Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Shrimant Raje Bahadur Raghojirao Saheb v. Shrimant Raje Lakshmanrao Saheb, from the High Court of Judicature at Bombay; delivered the 18th July 1912.

PRESENT AT THE HEARING:

LORD SHAW.
SIR JOHN EDGE.
MR. AMEER ALI.

[DELIVERED BY LORD SHAW.]

This Appeal is made against a Decree of the High Court of Justice at Bombay, dated the 14th November 1907, which affirmed a Decree of the Subordinate Court of Poona, dated the 7th December 1904. The Plaintiff (Respondent) and the Defendant (Appellant) are brothers. The main object of the suit is contained in the first prayer of the Plaint, and is to have it declared that the whole of the immoveable and moveable estate mentioned in the schedule annexed to the Plaint belongs to these two brothers as equal owners thereof. The elder brother, the Defendant Appellant, is Rajah of Deur. And the claim is resisted by him upon the ground that the various properties referred to had been succeeded to by him, under the law of primogeniture, as an appanage to the title of Rajah conferred upon him by a Sanad issued under the hand of the Governor-General, Earl Canning, in the year 1862.

[55] J. 155. 120.—7/1912. E. & S.

The properties are situated in the Districts of Poona, Ahmednagar, Satara, and Sholapur, all in the Presidency of Bombay. They include five *mouzahs* or villages, together with various *vatans*, *hakks*, and cash allowances, set forth in the schedule. It was matter of agreement in the High Court that the main question in the case should be treated as one applicable to the villages or *mouzahs*, and that when the question of partibility or impartibility should be settled in regard to them, the remaining items in the schedule should follow that decision.

Of the *mouzahs* mentioned, that of Deur is situated in Satara. In the course of the proceedings it has been admitted that the property in the Satara District is an appanage of the title of the Rajah of Deur, is impartible, and is succeeded to along with the title and position of Rajah accordingly, that is to say, by the rule of primogeniture. It is submitted by the Appellant that the same result should have followed with regard to the rest of the properties in dispute. The question in the case is whether that submission is correct.

The whole of the properties are, as stated, within the Bombay Presidency. This fact throws light upon the construction of many of the official minutes, despatches, entries, and others, referred to in the case, and appears to be one of cogency. It can hardly be denied that the language used in all these official documents for a period of about fifty years is at least *ex facie* language applicable to the possessions of the Rajah in the Bombay Presidency as a whole.

Points of great historical interest are naturally suggested by a review of the pedigree put in by the parties. The records of the Bhonsle family —the Rajahs of Nagpur—are bound up during a long period of time with many stirring adventures and achievements in the course of the Maratha

ascendancy and its decline. The position of the family was one of great note from the middle of the 17th, and during the whole course of the 18th, and the first half of the 19th, centuries. The possessions of these Rajahs were extensive, stretching throughout many portions of the Central Provinces, the North-West Provinces and Berar, as well as of the Bombay Presidency.

The last of the Rajahs of Nagpur, Raghoji III., held the title, estates, and rights from the year 1817 till his death in 1853. The forfeiture of 1818 followed by the treaty and free gift of 1826 need not be referred to, the facts of ownership and possession being substantially as stated. He died without issue. He himself was an adoptive son of one Parsoji Bhonsle, and with his death in these circumstances the Bhonsle dynasty of Nagpur came to an end. It is an admission of parties that in that year the title of Rajah of Nagpur lapsed and that the estates and rights of the deceased Raghoji III. fell to the British Government.

The widows of Raghoji, however, adopted Janoji in the year 1855. He survived till 1881, leaving behind him the two sons who are contestants in the present case.

