Privy Council Appeal No. 56 of 1935.

Sardar Vinayakrao Dhundiraj Biwalkar - - - - *Appellant (Plaintiff)*

v.

The Secretary of State for India in Council - - - *Respondent (Defendant)*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 29TH JULY, 1936.

Present at the Hearing:

LORD ROCHE.
SIR JOHN WALLIS.
SIR SHADI LAL.

[*Delivered by* LORD ROCHE.]

This suit was instituted by the plaintiff in the District Court at Thana against the Secretary of State for India in Council for a declaration that he is the inamdar and owner of the soil and has full proprietary rights in the suit lands, and for possession and mesne profits. The District Judge dismissed the suit as to merits and for want of jurisdiction. He also thought that the suit was barred by limitation of time. The judgment of the Bombay High Court affirmed his decision as to merits and dismissed the appeal without deciding the questions of jurisdiction or limitation.

The plaintiff claims under grants made to his ancestor Vinayak in the earlier part of last century by Raghoji Angria, the Ruler of the Kolaba State, which had formed part of the territories extending from Bombay to Goa over which the notorious Kanoji Angria established his rule in 1713. For more than forty years he and his descendants carried on a piratical war against shipping in the Indian Ocean until they were finally suppressed by Lord Clive and Admiral Watson in 1756. The northern portion of these territories forming the Kolaba State and adjoining the Bombay Presidency managed to survive as a feudatory of the Peishwa, and in 1802 Vinayak Purusram the plaintiff's ancestor succeeded his father as Dewan of the State and held that office until the annexation in 1840. In 1816 in reward for his services he obtained two grants, one on the 25th January of the inam village of Kaproli for himself and on the following day another grant for himself and his associates. He may well have considered that it was better

to have two separate grants, as if the second and larger grant were resumed at any time, the village of Kaproli might be left to him. He was doubtless aware that these grants in whatever terms they were expressed, were liable to resumption; and in 1818 having in the meantime rendered signal services, not only to the Kolaba State, as recited in the correspondence, but also to the East India Company by preventing his State from joining the Maharatta confederacy in the war against the Company which ended in the annexation of the Peishwa's territories in 1818, he obtained the further security of a guarantee from the Company of the continuance of the grants already mentioned, as, also, of a cash allowance of Rs.2,000 payable by the Treasury, and of payment of the State's indebtedness to him.

This undertaking of the paramount power to prevent the exercise of the power of resumption was of value especially in the event which has happened of the large areas of waste land then existing in so many villages being brought under cultivation. In this case between 1844 and 1917 owing to the industry and good management of the grantees the area under cultivation has doubled and the income trebled as may be gathered from the fact that in 1917 the area is found to contain 16 villages instead of eight as in 1840, and according to the estimate of the District Judge the income has risen to Rs.25,000. The Ruler, however, accepted the restriction and helped in bringing it about. The Company was willing to give these guarantees, no doubt on the advice of Mr. Mountstuart Elphinstone who had been Resident at the Peishwa at the outbreak of hostilities and was in charge of the annexed territories and knew all the circumstances. The matter having been arranged, the two letters of the 4th and 11th April, 1818, were exchanged between Raghoji Angria and Mr. Elphinstone. Angria's letter asked that Vinayak and his associates were to be duly protected as to the allowances and inams granted to them and their heirs as shown in a memorandum of assignments forwarded with the letter and as to the indebtedness to Vinayak and requested the Company to satisfy Vinayak on these points. Mr. Elphinstone's reply, omitting the end of the letter referring to the debts, was as follows :—

