as it falls under clause (*d*) of the proviso. But if it does not fall under clause (*d*) of the proviso to section 31, it is clear that his claim is one which would fall under section 35. The claims falling under that section are to be dealt with by the Collector, or by the higher officer to whom an appeal would lie under the rules framed, and the decision of that officer is conclusive. The effect of that provision, in my opinion, is to oust the jurisdiction of the civil Courts in respect of such claims. The jurisdiction of the civil Courts is not ousted in terms ; but in view of the scheme of the Act and the special procedure laid down for compensation for interruption to the supply of water to any land irrigated by a canal, it seems to me that the jurisdiction of the civil Courts is ousted. In either case the result is that the plaintiff's claim must fail.

Appeal dismissed.

J. G. R.

APPELLATE CIVIL.

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

1921.

December 7.

TUNGABAI ALIAS RUKMINIBAI WIFE OF GOPAL ANANT DESAI MINOR BY HER GUARDIAN KRISHNAJI ANANT DESAI (ORIGINAL PLAINTIFF), APPELLANT *v.* KRISHNAJI RAMCHANDRA DESHPANDE AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS*.

Vatan—Deshpandegiri Vatan—Grant of land for Palkhi allowance—Such a grant can be considered as an appanage of the Vatan—Gordon Settlement—Sanad under Gordon Settlement—Land referred to in the Sanad as part of Deshpandegiri Vatan.

A grant of the village in suit was made in favour of the defendant's ancestors, who were Deshpandes, at the end of the seventeenth century by the then King of Bijapur. It was given in Inam for Palkhi allowance.

* Second Appeal No. 1105 of 1918 (with Second Appeals Nos. 1106, 1118, 1130 to 1132 of 1918).

1921.

TUNGABAI v. KRISHNAJI RAM-CHANDRA.

Under the Gordon Settlement which dealt with service Inams, the village was classified as Deshpande Vatan and a Sanad was issued in 1901 in which the lands in suit were referred to as part of Deshpandegiri Vatan. In 1903, the last male holder of the Vatan died without any issue, leaving three sisters who filed suits for partition. A question arose whether the lands in the village were an ordinary Inam or a Vatan,

Held, that the village was granted to the Deshpandes to pay their Palkhi expenses and was, therefore, an appanage of the Vatan. Moreover under the British Rule the grant had been treated by the parties and the Government as part of the Vatan property and as a part of the remuneration for the services.

Per MACLEOD, C. J. :—"Even in the case of Inams, the decisions of this Court that, in the absence of evidence as to the terms of an Inam grant made by a Native Ruler before British Rule, there is a presumption of law that the grant was only of the royal revenue from the land and not of the soil, may require to be reconsidered since the decision of the Privy Council in *Suryanarayana* v. *Patanna*[1]...referred to with approval in *Upadrashta Venkata Sastrulu* v. *Divi Seetharamudu*[2].

SECOND appeal against the decision of E. Clements, District Judge of Dharwar modifying the decree passed by B. S. Kembhavi, Subordinate Judge at Haveri.

Suit for partition of lands.

The lands in suit were situate in the village of Gudgudi. Towards the end of the seventeenth century the village of Gudgudi was granted by the then Mahomedan King of Bijapur as Palkhi Inam to the plaintiff Tungabai's ancestors who were Deshpande Vatandars. The terms on which the grant was made can be gathered from Exhibit 113 which ran as follows :—

"To the Karkun of Nidsingi. Salams. The day from Makbulkhan Subhedar Mamla of Bankapur and of the Mahals. The Sun Year 1087, Nilo Didras Deshkulkarni of the said village, has agreed to pay a sum of 600 Hons as Sirani (present) and to him the village of Gudgudi has been graciously granted as an Inam village. In this respect an agreement has

(1) (1918) L. R. 45 I. A. 209. (2) (1919) L. R. 46 I. A. 123 at p. 128.

been issued by the Subha to the Deshkulkarni. The amount of Sirani is payable in three years as per Kowlnama :—

The Current year	The year 80 (88 ?)	Year 80.
Hons 300	Hons 150	Hons 150.

Consent with the Deshkulkarni that we shall have the (instalments) recoveries to the said effect (torn) (not readable). No objections should be raised (torn) (not readable). All kinds of Haks (Kulkanoo) and Babs (Kulbab) in the said village have been granted. Do not object. Keeping a copy (torn) 'send back or hand over' the original. So it is ordered, 16th month of (torn) 1097.

16th Shaval 1097 (Fasli)."