During the Mutiny of 1857 a female member of the family, the Rani Baka Bai, appears to have powerfully and loyally assisted the British cause and to have rendered services worthy of official recognition. She was the widow of a former Rajah of Nagpur, namely, Raghoji II., and she was anxious for the continuance in the family of the title of Rajah and the attachment to it of such property as would mark and maintain its dignity. The Government of the day declined to restore the Nagpur title, but was willing to create—by Sanad issuing from the Governor-General—a fresh Rajahship. The title

pitched upon was derived from Deur, a small village in the Satara District of the Bombay Provinces. It is manifest from the official documents issued that it was one of the objects of the Government to make such a provision—in land and revenues accompanying the title—as, though small and unimportant if viewed relatively to the ancient Nagpur possessions, would still be sufficient to gratify, so far, the desire of Baka Bai, and to support in becoming dignity the newly created title.

It is accordingly important to note what were the exact terms of the Sanad under the hand of Earl Canning, Governor-General. It is dated the 10th October 1861. The Subordinate Judge of Poona has closely examined it and the translations. As stated by the learned Judge, it is written in Urdu, and its text is as follows, it being super-signed by Lord Canning and bearing the seal of the Government of India :—

"Sanad granted by His Excellency the Viceroy and "the Governor-General of India in Council to Raja Janoji "Bhonle Bahadur conferring upon him the title of Raja "Bahadur of Deur.

"Whereas it has been proved and verified that Maharani "Bakabai Saheb was loyal towards the noble British "Government and the good behaviour and loyalty of that "family during the Mutiny has been proved and verified; in "recognition thereof the title of Raja Bahadur of Deur "together with the lands attached to Deur has been con-"ferred upon and given on this auspicious occasion, to that "Meherban himself and his heirs in succession whether "begotten or adopted in perpetuity and the Sanad thereof "has been executed. It must be deemed incumbent that in "return of this gift and kindness you will always remain "loyal to the noble British Government and you will look "upon this Sanad a perfect one."

The point of the case is : What meaning is to be given to the words "lands attached to Deur"? Are these lands limited to the village of Deur itself? Or do they extend to the possessions in the Satara District? Or do they cover the

possessions as a whole which lay within the Presidency of Bombay?

Neither party to the case maintains that the grant should be confined to the lands in the village of Deur alone; and it is conceded by the Respondent that other lands in the Satara District must be held to be included. This concession is perfectly reasonable, for otherwise the lands attached to Deur, if confined to the village of Deur itself, would reduce the maintenance of the dignity of the Rajah almost to a shadow.

But the mere inclusion of all the Satara lands also reaches a very inconsiderable total. These lands are worth over Rs. 3,000 per annum. The villages, lands, and others, in the whole of the Bombay Presidency, mentioned in the Plaint, yield a total revenue of over Rs. 12,000, and it would appear from this, that if all these lands were dealt with as lands which were attached to Deur by the Sanad, they would form taken together a fund for the maintenance of the dignity of the Rajah which could not be said to be over ample. But if the lands attached to Deur are confined to those in the Satara district alone, then the result of such a construction of the Sanad is to set up this Rajah with an appanage of about Rs. 3,000 per annum for the support of his dignity and title. Their Lordships are not surprised to learn that during all the years since the Sanad, in many of which the Court of Wards have had possession, and in all of which the Government have had cognizance of the facts, no one apparently until the institution of this suit ever thought of maintaining that the possessions attached to the position of Rajah were of the slender proportions described. Upon the contrary, they have throughout been dealt with as those within the Bombay Presidency at large.

As mentioned, the properties of the former Rajahs were situated not only in the Bombay Presidency, in which their extent was very limited, but in the Central Provinces and Berar. A large donation or stipend of Rs. 120,000 per annum was enjoyed by the late Rajah Janoji at the time of his death. After that event, in 1881, the Government of the day had to consider the question of the allowances to be made to his successors, namely, his two sons. A pension amounting to Rs. 90,000 was fixed, and in the despatch of the 10th February 1882, by the Assistant Secretary to the Chief Commissioner, the grounds are explained of the distribution of this pension. "The two sons," it is said, "will "succeed to the landed property of the late "Rajah in the Central Provinces and Berar, and "to the personalty in equal shares. This is in "accordance with the Hindu law and Maratha "custom. The elder son will succeed to the "title of Rajah of Deur and to the estate in the "Bombay Presidency, which goes with that "title. The value of this estate is, however, "comparatively small, the bulk of the landed "property of the late Rajah being situated in "the Central Provinces and Berar. There will "not, therefore, be much difference in the "private income of the two sons should they "hereafter separate." This passage is quoted as an indication of the view which is repeatedly exhibited in the documents with regard to the attitude of the Government, from whom the grant by way of Sanad proceeded. This interpretation was undoubtedly that the Rajah of Deur should take the estates in the Bombay Presidency, which were comparatively small, as an appanage of the title; that these should accordingly follow the rule of primogeniture; whereas the larger and more important estates

