

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Ramchandra Narsingrav v. Trimbak Narayan Ekbote (Ex parte), from the High Court of Judicature at Bombay; delivered 17th December 1891.*

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Present :

LORD HOBHOUSE.

LORD HERSCHELL.

LORD MORRIS.

SIR RICHARD COUCH.

MR. SHAND (LORD SHAND).

[*Delivered by Lord Herschell.*]

This is an appeal against the decision of the High Court of Bombay, which reversed the decision of the Subordinate Judge of Poonah. The Plaintiff, who is now the Appellant, is hereditary Deshmukh of Kharepathar, and as such is entitled to various fees and emoluments issuing out of villages in that district. The Respondent and his ancestors have for a long series of years acted as Gumasta in respect of the fees and emoluments to which the Appellant and his ancestors have been entitled, and collected the same. The sole question raised by the appeal is whether the Appellant is entitled to dismiss the Respondent from his position as Gumasta, and to put an end to his tenure of that office. The prayer of the Plaintiff in his claim is as follows :—

“ The income mentioned in clause I. of (this) plaint is entered in Government papers in the Defendant's name. The Defendant should never recover the same; and the Plaintiff

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will have the same entered in his name and will himself collect (or recover) the same, and the Plaintiff . . . . will himself hold and manage his own *Vatan*. The Defendant is not to raise any impediment whatever thereto. To this effect a perpetual injunction should be given to the Defendant. In respect of the same a claim of Rs. 130 (is made)."

The earliest document produced in the cause is a Sanad bearing date 1741-1742. This document states that Ramaji Shivdev and five other persons had intimated to the Deshmukh that their ancestors had served him and his predecessors generation after generation in succession, and that at present they, the six brothers, were performing the work of the subdivision, and prayed that, as their families would be greatly increased, a Sanad should be prepared and granted in the names of them all; and that therefore the Deshmukh, having taken consideration of the fact that their ancestors served his ancestors very much from generation to generation, the Sanad was granted in the names of the six persons who were to perform the work of the Gumastaship of the 21 villages in the sub-division. The Sanad concluded in these terms :—

"You are to perform the service hereditarily and in the same way as your ancestors performed (the same)."

This document clearly recognizes that the office of Gumasta had been hereditary for a long period in the family of those who were then fulfilling its duties, and that it still continued to be hereditary. If the case of the Defendant had rested merely on the fact that the office of Gumasta which he held had been hereditary from generation to generation, and had been recognized as hereditary by the Deshmukh of that day, nearly a century and a half ago, their Lordships would have had to consider what rights were inherent in such an hereditary Gumasta, and whether the Deshmukh could, and if so, under what circumstances, put an end to the

the relation between him and the Gumasta, and either collect the revenues himself or appoint some other Gumasta to perform the duties for him. But it is unnecessary, in their Lordships' opinion, to determine this point, inasmuch as the Defendant's case is that his ancestors held the office of Gumasta from the same authority as that from which the Deshmukh derived his rights, that is to say, the sovereign power to which they were both subject, or that at all events the hereditary right to act as Gumasta has been so recognized and confirmed by that authority, that the Deshmukh cannot now claim to treat him as deriving his right merely from an ancestor of the Deshmukh, and as subject therefore to dismissal according to the law ordinarily regulating the relations between principal and agent.

It appears that some time prior to the year 1759 the then Deshmukh used to make excessive recoveries from the villages. An order was therefore received from the Government that the amount should not be paid without an order. The Deshmukh having given an undertaking that he would not receive more money for the Hak Rusum than was just and proper, an order was made that the Hak Rusum of the Deshmukh were to be paid without any detriment. The order, which bore the date 6th January 1759, after stating that the Gumasta had been entrusted with the work of recovering the amount of the Hak from the villages in the subdivision under the charge of the Deshmukh, concludes in these terms:—

“Therefore the amount appertaining to Shidoji Narsingrav is to be paid through Rajashri Ramaji Shivdev *Gumasta* (i.e. Agent). Let this be known.”

This document is important, as it shows that the sovereign power had for a time deprived the

Deshmukh of the right to receive the accustomed payments, and that when it permitted the payments to be resumed it designated by name the then hereditary Gumasta as the person through whom the payments were to be made. Such an act was wholly inconsistent with the notion that the Deshmukh could immediately deprive the Gumasta of his functions, and claim either to receive the dues himself or to appoint any person he pleased to receive them on his behalf. But the matter does not stop here. In April 1762 a mandatory letter was sent by the Prime Minister to the managing authorities of the villages in the sub-division of Kharepathar in these terms :—

“Ramaji Shivdev will therefore transact all the business and work of the *Gumastaship* of the sub-division aforesaid appertaining to the quarter of Shidoji Narsingrav Deshmukh in the same way as has continued freely and without molestation from former times and he is to collect the *Hak Rusum* and the Gavkhandi (cess), &c., and send (the same) on to the Deshmukh. Do you pay to Ramaji Shivdev the amount of the Deshmukh's *Hak Rusum*, the *Gavkhandi cess*, &c., of the sub-division aforesaid. In the meantime should his kinsmen create disorder and confusion, the amount is not to be paid to any body without His Highness's order.”

