1865.
Motí'lál Rámdás v. Jamnádás Javerdás.

COUCH, J.:—We must set aside the decrees of the Assistant Judge and of the District Judge in this suit, as they were made without jurisdiction.

The suit ought to have been instituted in the court of the Principal Sadr Amin, from which it might have been withdrawn by the District Judge, and then referred for trial to the Assistant Judge. The objection, though not raised in the memorandum of appeal to the District Judge, ought to have been considered by him, as involving question of jurisdiction. The objection does not appear to have been taken before the Assistant Judge.

We, therefore, reverse the decree of both the courts; and order the costs in this and the lower appellate court to be borne by the respondent: Each party to bear his own costs in the Court of the assistant Judge.

Appeal allowed.

Special Appeal No. 791 *of* 1864.

Feb. 1.

SULTÁNJI T. PÁTIL SIRVALE..... *Appellant.*

RAGHUNA'TH R. MARA'THE ..... *Respondent.*

Alienation—Ina'm—Perpetuity—Amendment of Decree.

Held that it was competent for an inámdár to alienate a third share of whatever interest he himself had in a family inám, in consideration of services rendered in recovering the inám itself; and that the grantee had a right to have the award made by the decree in the terms of the grant, which purported to bestow the third share in perpetuity.

THIS was a special appeal from the decision of C. Walter, District Judge of Puná, in Appeal Suit No. 499 of 1863, reversing the decree of the Sadr Amin, in Original Suit No. 349 of 1862.

The plaintiff sued to recover a one-third share of the defendant's inám village Piple, in the Puná zilla, and its income as arrears due under an agreement in Maráthi executed by the defendant, and dated Mágh Shudh 5th, Shake 1778.

The following is a translation of the agreement :—

1863.

Sultánji T. P. Sirvale v. Raghunáth R. Mara'the.

"This agreement, made on Mágh Shudh 5th, Friday, Shake 1778, Nalanámsanvachhare. To Rághunáth Rámchandra Maráthe, from Sultánji Trimbakji Pátil Sirvale, Inámdár of Piple Gurav, in Puná. To wit: The village Piple, in Puná was granted as hereditary inám to our family by the Peshwá's government, who have given sanads for its use; and the late Haibatráv bin Bhagvantráv Sirvale, of our family, alone sold it to Báláji Náráyan Nátu, although I was heir to it. At that time I was under age; but subsequently, when I was able to understand, I inquired about the inám, and then learnt that it was sold to Na'tu' by Haibatráv. I being a Shudra, and ignorant of writing or of court affairs, &c., and having no means, and thus being reduced to a helpless state, in all ways endeavouring about it, I acquainted your late father with the whole case, whereo upon he kindly continued his endeavours to recover th, inám, and resolved to sue Nátu in the Court of the Agent, and made expenses for his own exertions and also for our maintenance, and obtained an original decree and an order from the Governor of Council in our favour, and recovered the inám: for which a signed and attested agreement, on unstamped paper, was given by me, dated Mágh Shudh 13th, Shake 1766, Krodhinámsanvachhare, to give in inám one-third of the net income of the inám, after deducting expenses of the hakdárs, khots, &c., as long as the inám should be continned to us, and to give Rs. 1,600 in cash. Accordingly, I consider that he, by his personal exertions, and by spending his money, obtained for us as it were a new inám, the obligations for which cannot be repaid by us, or our descendants, in this life or in another. And knowing that he is dead, and that it is meritorious to support you, his son, I, according to the said agreement, will give you one-third of the income of the said village, after de ducting expenses, by due instalments, and I shall take the remaining two shares. And if you do not approve of this, I will assign over to you land of the one-third share worth the amount. And it is stated that Rs. 16,00 in cash should be given: but, as I am unable to pay this amount, you should not demand it, and I will not pay it to you. I will give one-third share of the

village to you, your sons and grandsons from generation to generation. Should I or any of my descendants object to this, we are bound by the oath of our family god. And one who will object to this grant for such obligations should be considered as not belonging to the Sirvale family. If you should be required to bring a suit on account of this agreement, from some cause or other, I and my descendants shall pay costs and damages for the same. After everything is finally disposed of, according to the agreement, you should return to us the original order of the Governor in Council, decrees, and other papers of ours which may be in your possession. I have left with you the agreement executed in the name of your father. This agreement is written of my own will, and in sound sense. Dated 2nd February 1857.

