1922. *January 9.*

Khot—Payment of Faida to the Khot—Khoti Khasgi lands—Khoti Nisbat lands—Liability to pay.

The Faida payable to a Khot is leviable both on Khoti Khasgi lands in the hands of a Khot and on Khoti Nisbat lands in the hands of his alienee.

SECOND appeal from the decision of N. V. Desai, Assistant Judge of Thana, confirming the decree passed by B. N. Hublikar, Subordinate Judge at Murbad.

The plaintiff who was a managing Khot of the village of Bhandivli, sued to recover Khoti Faida from the defendant who held Khoti Nisbat lands which were alienated to him by a co-sharer Khot.

The lower Courts decreed the claim.

* Second Appeal No. 676 of 1920.