> " I have received your letter dated the 27th Jumadyoolavul (4th April, 1818), noticing that Vinaik Purusram, the Deewanjee, having, during the administration of the late Manajee Angria, been extremely useful, and having preserved the State of Colaba by maintaining the alliance with the Honourable Company, when Bajee Row subsequently broke with the Honourable Company and commenced hostilities, *certain allowances and enams had* been granted to him, as well as to Bapoojee Bullal and others connected with him, by the Government of Colaba, as detailed in a separate memorandum, which were to be enjoyed by the respective parties and their heirs unmolested, even though the said Deewanjee should no longer act in the administration, that his claims against the State should be satisfied according to what might appear to be justly due, and that

he should be protected by it, whenever occasion might render such protection necessary, requesting, at the same time, that the Honourable Company's Government satisfy him on these points. In consequence of this application, I have affixed my signature as *guarantee to the memorandum of the enams and allowances granted to* him and to his dependants, which was transmitted under your Mortub (Seal), amounting to Rupees 15,001."

Angria's letter, the memorandum of assignments and Mr. Elphinstone's reply were afterwards made annexures A, B and D to Article 6th of the Treaty of 1822 regulating the relations of the State with the paramount power.

The guarantee was recited in article 6 of the Treaty as " a guarantee to Vinayak and his associates of certain villages and lands of the value of Rs.15,001 as per the annexed list (annexure C) which the Company's Government had undertaken " to the said Vinayak " his heirs and successors, together with certain other persons therein named."

The interpretation of the grant guaranteed to Vinayak himself is one of the principal questions in the case, but before dealing with it their Lordships think it desirable to set out the circumstances which resulted in the institution of this suit. As will be seen, for more than seventy years after the annexation of the Kolaba State by the Company which took place in 1840 the plaintiff's predecessors had been in enjoyment of the rents and profits of guaranteed villages and lands in the same way as other inamdars down to 1917. Inam tenure is one of the oldest and most widespread land tenures in India. In the Fifth Report of the Committee of 1812 it is stated that from the very earliest times Indian Governments had been in the habit of granting lands with a total or partial remission of land revenue described as enams to the humble village servants in every village as well as to its revenue officers and to religious and charitable institutions. Before the beginning of last century lands held under these grants had come to be known in Bengal as lakiraj or revenue free lands, and in most parts of India as " inams " (then spelt " enams "), a Persian word meaning reward or favour. The events which happened as to the lands now in question at and after the date of the annexation in 1840 will be discussed later in this judgment. It is sufficient to say now that although in 1880 when Vinayak's son died the Bombay Government recognised his widow's right to succeed to his estate, they intimated that they would not admit the right of succession of any son she might adopt. On her death in 1917 they resumed the lands held under the grant offering at the same time to make some provision for her adopted son, the plaintiff, as an act of grace. Thereafter on the 25th November, 1918, the plaintiff presented a memorial to the Government of India who dealt with the

memorial in a letter to the Government of Bombay dated 9th January, 1920. As stated in that letter, in view of the opinion of the Advocate-General of Bombay forwarded to them on the 12th September, 1919, " the Government of India did not see how the memorialist's claim to the restoration of the inam grant in full could be resisted, but before issuing orders would be glad to know whether His Excellency (The Governor of Bombay) in Council had anything to urge against this course." On the 9th April, 1920, the Bombay Government replied that they had nothing to urge against the issue of orders admitting the plaintiff's claim to succeed to the inam property held by his adoptive mother, which apparently meant no more than that they had nothing further to say—at least officially. The Government of India thereupon passed the following order :—

> " I am directed to refer to the correspondence resting with Mr. Knight's letter No. A-54, dated the 9th April, 1920, and to say that after careful consideration of the facts represented by Meherban Vinayakrao Dhundiraj Biwalkar, Inamdar and First Class Sardar of the Deccan, in his memorial dated the 25th November, 1918, and of the previous history of this case, the Governor-General in Council considers that the claim made by the memorialist to succeed to the whole of the Inam property held by the late Umabai Saheb widow of Dhundiraj Vinayak Biwalkar, as her adopted son should be admitted.
>
> " 2. I am to request that necessary action may be taken by the Government of Bombay to give effect to this decision in such manner as they may think fit and that the memorialist may be informed."