In 1863, the Government appointed a Commission presided over by Mr. Gordon for the settlement of service Inams in the Deccan, Konkan and Southern Maratha country. The result of this Commission was commutation of service for a payment of quit-rent. When sanctioned by Government it was known as the Gordon Settlement. Under the Gordon Settlement the village of Gudgudi was classified as Deshpande Inam. Thereafter both Government and the grantees treated the village as Vatan.

In 1901 Government issued a Sanad to the Vatandars the material portions of which were :—

"Whereas in the Zilla of Dharwar certain lands and cash allowances are entered in the Government accounts for the year 1863-64 as held in the service tenure as follows :—

Name of the Vatan	Lands at
Deshpande	Mahal Nidsangi.

And whereas the holders thereof have agreed to pay to Government a fixed annual payment in lieu of service. It is hereby declared that the said lands and cash allowances shall be continued hereditarily by the British Government on the following conditions . that is to say that the said holders and their heirs shall continue faithful subjects of the British Government and render to the same the following fixed yearly dues :—

Mamul Judi	...Rs.	1,489	7	0	One thousand nine hundred
In lieu of service	... ,,	431	11	0	and twenty one and annas
	Rs	1,921	2	0	two only.

1921.

TUNGABAI v. KRISHNAJI RAM-CHANDRA.

In consideration of the fulfilment of which conditions—First. The said lands and cash allowances shall be continued without demand of service, and without increase of land tax over the above-fixed amounts, and without objection or question on the part of the Government as to the right of any holders thereof as long as any male heir to the Vatan lineal, collateral, or adopted within the limits of the Vatandar family in existence...."

The properties in suit were held by Gurunath Deshpande who died leaving three sons, Dattu, Shripad and Bhimappa. Shripad was the last owner as survivor and he died in 1903 without issue, but leaving plaintiff Tungabai, and two other sisters. Tungabai filed a suit to recover one-third share in the village lands claiming to be the heir of Shripad under Hindu law. She alleged that the properties in the Schedules A, B and C originally belonged to Gurunath and though the property in Schedule C was Vatan, the occupancy rights were not Vatan as they existed before the grant of the Inam.

The defendants Nos. 1, 2, 4 and 5 contended that the village was Vatan and so the plaintiff was not entitled to succeed.

The Subordinate Judge held that the grant of the village of Gudgudi for Palkhi allowance was a Deshpandegiri Vatan; that the grant was of the royal share of the revenue but the Inamdars did not get the occupancy rights in the village. His reasons were as follows :—

"These three documents, Exhibits 85, 112, 113, show that the grant of the village Gudgudi was for keeping a palanquin. The grant was made by Makbulkhan, the Dewan of the Emperor of Bijapur. Exhibit 85 is dated 1851. Bhimrao made that statement, I think, for the Inam inquiry. There is nothing in the record to show what the result of this inquiry was. This grant, though originally for a particular purpose, came to be looked upon as *Deshpandegiri Vatan*. This grant as it was made for providing a palanquin to the Deshpande when he went to the Capital, was an appanage of that *Deshpandegiri Vatan*. That is why it was regarded as part of the *Deshpandegiri Vatan*. Later on when the object of the grant was forgotten,

it was looked upon as remuneration of the Deshpande. This can be seen from the fact that it was entered in the Vatan Register of 1862-63 as *Deshpandegiri Vatan*. Commutation settlement was applied to that. This property was given to the share of Shripad's ancestor. That the parties also looked upon the grant as *Vatan* can be seen from the fact that the ancestor of plaintiffs has signed Exhibit 98, the copy of the *tharavband* of 1867-68. It is contended that this signature cannot be construed as consent of the signatory because he was bound to sign it. This has no force in it. There is nothing to show that he was bound by it. Besides I think this grant ought to be held to be *Deshpandegiri Vatan*. To hold otherwise would utterly frustrate the object of the grant, for the dignity of having a palanquin would be with one and the grant for the expenses of that dignity would be with another. The dignity was conferred upon the grantee not because he was A or B but because he was the Deshpande and had to attend the Court with due pomp becoming the dignity of that office. Though the grant was not originally for the remuneration of the Deshpande office still I hold that the grant was *Deshpandegiri Vatan* as it came to be looked upon as such and as it must go hand in hand with that Vatan....Mr. Kargudri next contends that there is nothing to shew that the village was occupied and that therefore both the royal share of the revenue and occupancy rights must have been given. The facts that there are *Kadim* Inamdars and that there are persons other than Deshpande shown as occupants in Village Register No. 1 (Exhibit 93) go to show that the village was occupied and was not brought by the Deshpandes under cultivation. Exhibits 112 and 113 also go to show the same thing. Therein it is stated that there was a balance of assessment and that the lands were uncultivated that year. All these go to show that the village was occupied. It, therefore, follows that the Inamdars did not get the occupancy rights with the grant of the village."