The next two documents in process are two letters, the one bearing date June 1762, and the other April 1765. The former is addressed by the Deshmukh to Balaji Govind and other persons, and, after stating that they had been asked in former times to conduct the hereditary Gumastaship for the subdivision of Kharepathar, purports to confirm the same to them and their descendants. The second document purports to be a partition by the Deshmukh determining that the hereditary Gumastas are to “render their service every year one by one.” These letters appear to indicate that, notwithstanding the order of the Government already referred to, the Deshmukh had intervened, and either recognized the rights of the several members of the

family to act as Gumastas, or sanctioned their so doing. On the 27th January 1767, however, a mandatory letter was addressed by the Prime Minister of the Peishwa to the Mokadams, or executive authorities of the villages from which the Deshmukh received his dues. This letter, after stating that the Gumastaship in the division aforesaid of the Deshmukh belonged to Ramaji Shivdev, and that while the same was held by him his uncle, Koner Trimbak, created disorder and confusion in it for four or five years, and in the meantime collected the revenue himself and paid it over to the Deshmukh, and that the circumstances of the case had been laid before His Highness, and had been investigated in consultation with arbitrators, further stated that it was decided as follows :—

“That as Ramaji Shivdev is a senior member among the Ekbotes, Ramaji Shivdev’s son Gundo Ramaji should carry on the *Gumastaship* of the sub-division aforesaid, belonging to the Deshmukh, and that the other kinsmen and Koner Trimbak should act in accordance with his views. Pursuant to what is thus decided this mandatory letter is sent. (You) are therefore to continue to pay regularly to Gundo Ramaji the revenue collected . . . and he (Gundo Ramaji) will pay over the same to the Deshmukh. (You) are not to pay the amount (to any body) without a written order from Gundo Ramaji. As to the Hak Rusum (*i.e.* dues, perquisites, &c.) appertaining to fairs at Morgav and Jejuri, (you) are to pay the amount thereof to him as the same may have been paid (hitherto). In the meantime, even if his kinsmen or the Deshmukh should create any disorder or confusion, (you) are not to pay the amount to any body without an order from the Huzur (*i.e.* His Highness). Do you take a copy of this letter in writing, and return this original letter to Gundo Ramaji (as a muniment of title) for enjoyment.”

It will be observed that this order of the Government completely overrides what the Deshmukh had purported to do by the two preceding documents already referred to, and it would rather seem that Koner Trimbak, who is treated as having created disorder and confusion for four or five years by collecting the revenue, was one

of the persons whom the Deshmukh himself had authorized to collect it. But whether this be so or not, it is quite clear that the Government not only exercised the right of appointing the person who was to act as Gumasta in the department of the Deshmukh, but directed that if even the Deshmukh created any disorder and confusion the amount of revenue was not to be paid to anybody without an order from his Highness. It is not necessary to refer in detail to the subsequent documents during the time prior to British rule. It is enough to state that they are all consistent with the view that the hereditary Gumasta acquired a title from the Government independently of the Deshmukh, and could not be displaced at his will. There is no evidence of any change having taken place since British rule has been substituted for that of the Peishwah. On the contrary, it appears that in the year 1858 the then Deshmukh applied for an order that the money which had been substituted for the dues payable to the Deshmukh should be paid to him direct and not to the Gumastas. On this petition the order made was as follows:—

“The money for the Hak has been, from former times, paid by the Government to both the *Gumastas* (*i.e.* Agents) themselves. This being so, you have not given any evidence that it should not be paid to them, but paid to you yourself. Therefore, there does not seem to be any special reason for making an order from this office to pay the money to you yourself. The money will be paid just according to the practice of making payments, may this be known.”

Upon the whole, then, their Lordships see no ground for dissenting from the judgment of the Court below, that the right of the Gumasta to act as such, and receive the payments, has been either granted, or else so recognized and confirmed by an authority binding on the Appellant that he cannot oust the Defendant, and deprive him of an office and function which the Government has conferred upon him, and still allows

him to enjoy; and, this being so, has not the right as against him to collect the allowance himself directly, either from the village officers or from the treasury.

Their Lordships will therefore humbly advise Her Majesty that the judgment appealed from be affirmed, and the appeal dismissed.

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