Their Lordships are clearly of opinion that in passing this order the Government of India proceeded on the basis that the plaintiff's predecessors had held their lands as inam lands, that is to say as lands in respect of which the Government had alienated to the grantee its land revenue in whole or in part as well as the lands themselves so far as they were the property of the Government.

The Bombay Government, whose refusal to recognise the plaintiff's right of succession had been overruled, took no official action on the order of the Government of India for two years beyond notifying the plaintiff of the decision and then fell back upon the position that the plaintiff's predecessors had never had any inam property which could be restored, as they had never been entitled to more than a fixed money payment out of the land revenues of the lands specified in his grant, and in any case that this was the only right recognised by the Company from the time of the annexation. They accordingly proposed to put him in possession of the lands, not as inamdar a title which they dropped, but as a sort of managing member of an estate in which he was a co-sharer with the Government, being entitled to retain Rs.8,328 out of the collections, which with his money allowances made up the fixed sum of Rs.10,002, leaving him accountable to the Government for the balance.

Their decision was communicated to the plaintiff in the following letter of the 20th June, 1922:—

> " With reference to your memorials dated 3rd March, 1921, 24th August, 1921, and 2nd November, 1921, addressed to Government, I am directed by the Governor in Council to inform you that all that you are entitled to is (1) a cash allowance of Rs.1,674 and (2) a revenue amounting to Rs.8,328 from lands coming to you on Bai Umabai's death; that the cash allowance will be continued to you; that out of the land revenue of the 16 villages and Khars and 4 Vadis fixed for collection annually according to the Survey Settlements from time to time in force and the provisions of the Land Revenue Code, you will be allowed to retain Rs.8,328 and that you should refund the balance annually to Government and that your position will be that of a sharer in the revenue of the villages and all increases whether in agricultural or non-agricultural assessment will go to Government.
>
> " 2. As regards the management of the villages, you will be allowed to retain the management and to appoint your own village accountants on condition that you maintain all the necessary village forms. The work of the village accountants whose cost will be borne by Government will be subject to the supervision of the Revenue Officers."

The plaintiff was not satisfied with the offer of the Bombay Government and submitted a further memorial to the Government of India on the 23rd November, 1922; and then without waiting for the reply to his memorial on the 20th June, 1923, filed the present suit for a declaration of title to hold the suit lands as inamdar with full proprietary rights.

As he had applied to the Civil Courts for an adjudication on his claims, the Government of India not unnaturally was unwilling to interfere, and on the 5th December, 1923, the plaintiff was informed that, " as he had filed a suit in the District Court, the Government of India would not take any action in regard to his prayer for proprietary rights in the villages in question."

Unfortunately, owing largely to the way the cases for both parties were presented in the pleadings and at the hearings, the plaintiff's suit has been dismissed on the merits without any adequate consideration of his claim to the suit lands as inams which was the basis on which the Government of India directed that he should be restored to the whole inam property held by his mother.

As regards the period after the annexation the evidence of recognition of the status of the plaintiff's predecessors as inamdars is not dealt with in either of the judgments, and their conclusion as to the nature of the original grant is in their Lordships' opinion based on questionable inferences from the terms of an old grant of an Indian State which can hardly be regarded as complete, seeing that the sanads ordered to be issued to give effect to it are not forthcoming.

But in endeavouring to meet the plaintiff's claim that he was entitled to hold the lands on inam tenure, with full proprietary rights in the soil, those responsible for the written statement after pleading that the Civil Court had no jurisidiction to entertain the suit, though they did not deny in terms that after the annexation the plaintiff was an inamdar and entitled as such to the possession and full enjoyment of the suit property; yet in effect they raised the point by their plea that the Company had " never recognised the plaintiff's predecessors as having any right to the soil of the said villages or lands or to any forests or waste lands in the said villages." The defence, moreover, felt bound to put forward some explanation of the fact that the plaintiff's predecessors had been in unquestioned possession and full enjoyment as inamdars for seventy years after the annexation. That explanation, such as it is, is to be found in paragraph 7 of the written statement which is as follows: " If the Government allowed the plaintiff's ancestors to retain any of the said lands or villages in their possession, it was done as an act of grace, and more for the convenience of the Company's administration than as a recognition of any rights of the plaintiff's ancestors." This is an amazing plea, and is really tantamount to a reflection on previous Governments and Revenue Officers, as it suggests that they allowed the plaintiff's predecessors to remain in full possession and enjoyment of all the suit property for so long a period without making any demand as an act of grace, while the income of the estate, as already shown, was steadily rising.