The decree passed by the Subordinate Judge was as follows: "The plaintiff was the owner of the occupancy rights in lands mentioned in Schedule C except the four Talwarki lands and in Schedule D except the first two. She was also owner of the third."

On appeal, the District Judge agreed with the Subordinate Judge as to the Vatan character and the nature of the grant but held that the plaintiff was not the owner of the occupancy rights. He, therefore, reversed the decree so far as it declared that the plaintiff was the owner of the occupancy rights in the lands mentioned in Schedule C (except the four

1921.

TUNGABAI v. KRISHNAJI RAM-CHANDRA.

Talwarki lands) and in Schedule C (except the first two) and allotted shares in those lands by partition. The rest of the decree was confirmed. His observations were as follows :—

"The *Inam* in this case was a grant of the village of Gudgudi as an appanage to the *Vatan* of the Deshpande. It may be presumed that it was intended to be a grant of the same description as the Deshpande Vatan. The Deshpande in *taraf*, which is a small District, corresponded to the Kulkarni in the village ; it was his duty to look after the land and revenue records of his District....The date of the grant, see Exhibits 112 and 113, was during the last days of the Bijapur kingdom. I have already shown that practically from that date until British rule was introduced there was no settled Government of a permanent character in this District. It is no wonder then that Mr. Chaplin reported to Mount Stuart Elphinstone that there were no *Mirasdars* in this part of the country. We may take it then that for over a hundred years the Deshpandes managed this estate through farm servants and yearly tenants. Since the introduction of the British rule some of the tenants have acquired a permanency of tenure which may lead them to suppose that they are on the same footing as occupants of survey numbers in British villages. Most of the land however as Village Form I shows, Exhibit 93, is occupied by and registered in the names of the Inamdars themselves. The wording of the title deeds of the *Inam*, Exhibits 112 and 113, does not differ from other grants which in other cases have been held to be grants of revenue only ; nevertheless I entertain not the slightest doubt that the grant included extensive proprietary rights in the village. It was a grant of the soil in that sense and was only subject to rights already subsisting. Exhibit 108 shows that Government have even admitted the Inamdars' rights over forest lands. Exhibit 98, the *th arvband*, shows what ancient rights in the village were reserved. I find, therefore, that whatever proprietary rights were held by the deceased Shripad in the Gudgudi village were *Vatan* property."

The plaintiff appealed to the High Court.

K. H. Kelkar, for the appellant.

Coyajee with *H. B. Gumaste*, for respondent No. 1.

MACLEOD, C. J. :—The plaintiff sued to recover from defendants Nos. 1 to 5 and 9 and 10 by equitable partition her $\frac{1}{3}$rd share in the properties mentioned in

Schedules A, B and D of the plaint or ⅓rd share in the lands in Schedule C even if the property in A was Deshpandegiri Vatan and for mesne profits. The properties in A, B and D originally belonged to one Gurunath Dattatraya Deshpande who died leaving three sons, Dattu, Shripad and Bhimappa. Shripad was the last owner as survivor and he died in January 1903 without issue, but leaving three sisters who filed three suits for partition. It was further urged by the plaintiff that though the property in Schedule C was Vatan, the occupancy rights were not Vatan as they existed before the grant of the Inam. The defence was that the lands were Vatan and so the plaintiff was not entitled to succeed. One decree was passed in the three suits. The trial Court held that the occupancy rights in the lands in Schedule C and D with certain exceptions were not Vatan. The plaintiff was also held entitled to certain sites in Schedule A. The lower appellate Court held that the plaintiff was not the owner of the occupancy rights in the lands mentioned in Schedules C and D with the exceptions mentioned in the decree. The plaintiff has appealed and the only question argued in the appeal was whether the lands in the village of Gudgudi were ordinary Inam or Vatan.

The case has been unduly complicated by the view taken by the trial Court that the rights of the plaintiff's ancestors in the village were partly Inam, partly Vatan, that the original grant was a grant of the royal share of the revenue, and any occupancy rights they possessed were acquired afterwards, so that they could not be considered as subject to the rules of succession to Vatan property. The learned appellate Judge seemed to think that this was a possible inference, but came to the conclusion that the grant included extensive proprietary rights and was a grant of the soil in that

1921.

