Privy Council Appeal No. 66 *of* 1929.

Sahebrao Narayanrao Deshmukh - - - - - *Appellant*

v.

Jaiwantrao Yadaorao Deshmukh and another - - - *Respondents*

Privy Council Appeal No. 20 *of* 1930.

Jaiwantrao Yadaorao Deshmukh and another - - - *Appellants*

v.

Sahebrao Narayanrao Deshmukh - - - - - *Respondent*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF THE CENTRAL PROVINCES.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL DELIVERED THE 31ST MARCH, 1933.

Present at the Hearing:

LORD ATKIN.
LORD THANKERTON.
SIR JOHN WALLIS.

[*Delivered by* SIR JOHN WALLIS.]

Their Lordships have heard arguments in two appeals from the Central Provinces arising out of two suits between the same parties and connected with the same *watan* or hereditary endowment and will now proceed to dispose of them together.

The first of these appeals is from a judgment in second appeal of the Court of the Judicial Commissioner in a suit filed in 1918 by the head of the junior branch of the *watan* family and his son to recover a one-half share of an annual payment of Rs. 768.8, made by Government to the first defendant, the head of the senior branch.

The other appeal is from a judgment of the same Court on first appeal in a suit filed in 1924 by the head of the senior branch

of the family to recover from the head of the junior branch possession with mesne profits of a one anna four pice share of the *watan* village of Lakhanwadi, of which it was alleged he had taken wrongful possession. In this case the Court affirmed the judgment of the District Judge decreeing the suit.

The facts which led up to this litigation as they appear from documents exhibited in both suits may be first stated.

In 1860 Achawit Rao, the great uncle of Sahab Rao, the first defendant in the earlier and the plaintiff in the later suit, obtained from the Nizam's Government a *sanad* confirming and continuing to him on the death of his father Khooshalrao the *watan* (hereditary office) of Deshmukh of the Pergana Daryapur in Berar. Berar was one of the districts which had been assigned by the Nizam to the exclusive management of the Resident at Hyderabad under the orders of the Government of India by the Treaty of 1853; and, as the Deshmukhs had already been relieved of what was formerly their principal duty, the collection of the revenue, the *sanad*, whilst continuing to the grantee "his usual Russoons, Huqs, Palanputt villages, share in the Mookuddumee of Daryapur, Inams, Babs, Lowazmah of villages of his share," merely required him "enjoying the said Lowazmah and Huqs of his office of Deshmookee," to endeavour to encourage the increase of *rayats* and of cultivators of the land and the prosperity of the villages, and to be obedient to the Amils and Jaghidars and render them every assistance in his power and pay the Government dues in proper season." As will be seen, even these light duties disappear from the Inam certificate of 1870, which continues the grant of the village of Lakhanwadi for personal maintenance to Achawit Rao, his lineal descendants and co-sharers.

Under this *sanad* the grantee only obtained a one-third share of the Kushba or Pergana Daryapur, consisting of 37 villages, one of which Lakhanwadi, was entered as a Palampat village and formed part of the endowment. As stated in the Inam rules a single Pergana had often been divided and each of the divisions held for several generations by a member of the Deshmukh family.

In the adjoining Bombay Presidency, as Mr. Mayne has observed, Hindu Law, 9th edn., p. 676 :—

> "There are numerous revenue and village offices, such as *deshmuk, despandya desai* and *patel*, which are remunerated by lands granted by the State. These lands have by lapse of time come to be regarded as purely private property of the family which holds the office, though they are subject to the obligation of discharging its duties."

It is, therefore, not surprising to find from the evidence in this case that a similar state of things had arisen as regards the office of Deshmukh in Berar.

The records of the Lakhanwadi Inam inquiry in 1867 are the most important evidence in both suits, and it will be convenient to deal with them at once, especially as leave to

appeal has been granted in the allowance suit owing to conflicting decisions as to the effect of the Inam rules on the descent of these allowances.

In 1859 the Government of India had made Inam rules for the settlement of Jagir and Inam claims in Berar, which, though differing in some respects, were on the same lines as the rules prescribed about the same time for the adjoining Presidencies. Under Rule VIII " the term inam is to be understood as applying to all land, whether in integral villages or lesser grants held entirely free of land-rent or on a favourable quit-rent and will all be disposed of under the above rules." An Inam Commissioner was appointed under the rules and in 1867 an inquiry was held into the Lakhanwadi village, with the result that in 1870 it was confirmed by the Government of India to " Achawit Rao and lineal descendants and co-sharers."