in the Central Provinces and Berar should be partible equally between the two sons.

Contemporanea expositio as a guide to the interpretation of documents is often accompanied with danger, and great care must be taken in its application. But in the present case their Lordships do not feel themselves able to reject the assistance which it affords. The Sanad upon which these important rights are founded is a document of a general and informal character. It admittedly is capable of a variety of constructions. The extreme literal construction—its confinement to the single village of Deur—is adopted by neither party. And when the ambiguity covers the geographical and pecuniary extent of an admittedly ambiguous grant, their Lordships think it legitimate to observe what was the footing upon which the grantors, namely, the Government and its successors and officials, from the date of the grant and for a long period of time, proceeded.

It may be pointed out that since 1881, namely, since the death of Janoji, the question of partibility was, of course, practically and sharply raised, and the fact is that the whole of the income derived from the estates in the Bombay Presidency, amounting to about Rs. 12,000 per annum, has been uniformly treated as the exclusive income of the elder son, namely, the present Appellant. This was done both while he and his brother were wards in the Court of Wards and at other times. That Court managed the possessions of the Appellant until he came of age in 1893. Again in 1895 the Court of Wards re-entered, by request of the Rajah, into possession and management for a time. In 1899 the younger brother came of age, the property in the Central Provinces and Berar was divided equally, and the Bombay estate was treated as impartible and continued with the

Rajah as an appanage of the title. In the opinion of their Lordships, this throughout was a correct course; and the present suit, the object of which is to diverge from that course, is not in accordance with the rights of parties.

In one view, what has been said might appear to be sufficient for the disposal of this case. But in the judgments of the learned Judges of the Courts below, and in the arguments addressed to their Lordships, further considerations were urged as assisting towards a conclusion and falling to be dealt with. There can be little doubt that the whole of the lands in issue were originally *Jaghir* lands, and the legal position of such property *quoad* succession, and the competency or incompetency of assisting the construction of the Sanad of 1862 by such considerations, were much discussed. There are three points with reference to the position of property such as that now in suit which stand logically clear of each other, and with regard to which there has been a certain element of confusion. These three points are, first, was the land impartible? Secondly, did the law of hereditary succession apply to it? And thirdly, was it subject to the law of primogeniture?

The Subordinate Judge, after referring to the fact that some of the villages are referred to as *Jaghirs* in the old records, is of opinion that "that fact *per se* is not sufficient to make them "impartible." If this be stated as a conclusion with regard to the *Jaghir* tenure in general, their Lordships cannot agree with it; but, upon the contrary, they are of opinion that the following statement in the Judgment of the High Court is correct, namely, "The grants were manifestly "grants in *Jaghir* of the ordinary character, "that is to say, they were personal and not "hereditary, and were resumable at pleasure. "Being personal and temporary, they were

" necessarily impartible." This accurately distinguishes between partibility as such, and any consequence, whether in the direction of hereditary or primogenital succession, which may be supposed to flow from such a fact. The impartibility of *Jaghir* lands is in truth entirely separated from the idea of succession by the fact that the impartible lands were held together as a unit in the hands of one man who was rendering personal service to the Government of the day. It may be that upon his death a fresh grant, again to one man, and again in return for personal service, was made ; and it may also be that the one man selected was in the ordinary case the eldest son ; but these matters of practice were not consequences of law, and the impartibility and unity which attached to personal service was not related to, but, on the contrary, was distinct from, the idea of succession by force of law to the impartible lands.