TUNGABAI v. KRISHNAJI RAM-CHANDRA.

sense subject to rights already existing. Now if we concede that whatever rights the plaintiff's family now possess in the village arose from the original grant, it follows that those rights are either Inam or Vatan according to the purpose for which that grant was made. If, however, only the royal share of the revenue was granted for Vatan services it would not be impossible for the Vatan family to have acquired afterwards proprietary rights in the village lands which would be their personal property and would descend according to the rules of Hindu law. But it has not been suggested in this case that the occupancy rights in the village have been acquired apart from the original grant or the Sanad issued in 1901.

Exhibit 112 contains a copy of the original grant, from which it appears that the village of Gudgudi was given as Palkhi Inam to the plaintiff's ancestors who were admittedly Deshpande Vatandars.

The village was described as having fallen fallow, the revenue being 150 Hons. 600 Hons were to be paid as premium while the Vasul was to be paid at stated times. Judged by the rules laid down by the decisions of the British Courts, it might be said that this was only a grant of the revenue, but I quite agree with the learned appellate Judge that those rules have been laid down without considering from the lessons of history what were the actual conditions when grants going back 250 years, as this one does, were made. To quote from the judgment, they assume a stabilised condition of the village granted where all cultivable land is occupied by cultivators who are entitled to remain on the soil so long as they pay a definite amount out of the produce or a definite share of the produce to Government. In such a case nothing would be left to Government to give away except what it

received itself as revenue. But we cannot assume that those conditions existed in the 17th century. The grantee may or may not have recognised existing rights but what those rights may have been it is impossible for us to say. That occupancy rights were recognised by Governments previous to British Rule may be admitted, but I very much doubt whether those Governments in making grants considered that such grants were anything more than grants of the rights which existed in Government at the time they were made. However that may be, it is clear that the village was granted to the Vatandars to pay their Palkhi expenses and was therefore an appanage of the Vatan. Under the Gordon Settlement which dealt with service Inams, the village was classified as Deshpande Vatan and the Sanad, which was eventually issued in 1901, after reciting that certain lands and cash allowances were entered in the Government accounts for the years 1863-64 as held in service tenure, declared that the said lands and cash allowances should be continued hereditarily by the British Government on certain conditions. No distinction was made between the right to levy the assessment and the right to occupy the land so that it cannot be said that only the former was settled to be Vatan by the Sanad.

A very similar question arose in *Amrit* v. *Hari*[1]. The original grant was made in 1734 by a Maratha Ruler for maintenance in return for service. In 1884 the grantee accepted a settlement on the lines of the Gordon Settlement and the Sanad issued was in the same terms as the Sanad in this case. Shah J. said (page 249): "In the absence of any clear proof that the occupancy right in the survey number in suit was vested in the plaintiff's ancestor independently of the grant and that

[1] (1919) 44 Bom. 237.

1921.

TUNGABAI v. KRISHNAJI RAM-CHANDRA.

the land in suit was outside the lands dealt with in the settlement of 1884, I think that it must be held to be Vatan property like the village itself.... Thus where the whole village is mentioned in a Sanad evidencing a settlement under section 15 of the Hereditary Offices Act, it is for the party alleging that a particular survey number of that village is outside the scope of the settlement to prove it." Even in the case of Inams, the decisions of this Court that, in the absence of evidence as to the terms of an Inam grant made by a Native Ruler before British Rule, there is a presumption of law that the grant was only of the royal revenue from the land and not of the soil, may require to be reconsidered since the decision of the Privy Council in *Suryanarayana* v. *Patanna*[1]. Their Lordships said at page 218: "In their Lordships' opinion there is no such presumption of law. But a grant of a village by or on behalf of the Crown under the British rule is in law to be presumed to be subject to such rights of occupancy, if any, as the cultivators at the time of the grant may have had".

This judgment was referred to with approval in *Upadrashta Venkata Sastrulu* v. *Divi Seetharamudu*[2].

I think the decision of the lower Court was right and all the appeals must be dismissed with costs.

SHAH, J.:—The principal point argued in this appeal is whether the land in the village of Gudgudi held by the Deshpandes is an ordinary Inam or part of their Vatan property. If it be an ordinary Inam, whatever the nature of the grant, whether the grant be of the soil or of the royal share of the revenue, it would go to the heirs of the last holder according to the Hindu law. If it be a part of the Vatan property the females

[1] (1918) L. R. 45 I. A. 209. [2] (1919) L. R. 46 I. A. 123 at p. 128.

would be postponed to the male members of the family under Bombay Act V of 1886.