The inquiry to be held under the rules was not limited in the case of these service grants to inams as defined in Rule VIII, but was also to include the holders' money grants, and Rule XV provides not only for the issue of Inam title deeds, but also for the issue of similar title deeds " in cases of money grants confirmed to claimants."

Under these rules all the cash allowances forming part of the *watan* endowment should have been inquired into and either disallowed or confirmed. The form of Inam statement which the claimant was required to fill in and verify required the claimant in column 2, "Particulars of claim," to give particulars of " Cash " claimed as well as of land. Column 8 also required the claimant to give " Details of other income," that is to say, of his private means, and in column 10, " Co-sharer of the property in suit," there was a similar inquiry as to the other means of the co-sharer.

In the Inam statement Achawit Rao made no claim under " Cash," in column 2, but possibly by mistake entered under column 8, " Details of other income," " *Rusum* in cash, Pergana Daryapur, Rs. 663.13 still continuing," and in his report the investigating officer treated these *rusums* as cash allowances and proposed that they should be reduced to Rs. 508.5.9, and met by reducing the Lakandwadi quit-rent from Rs. 1,656 to Rs. 1,147.10.3, a proposal which was not adopted, as the grant of the village was continued at the old quit-rent of Rs. 1,656.

Had any cash allowances been confirmed by the Government as the result of this inquiry a title deed should have been issued showing for whose benefit it was made and how it was to descend, but no such title deed has been produced and the inference therefore is that no cash allowances were confirmed.

The two last columns of the Inam statement, numbered 10 and 11, are especially relevant to the claim in the later suit for possession of a share of the Lakhanwadi village.

Column 10, headed " Co-sharers of property in suit," requires particulars as to the relationship of the co-sharer to the original grantee, his father's name, his age, what should the claimant get, his share in annas out of a rupee, and details of other income, if any."

The required information is given in a separate statement :—

Statement of kinsmen owning shares in the *Palampat Makta* villages for the *Hijri* year 1276 *Fasli* (1860–61 A.D.). Statement made before the *Inam* Commissioner R. S. Sitaram Raoji, Extra-Assistant Commissioner, on 2nd February, 1867, in connection with *mauza* Lakhanwadi, *pergunna* Daryapur.

Rs.	a.	p.	
0	8	0	Acheut Rao, son of Khushal Rao Deshmukh.

Rs.	a.	p.	
0	8	0	Yadoji, son of Dharmaji Deshmukh, Jaiwant Rao Deshmukh.

Rs.	a.	p.	
0	4	0	Aforesaid person.
0	4	0	Sonaji, son of Laxmanji Deshmukh.
0	1	4	Aforesaid person.

This statement, signed by Achawit (i.e. Acheut) Rao himself and Yadoji, the head of the other branch of the family, clearly shows that Achawit Rao only claimed an eight annas share in the village, and that the other eight annas share was owned by the junior branch of the family, four annas being owned by Yadoji and a one anna four pice share by Sonaji, the remaining two annas eight pice share being divided among other members of Sonaji's branch, whose shares it is unnecessary to set out, as this suit is concerned with Sonaji's share. Sonaji's elder son, Jaiwantrao, the first defendant, who had been adopted by Yadoji, the owner the four annas share, had taken possession of Sonaji's share on the death in August, 1913, of Radhikabhai his brother's widow.

The Inam certificate, the last and most important of the Inam records, was made under the authority of the Government of India, communicated to the Commissioner of the Hyderabad Assigned Districts on the 19th February, 1870, and under it the Mauza Lakhanwadi was "for personal maintenance continued to claimant, his descendants and co-sharers in perpetuity, deducting *abkari*, subject to quit-rent Rs. 1,656."

Appeal No. 20 *of* 1930.

Their Lordships will now proceed to deal with the appeal from the judgment of the Court of the Judicial Commissioner, affirming the judgment of the District Judge of Amraoti, and decreeing the suit of the plaintiff Sabhabrao as successor to Achawit Rao's lands, which had been in the possession of Radhikabhai, as already stated.

