Privy Council Appeal No. 56 *of* 1921.

The Secretary of State for India in Council - - - *Appellant*

v.

Laxmibai and another - - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 8TH DECEMBER, 1922.

Present at the Hearing:

LORD PHILLIMORE.
SIR JOHN EDGE.
SIR LAWRENCE JENKINS.
LORD SALVESEN.

[*Delivered by* LORD SALVESEN.]

This is an appeal against a decree of the High Court of Judicature at Bombay, dated the 22nd December, 1916, which reversed a decree of the District Judge of Dharwar, dated the 6th January, 1913. The suit relates to a part of the Hebli estate, from which the plaintiff was evicted by the Government on the death of his grandfather, Pandurangrao. Their object in doing so was to prevent partition of what they regarded as an impartible estate held under a grant of Saranjam.

It is not necessary to recapitulate the facts which have been very fully stated in the judgment of the District Judge of Dharwar or to consider the majority of the points which were disposed of by him and on appeal by the High Court at Bombay. The sole issue which remains for determination is whether the Saranjam grant made by the British Government in favour of an ancestor of the plaintiff was a grant of the royal revenue only, or was a grant of the land itself, or of the whole revenue of the land coupled with a right to hold it. The learned District Judge held that the original grant by the British Government was a grant

of the whole revenue of the land, and that this carried with it the right to make the best possible use of unoccupied land. The High Court at Bombay in reversing his decision held that the grant was one of the royal share of the revenue only and not of the soil. In reaching this conclusion it is impossible to resist the view that the judges of the High Court were much influenced by their view that there is a presumption that a grant of Saranjam is a grant of royal revenue only, and accordingly that the burden of proving that, in any particular case of Saranjam, it is a grant of the soil, lies upon the party alleging it. They relied upon various cases cited and which at that time seemed to establish this proposition. They had not, however, the benefit of two recent decisions of this Board, viz.: *Suryanarayana* v. *Patanna*, 45 I.A., 209, and *Chidambara Sivaprakasa Pandara Sannadhigal* v. *Veerama Reddi*, 49 I.A. 286, in both of which it was held that there is no such presumption.

In conformity with these decisions their Lordships are of opinion that a grant of Saranjam may be either of the soil and the whole revenue derived from it, or a grant of the royal share of the revenue only. It must be determined in each case upon the facts what was the quality of the original grant, although it may well be that it is ordinarily a grant of the royal revenue only. It may be that as the plaintiff was dispossessed by the British Government in 1901 there is a certain *onus* upon the appellant to justify his dispossession, but this becomes of little materiality when evidence is adduced from which a conclusion in fact may be legitimately drawn. In the present case the oral evidence is of no value as supporting the plaintiff's case, and an inference must be drawn one way or the other from the documents that have been produced in the case. These have been examined in detail by the District Judge on pages 35 and 36 of the record, and their Lordships concur generally in the result of his analysis. It is plain that the original grant was made in respect of political services; and while it is no doubt possible that the grantees were at that time the owners of the estate, and that all that the grant was intended to give them was a release from payment of the royal share of the revenue, there is nothing in any of the documents produced which suggests such a limitation. On the contrary in one of the early documents founded on the grant was made expressly of the Kasba Hebli with its hamlets and Watnhal, with the Mahal Jukath and Mokassa "with the whole of the dues and cesses and hidden treasures, exclusive, however, of the dues of Huckdars and Inamdars," and the language of the other documents is in similar terms. It is significant also that in the deed of partition executed by Pandurangrao in 1879, the property partitioned is described as the Jahagir villages of Kasbe Hebli and Majre Watnahal and the Mouza of Talvai and Kurdapur "obtained from the British Government." Throughout the documents there is no suggestion that what was conveyed was merely the royal share of the land revenue. They assume throughout that the whole

revenue of the lands was conveyed to the grantees and the amount of the nazarana which has been levied from time to time appears to have been based on the yearly revenue of the estate, " there being no suggestion (as the learned District Judge says) that revenue derived by the holder as occupant, as distinct from Saranjamdar was not liable to nazarana." All these considerations are sufficient in their Lordships' opinion, to justify the inference that the original grant was a grant of the soil.

It is significant as bearing on the result at which their Lordships have arrived, that the plaintiff in his original plaint nowhere maintained the view upon which the learned judges of the High Court proceeded. His main claim was that he was a full owner of the property in dispute, and that the estate in question was granted as Sarva Inam hereditarily in recognition of the services which his ancestors had rendered in assisting the British in settling the country conquered from the Peshwas. This claim was rejected by the District Judge and has now been admitted by the plaintiff to be untenable. As an alternative to this claim, based on the grant by the British Government, the plaint proceeds as follows :—

> " Saranjam grant is a grant of the Revenue only, and the Government cannot resume the Raitava rights which the plaintiff and his ancestors have been enjoying from ancient times. And even if the Saranjam grant be of the soil, Government has no right to resume it. And the estate in suit is partible."

It is not clear what is meant by " Raitava rights," but the statement sufficiently discloses that they are rights of occupancy only and not of ownership, and a claim of this kind was strenuously maintained in the Lower Court with regard to the occupation of lands which were unoccupied at the date of the original grant. This latter claim has now been abandoned. In no part of the plaint is it possible to find a claim that the Saranjam grant was a grant of the royal share of the revenue only. It appears, however, that this point was argued, and it has not been the practice of their Lordships to construe the pleadings too strictly, or to exclude a plea, which was not embodied in the plaint, from being made an issue in the case. The fact, however, that it did not occur to the plaintiff's advisers to propound this contention on the evidence which he adduced has a bearing on the question as to the proper inference to be drawn in fact from that evidence.

As the case was framed, the jurisdiction of the Civil Courts in India was apparently not ousted. But in the view which their Lordships now take, the right of the Government to resume these lands could not be questioned in the Civil Courts.

In the result their Lordships will humbly advise His Majesty that the decree of the High Court at Bombay should be set aside and the suit dismissed with costs, here and in the Courts below.

In the Privy Council.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL

v.

LAXMIBAI AND ANOTHER.

DELIVERED BY LORD SALVESEN.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.

1922.