Their Lordships will begin by dealing with the original grants in 1816 which were recited and incorporated in the memorandum of 1818. The first grant of the village of Kaproli on the 25th January, 1816, is one of the exhibits and is admittedly an ordinary inam grant. The other villages are included in the grant of the 26th January, 1816. After reciting Vinayak's services it goes on to say "Considering that what has been given to you should go on from generation to generation a nemnook is granted you *in inam*. The details are as follows. Cash amount Rs.7,002. Nemnook to you ". Then after setting out the other nemnooks to his associates the deed states as regards Vinayak that " *For the actual payment of the nemnook the following villages in Taluka Manikgad are allotted.*" The words " cash amount " which immediately followed the statement that the grant was in inam cannot refer to a fixed money payment, because what was " allotted in payment " of the nemnook were villages of which the total land revenue, of which particulars are set out, was Rs.7,542 out of which Rs.540 was payable by Vinayak to Pandarang Singh and his dependants for the nemnooks to them already specified, leaving a balance of Rs.7,002 which had been entered at the beginning of the deed as " Cash amount. Rs.7,002 nemnook to you." In a good year he might realise more; in a bad year, where the monsoon

failed, little or nothing. It was as if a landowner were to settle on a member of his family land with a rent roll of £1,000 a year. The word *nemnook* on which so much is made to turn in the judgments of the Courts below, means provision, and is large enough to cover provision in land as well as in money; and as, already stated, villages and lands were expressly allotted in payment of Vinayak's nemnook. The Angria Government was no doubt in the habit of granting money payments under that name payable not by the Treasury but out of the land revenue of a particular village under orders to the appropriate land revenue officer, and some of the nemnooks granted to dependants in the assignment of 1818 appear to be of that character. Later grants of villages to Vinayak included in the record also contain reservations in respect of such nemnooks as had been already granted to others. Such nemnooks gave no right to possession nor were they grants of the land, and were very different from the allotment of whole villages in payment of a nemnook.

Even assuming, as stated in Wilson's Glossary under "Inam," that inams were sometimes "qualified by the exaction of all proceeds exceeding the intended value of the original assignment," such an exceptional limitation of the ordinary rights of an inamdar should in their Lordships' opinion be very clearly proved, and is negatived in this case by the failure to enforce such a reservation for more than a hundred years. There is no such reservation in the Kaproli sanad, and it is even less likely to have been found in the missing sanads of the villages included in the second grant. Nor is there any such reservation in the fresh sanads which, as will be seen, were granted for the suit villages in 1827. Exhibit 178 a document bearing date in 1821 which is relied on in the judgment of the High Court, merely provides that the government was to go on bearing the cost of the collections from the specified villages, a concession which Vinayak was not entitled to but was in a position to obtain, and in their Lordships' opinion has no bearing on the present question. Between 1822 and 1827 some of the lands included in the grant were transferred to the Bombay Presidency in exchange for others, and in place of lands so transferred Vinayak received additional grants in the Kolaba State, which according to Mr. Davies's report much exceeded in value the lands which he surrendered. He was obviously not the man to leave undone anything that could strengthen his position and on the 14th January, 1827, he obtained a further guarantee in respect of the lands received by him in exchange from the Governor of Bombay in Council signed by Mr. Elphinstone as Governor, and also fresh grants from the Angria Ruler as regards the guaranteed villages. The order of the Bombay Government set out particulars of the lands and villages held under the grant after the exchanges and guaranteed them as follows "In accordance with the above memorandum year after year and from generation to generation the villages, lands, etc., will be continued