The plaintiff's title to the suit lands depends upon the Inam certificate, and unless he can establish that title his suit must fail.

whether or not the first defendant had any title to the suit lands of which he took possession, as already stated, on Radhikabhai's death in 1913. Both the District Judge and the learned Additional Judicial Commissioners have held that the certificate was evidence of a grant to Achawit Rao and his lineal descendants and conferred upon the co-sharers mentioned in the grant only a right of maintenance. The Additional Judicial Commissioners have further held, following an earlier decision of their own Court, that if the Inamdar for the time being allows a co-sharer by way of maintenance to remain in possession of lands in the village for a certain time, that may raise an implied contract to allow him to remain there during his own lifetime, but that such contract will not be binding on his successors.

In their Lordships' opinion, the judgments of the lower Courts proceed upon a misconstruction of the Inam certificate, which is in terms a grant to the claimant Achawit Rao for personal maintenance to be continued to claimant, his lineal descendants and co-sharers, and not as held by the lower Courts a grant to Achawit Rao and his lineal descendants, subject to the obligation of maintaining the co-sharers.

Under this certificate this village, which had been part of the *watan* endowment, was continued for personal maintenance to Achawit Rao and his co-sharers, no doubt as members of an ancient family who for generations had been employed and remunerated for the discharge of important duties of which they had been relieved. As already mentioned, the Government had been at pains to ascertain the share in annas out of a rupee which were held by the co-sharers and had obtained a statement signed by Achawit Rao himself and Yadoji, the head of the junior branch, showing that Achawit Rao's branch only held an eight annas share in the village. In their Lordships' opinion, the effect of the grant was to continue to him and his co-sharers for their personal maintenance the village of Lakhanwadi according to their existing and ascertained shares. That this was the understanding of everyone concerned appears from the document (Exhibit D.5) executed on the 25th September, 1876, by Achawit Rao in favour of Jaywantrao, who is a party to these two suits and had succeeded his adopted father Yadoji as head of the junior branch :—

> "Your and my ancestors have already partitioned the *palampat* Lakhanwadi half and half according to the documents and accounts. If any dispute arises hereafter each one should manage his own affairs, as has been the ancient practice of managing in halves through separate Patwaris Hawaldars and Mahars. The village expenses incurred for government should be borne by both, half and half. The partition of the residential places has been made by our ancestor. Accordingly, Hambirji's site falling to the share of Yadoji may be taken by you. . . . We as elders have *man pan* (right of precedence). You may continue the same accordingly. The Government papers relating to Lakhanwadi should

be signed by you and me. And the *man pan* should be continued as going on from a long time. And half of whatever income may accrue from the village will belong to you."

It seems unlikely that this suit would ever have been brought if the good relations between the two branches evidenced by this document had not been interrupted, possibly by Jawantrao's claim to share in the money allowance which is the subject of the other appeal. However this may be, their Lordships are clearly of opinion that the plaintiff's suit must fail, as he has not proved any title to the suit lands.

Appeal No. 63 *of* 1929.

Their Lordships will now proceed to dispose of the appeal from the other judgment on second appeal of the same Court in the suit instituted by the aforesaid Jayawantrao, the present head of the junior branch of the family and his son, against the aforesaid Sahab Rao, the head of the senior branch, for a declaration that he was entitled to a half share in the *lawa-jama* of Mauza Lakhanwadi, and for the recovery of his share for three years. "Lawajama," it is explained in a note to the plaint, is a term used to denote the remuneration paid to hereditary officials, and in the order granting leave to appeal to His Majesty in Council it is stated that the cash allowances in these *watans* are known comprehensively as *lawa-jama*. The alleged *lawa-jama* in this case consists of an annual payment from the Government treasury of Rs. 768.8, which is referred to in the certificate under section 6 of the Pensions Act, 1871 giving the plaintiffs leave to sue, as "pension moneys now received by the said Sahebrao Narayanrao as registered payee and paid to him by Government." The revenue authorities must have some authority for paying these pension moneys to Sahebrao, but what it is is not disclosed in this certificate or in the rest of the evidence, and the effect of the lower appellate Court's finding is to leave the origin of this grant a matter of conjecture.