Handwriting of Vithal Gangádhar Joshi written by the order of Sultánji bin Trimbakji Sirvale.

[Signatures of six witnesses.] Signature of Sultánji Trimbakji mark (of a plough) by his own hand.

The decision recorded by the District Judge, in appeal, was as follows:—

"Raghunáth sued on a karárpattra, alleged to have been executed to him, on the 5th Mágh Shudh, Shake 1778, by Sultánji, securing to him a one-third share of an inám village. The share of the produce for four years from 1779 to 1782 was also claimed.

"Sultánji denied passing the karárpattra, [and contended] that he had no right to make such an assignment without the concurrence of his bhaiband; that Raghunáth, also, is not competent to sue by himself.

"The Principal Sadr Amin found that four witnesses spoke to the passing of the karárnámá; but he found a discrepancy in the dates (English and Vernacular), which raised his suspicion. But even supposing the karárnámá to have been passed, he held that it conveyed rights which Raghunáth was not competent to assign. He, therefore, threw out the claim.

"Against this decision Raghunáth appeals: on the grounds;

1865.
Sultánji T. P. Sirvale v. Raghunáth R. Maráthe.

(1) that the karárnamá is proved; (2) that there is no objection to the transfer of the village to him, up to such time as Sultánji's own rights exist.

"The points for decision are:—(1) Is the karárnámá proved; (2) Is the consideration sufficient; (3) If so, then is it competent to transfer to the plaintiff, under the karárnámá, the interest which the defendant has in the said share of the inám village.

"My finding on No. 1 is that it must be held to be so. The witnesses distinctly prove it; and the difference in the Maráthi and English dates is sufficiently explained. It is also admitted by the defendant, in his examination, that the plaintiff's father, Rámchandra, had made exertions, on his behalf, to advance his cause; and there is a prior karárnámá, unstamped indeed, but proved, and generally corroborative. The evidence adduced by the defendant, to prove that he was at another place on the Maráthi date of the bond, must be looked at with great suspicion; inasmuch as this defence was not urged in his answer, nor was the evidence in support of it brought forward early in the investigation.

"My finding on No. 2 is that the consideration must be held to be sufficient; for it has been held that, whenever the promisee shall have sustained some trouble or inconvenience in performing anything which there was no legal obligation for him to perform, there is a sufficient consideration to sustain an action.

"My finding on No. 3 is that the defendant had, at all events at the time of entering into the karárnámá, nothing but a life interest in the inám; and that he has covenanted to convey an estate in a share greater than he actually possessed. Yet that is no bar to the action, for if the promisee chooses to take such estate as the promisor has in the land, he [the promisor] should be bound to transfer to him all such interest as he may have.

"On these findings, I reverse the decree of the Principal Sadr Amin; and award the one-third share of the life interest of the defendant in the said inám village, with costs."

1865.

Sultánji T. P. Sirvale v. Raghunáth R. Maráthe.

On special appeal against this decision, the following (amongst other) grounds of objection were taken :—

"That the court below erred in receiving in evidence, and relied upon, an unstamped previous agreement, in deciding against the appellant.

"That, the inám having been granted for the support of the entire family, any one member thereof had no right to alienate any portion of it, for any purpose whatever; and it has not been found that the alienation was made for a legitimate purpose.

"That the consent of the other members of the family who had a co-ordinate interest in the inám, not having been shown to the alienation, it was requisite to join them as parties, which has not been done."

The case was heard before COUCH and NEWTON, JJ.

Reid and *Sha'nta'ra'm Na'ra'yan* for the appellant.

Pa'nduranj Balibhadra for the respondent.

COUCH, J. :—Although the agreement of 1845 is unstamped, it is recited and admitted by the defendant in the new agreement passed by him to the plaintiff in 1857, which is sufficient evidence of it; and there was, therefore, no error in law in relying upon it.

We are also of opinion that it was competent for the defendant, under the circumstances proved or admitted in this case, to make the agreement of 1857; and that whatever interest he had in the third share of the inám passed to the plaintiff under it, as found by the District Judge.

The plaintiff, moreover, has a right (as contended by *Mr. Pandurang*) to have the award made by the decree in the terms of the agreement, which purports to grant a third of the inám in perpetuity.

We, therefore, amend the decree of the Judge by striking out the word "*life*" before "interest;" and order the appellant to pay the costs of this appeal.

Decree amended.