to you." An additional guarantee was then added to article 6th of the Treaty which purports to give effect to the above guarantee, and was made annexure F to the Treaty. Endorsed on the original of annexure F there is yet another guarantee in 1835 by the Bombay Governor in Council, signed by the Governor Lord Clare. After reciting that in 1831 the village of Punade bearing an annual revenue of Rs.628,10,6 had been assigned by Angria Sarkhel to Vinayak as inam saranjam in exchange for the village of Asud which had been transferred to Bombay, and that Angria Sarkhel had asked for a similar guarantee to be given to the Diwanji, it went on : " accordingly a guarantee for the village of Manje Punade is hereby given by the Company Government."

Another set of documents obtained in 1827 from the Angria Ruler includes documents—plaintiff's exhibits 134 to 136 being grants of all the villages specified including the guaranteed villages in inam saranjam to Vinayak as revenue-free villages, and uses words " waters, trees, grass, woods, stones, mines and buried treasure " showing an intention to confer full proprietary rights. Exhibit 136 is a further document dealing with the guaranteed grant and entitling the grantee to resume for his own benefit the grants to his associates. Pursuant to these exhibits fresh sanads were issued as regards each of the guaranteed villages containing words purporting to pass full proprietary rights in the soil.

To come to the annexation in 1840 and the settlement which followed, their Lordships are also unable to agree with the findings of the lower Courts as to what then happened. It is in their opinion clear that the Government never purported to repudiate or depart in any way from the guarantees. On the contrary Mr. Davies distinctly states that they were recognised. The first document after the annexation included in the record is a letter from the Court of Directors dated the 9th September, 1843, in which they stated that the report of Mr. Davies the Political Officer on the claims of the late Dewan, " is an extraordinary picture of fraudulent mismanagement and showed that for many years he had appropriated to himself nearly half the revenues of the State." In other words what was contended was that the Dewan had got or taken more than had been granted and guaranteed. In a further report of the 9th December, 1843, Mr. Davies correctly stated the effect of the assignment of 1818 as follows. " To Vinayak Purusam himself inams were assigned valued at Rs.10,002 per annum, of which Rs.2,000 in cash was made payable for to Treasury *and the remainder Rs.*8,002 *was given in villages.*" On a careful consideration of his lengthy report their Lordships do not find that he questioned the right of the Dewan to the full enjoyment of the inam villages. What he said in paragraph 18 was that by unfair exchanges the Dewan had " enhanced

the value of the inams from Rs.15,001 to Rs.26,709.12.6." He therefore in paragraph 22 recorded his opinion that the Government was not bound to continue to the Dewan the surplus inams which are over and above the original grant of the Kolaba Government and are without the guarantee of the Treaty." There is nothing in his report to support the defendant's case that the Dewan never had in any ordinary sense any inams at all. On the 2nd August, 1844, the Bombay Government passed an order in the Political Department on Mr. Davies's report in the following terms:—

> "4. As by the Memorandum alluded to in the 6th Article of the Treaty entered into by the British Government with Raghojee Angria of Colaba in July, 1822, the late Dewan is only entitled to a Nemnook of Rupees 10,002-0-0 per annum, the Hon'ble Governor in Council directs me to request that you will inform Vinaik Purushram that to this extent only can Government recognise his claims, and that you have been ordered to attach whatever may be in his possession in excess of the above amount—a measure which you are authorised to carry into effect on the receipt of this letter."