The case made in the plaint was that the family as Watandar Deshmukh of Daryapur gets this *lawa-jama*, which is paid to Sahebrao as *Dastaki*, or head of the family. According to the plaint, it was formerly paid to Sahebrao's father Narayanrao, who paid the first plaintiff his half share down to the year 1914, but did not pay it in 1915, nor has it been paid since. The defendant pleaded that the plaintiffs were not members of the Watandar Deshmukhi family and had no share in the *lawa-jama*, that the *lawa-jama* did not form part of the Deshmukhi *watan*, that it was acquired by his great-grandfather Kulshabrao, the father of Achawit Rao, that the plaintiffs never got any part of it, and that the permanent payable order stood in the name of the defendant for his family and in no way for the plaintiffs' family. Had there been any direct evidence of the origin of this alleged permanent payable order of *lawa-jama* it might have thrown much light upon the case, but no such evidence was forthcoming.

Both the Subordinate and the District Courts found that the plaintiffs were members of the family and had a share in the *watan*, and that the defendant had failed to prove that this *lawa-jama* had been granted to his great-grandfather Khulshabrao. On the other hand, they found in the defendant's favour that the first plaintiff had failed to prove that he had ever received any share of it.

In the light of these proceedings they dealt with the second and main issue, " Whether Deshmukh *watan* includes *lawa-jama* ? " and after a careful examination of the contentions raised before him, the District Judge, agreeing with the Subordinate Judge found that it was not proved that the *lawa-jama*—that is to say, the pension moneys paid by Government to the first defendant—were included in the *watan* or hereditary endowment, and that therefore the plaintiffs could not claim a share in them as such. This was a finding of fact by the lower appellate Court, and under Section 100, C.P.C., could only be reversed on second appeal by reason of " the decree being contrary to law or some usage having the force of law." The first question therefore for their Lordships is, had the Court of the Judicial Commissioners any sufficient reason for reversing the judgment and decree of the lower appellate Court as contrary to law ? In their Lordships' opinion, the respondents have not succeeded in showing that the findings of the lower appellate Court were vitiated by any error of law. In the second appeal to the Court of the Judicial Commissioner the contention for the plaintiffs, as stated in the judgment, was that on the findings that the plaintiffs were members of the *watan* family and had a share in the *watan*, and that the defendant had failed to prove the grant of this *lawa-jama* to his great-grandfather, the conclusion must be in the plaintiff's favour, for presumably the *lawa-jama* formed part of the *watan*. The learned Judges accepted this contention and on an examination of the *sanad* of 1860, Achawit's Inam statement P.3 in 1867, and the investigating officer's report P.9 and P.14, a deposition of the first defendant's father Narayarao in 1876, found that the *lawa-jama* must be presumed to be a part of the Deshmukhi *watan* in which the plaintiffs were entitled to share.

Their Lordships have already carefully examined the entries in the Inam documents relating to allowances with a view of seeing if there had been any misconstruction of them by the lower appellate Court which could be treated as contrary to law. None has been suggested and they have been unable to find any. Unless there has been misconstruction a mistaken inference from documents as has been pointed out in the cases cited, is an error not of law but of fact. The lower appellate Court on a full consideration of all the evidence and of the plaintiff's failure to prove that he or his father had ever shared in this payment, refused to draw the inference that Rs. 508 in respect of *rusums*

which the investigating officer proposed to meet by a reduction in the quit-rent—a proposal not adopted—is now represented by the pension-moneys of Rs. 768.8, paid to the first defendant, whereas the learned Judges have found that it is.

If their Lordships had been called upon to choose between these two findings, the fact already mentioned that the *rusums* allowance is not shown to have been confirmed as the result of the Inam Commissioner's inquiry would also have had to be taken into account as militating against the plaintiff's claim.

For the purposes of this appeal it is sufficient to say that their Lordships are clearly of opinion that it has not been shown that the judgment of the lower Court was liable to be reversed on second appeal as being contrary to law, and that this appeal must therefore be allowed.

In the result their Lordships will humbly advise His Majesty that in both these appeals the decrees of the Court of the Judicial Commissioner be reversed with costs. In appeal No. 66 of 1929 the decree of the District Judge should be restored ; in appeal No. 20 of 1930 the suit should be dismissed. The respondents in both cases will pay the appellant's costs of the appeal to His Majesty in Council.

In the Privy Council.

SAHEBRAO NARAYANRAO DESHMUKH

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