It is urged on behalf of the original plaintiff that the original grant was made in favour of the defendants' ancestors, who were the Deshpandes, by the then King of Bijapur about the end of the seventeenth century, and that it was given in Inam for Palkhi allowance and not as part of the remuneration of the office which the Deshpandes held. On the other hand it is an admitted fact that the whole of this Deshpandegiri Vatan was settled on the lines of the Gordon Settlement and the usual Sanad was issued in 1901 in which the lands in question are referred to as part of the Deshpandegiri Vatan.

Both the lower Courts have found that it is part of the Vatan property and not an ordinary Inam. This finding is amply supported by the terms of the Sanad and by the fact that at least under the British Rule the grant has been treated by the parties and the Government as part of the Vatan property and as a part of the remuneration for the services. It is no doubt possible that a Palkhi allowance, which was made in favour of the original grantee by the Bijapur authorities, might not necessarily be part of the remuneration of the office held by the grantee. But it is also possible that it might be an appanage of the office and as such would go with the office. The terms of the original grant so far as they are available do not throw any light on the point and the way in which the parties and the Government had treated it is indicated by the Sanad. This contention of the plaintiff must be disallowed.

It is further urged that even in the case of Vatans the distinction must be made between the occupancy rights and the Inam rights, which would be limited

1921.

TUNGABAI v. KRISHNAJI RAM-CHANDRA.

to the royal share of the revenue. In view of the observations relating to Vatan property in *Amrit* v. *Hari*[1] Mr. Kelkar did not press this point seriously. It is clear on the terms of the Sanad that the grant must be taken to be a grant of the soil and not merely of the royal share of the revenue as was held in *Amrit* v. *Hari*[1] on the terms of a similar Sanad. It is true that the terms of the original grant by the Bijapur Kings in this case do not clearly indicate a grant of the soil, but merely a grant of the royal share of the revenue. The usual expression (*jal, taru*, &c.) indicating a grant of the soil is not to be found : and if the matter depended entirely upon the terms of that grant there would be some difficulty in holding that it was anything more than a grant of the royal share of the revenue. So far this case differs from the case of *Amrit* v. *Hari*[1]. But in determining the nature of the Vatan Inam I think that regard should be had to the terms of the Sanad and the nature of the settlement under which the Sanad was issued and on that point this case is similar to the case of *Amrit* v. *Hari*[1]. I do not think that any real basis is made out for making such a distinction in the case of this Vatan, and for holding that it is the royal share of the revenue and not the land or the occupancy right therein that forms part of the Vatan.

The result is that the appeal must be dismissed with costs. The other companion appeals also will be dismissed with costs.

I desire to make it clear that in taking this view as to the nature of the Vatan in this case, I do not mean to doubt in any sense the correctness of the view accepted in this Presidency as to the Inams and other similar grants being treated as implying a grant of the

[1] (1919) 44 Bom. 237.

royal share of the revenue and not necessarily of the soil unless words suitable to indicate a grant of the soil are used in the document evidencing the grant. I have nothing to add to what I have stated in the last but one paragraph of my judgment in *Amrit* v. *Hari*[1] as regards the effect of certain observations in *Suryanarayana* v. *Patanna*[2] on the view so far accepted in this Presidency beyond this that the *ratio decidendi* in the recent case of the *Secretary of State for India in Council* v. *Srinivasa Chariar*[3] appears to me to support that view.

Decree confirmed.

J. G. R.

(1) (1919) 44 Bom. 237. (2) (1918) L. R. 45 I. A. 209.
(3) (1920) L. R. 48 I. A. 56.

APPELLATE CIVIL.

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

MOHANSING, MINOR, BY HIS GUARDIAN MOTHER BAI RAJU (ORIGINAL DEFENDANT), APPELLANT *v.* DALPATSING KANBAJI AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS*.

1921. *December* 7

Indian Evidence Act (I of 1872) section 32, clause 6—Family pedigree—Book kept by a chronicler—Admissibility of the book to prove family pedigree.

The plaintiff claimed to recover the plaint property as the reversionary heir of one D. For the purpose of showing his relationship to D, the plaintiff relied upon a pedigree deduced from the evidence of a witness who was a chronicler and who produced a book which he asserted had been kept by himself, his father and his grandfather recording the events of various Rajput families of which the family in suit was one. It was contended that the entries in this book were inadmissible in evidence :

Held, that if the Court was satisfied that the members of the family in question depended upon the witness to keep a record of the family events in

*First Appeal No. 209 of 1920.