Here the Government apparently accepted Mr. Davies's report that it was only fair that the surplus inams which the Dewan had secured by unfair exchanges over and above the original grant should be resumed, and Vinayak was eventually handed back after attachment the eight villages mentioned in the plaint which are all included in the guarantees of 1827 and 1835 already mentioned with other lands making up a total nemnook or provision of Rs.10,002, but there is no evidence of any intention that the villages and lands handed back were not handed back as ordinary inams but as villages and lands out of the revenues of which the Dewan was only entitled to a fixed sum of Rs.10,002. There is nothing to show that in those days the annual rents and profits of the land and villages were much in excess of the assessments, and no question appears to have arisen about them. Far from there being any intention to alter the tenure of the villages the title deeds of 1827 which had been produced by the Dewan were handed back, and for more than seventy years he and his successors were recognised as holding inams and as entitled to all the rents and profits of the lands. All that the Government did in 1844 was to resume certain other inams not now in suit, an act of state at the time of the annexation which cannot be questioned. In 1851 when Vinayak's son claimed that some of the property restored was not yielding enough, he was told by letter of the Bombay Government dated 10th September, 1851, "you must either retain your present lands as a whole or exchange the whole of them for a money payment." The letter was definite and final enough and was acted upon as such. As regards the full enjoyment of the rents and profits their Lordships find no evidence that it was ever questioned. The objection that the plaintiff's mother as inamdar had no right to the forest produce was not pressed, and was certainly not based on the interpretation of the grant contended for by

the defendant, which, so far as appears from the evidence on record was formulated for the first time after the death of the plaintiff's mother in 1917. In conclusion if it had been necessary their Lordships would have been prepared to say that long enjoyment of this inam tenure without question for seventy years raised a presumption that it had a lawful origin; and that presumption has not been rebutted.

For these reasons their Lordships have felt bound to dissent from the decision of the Courts below that the plaintiff is not entitled to restoration in full of the inam property held by his mother as inamdar. That was the opinion of the Advocate General of Bombay on which the Government of India acted, in ordering the restoration of the whole inam property held by his mother and in their Lordships' opinion the advice then given was correct.

As regards the question of jurisdiction their Lordships conceive that in deciding as to the merits of the case they have in effect decided this question also. If the view of the Courts below as to the merits had prevailed there would have been substance in the point as to jurisdiction. But their Lordships have held that at any rate after the annexation in 1840 and after the subsequent discussion terminating in the restriction of the area of land claimed by the appellant's predecessor but in the confirmation of his claim to the lands now in suit the title of the plaintiff's family to the latter lands has been of a permanent nature and neither precarious nor limited in character. It follows therefore in their Lordships opinion that the tenure of those lands is not a tenure of the kind specified in section 4 of the Bombay Revenue Jurisdiction Act. To all of such tenures there is attached an element of grace and of precariousness which on the facts is absent from the tenure of these lands. The decision of the District Judge was based on the view he took of the particular facts of the case namely that there was no grant of the lands at all. Similarly their Lordships are not deciding any general question but are deciding in a contrary sense to the District Judge on the facts as they have found them to exist and to have existed for a very long period of time. The High Court expressed no opinion at all in the matter of jurisdiction, as was natural if the point was not one independent of the particular facts but falling to be resolved as the merits were resolved. Their Lordships only add one observation as to the words of the Act " lands held under treaty." The treaties material to this case were between the Ruler and the Company and were " res inter alios acta." They strengthened the plaintiff's predecessor in certain rights but were not their source and for nearly one hundred years their force has been spent and they have had nothing to do with this matter. In this respect their Lordships are in agreement with the written statement on behalf of the Defendant which in paragraphs 4 and 5 adopts this view of the effect of the treaty and of the annexation.

For these reasons in their Lordships' opinion the plea as to jurisdiction fails and as the plea of limitation also fails on the facts and dates the appeal should be allowed. The judgment should be for a declaration only as their Lordships were assured that the authorities would act in accordance therewith without any order for an injunction or other relief. The declaration will be as claimed in the plaint ending with the words " within their limits." The right to possession and to mesne profits follows. The plaintiff should have the costs here and below. Their Lordships will humbly advise His Majesty accordingly.

(36708—9A) Wt. 8136—2 100 8/38 P. St. G. 33

In the Privy Council.

SARDAR VINAYAKRAO DHUNDIRAJ BIWALKAR

v.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL.

DELIVERED BY LORD ROCHE

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