It is at this point that the case appears to have been confused and encumbered by a plea put forward by the Appellant to the effect that the lands in question were not only impartible and hereditary, but were, by custom, subject to the law of primogeniture. Once grant that the lands were *Jaghir* and impartible as such, a custom of the kind alleged was not a subject for proof, because such a custom would have been radically inconsistent with the personal and non-transmissive character of a grant in *Jaghir*. Their Lordships agree in holding with the Courts below that this case accordingly cannot be decided on the custom alleged.

All that remains on this issue, consequently, is the fact that prior to the regrant by Earl Canning the lands had been formerly *Jaghir*. But this term implied no grant of the soil, but a personal grant only of the revenue to the grantee. The *Marathi* equivalent to the term *Jaghir*,

namely, *Saranjam*, came in course of time to be applied to the lands ; and no doubt it was also a fact in the history of the property that the senior living male of the family had in the ordinary case succeeded to it.

In those circumstances, it is interesting to observe what was the delivery order issued with reference to the lands which were the subject of the Sanad. This forms a not unimportant item to that *contemporanea expositio* to which reference has been made. Much importance—and, in their Lordships' opinion, too much importance—has been attached in the judgments of the Courts below to the distinction between the term *Inam* and *Saranjam*. The importance has reached this point, that the learned Judges treat the lands of Satara as referred to in one or two of the documents as *Saranjam*, by way, as they apprehend, of distinction from the other lands which are treated as *Inam*. In their Lordships' view, the terms are not mutually exclusive in the sense indicated. The latter term, namely, *Inam*, is one of mere generic significance, applicable to a Government grant as a whole. But in the next place it is a very striking fact in this case that in the initial delivery order now being referred to (as indeed in many of the subsequent documents) the rights in the Bombay Presidency are dealt with comprehensively and as covered, not by one name, but by all, or at least many, of the names applicable to land and revenue rights. In the Mamletdar's order, for instance, of the 19th March 1862, applicable to the village of Mouje Devi Nimbgay, one of the properties in Ahmednagar, the matter is treated of in this way. The village "is a jahagir to the Bhonsles " and as a village was placed under japti (attach- " ment) ; the revenue of the same was received " for being credited in Government records." Then follows the definite statement :—"But the

" Vatan, Inam, Saranjam, Hakks, &c. . . .
" have been entered in the name of Janoji
" . . ." Therefore certain definite orders are given pursuant to the Government Resolution, " directing the said village, Vatan, &c., to " be delivered " into the charge of Janoji's managers. It would therefore accordingly appear that the term *Saranjam* was not in point of fact confined to the lands of Satara. This ground of the judgments of the Courts below accordingly disappears.

A matter of much significance must now be dealt with. On the death of Janoji in 1881 the question of partibility or impartibility,—there being two sons of that Rajah,—became matter for definite consideration and regulation. What light is thrown upon the case by the conduct at and after this juncture of the Government, including the Court of Wards, which was charged with the correct distribution of these two sons' shares? Upon this head their Lordships do not conceal that they have viewed with some dissatisfaction the conduct of certain parts of the Plaintiff's case. On the 6th May 1882 an important letter was written by Mr. Lawrie, manager of the estates, to the Deputy Collector, "Satara, Sholapoor, Ahmednagar, and Poona." That is to say, this letter was addressed to the persons acting as Collectors in reference to all the estates within the Bombay Presidency which were the subject of issue in this case. He forwards his appointment by the Deputy Commissioner of Nagpur as manager of the estate of the late Rajah's minor sons; and then there follows this passage, or what was supposed to have been this passage, as the document was produced in the suit: " I have the honour to " request you to be so good as to cause mutation " of names to be made for all villages held by " the late Rajah in your collectorate in favour of

" his two sons, Rajah Raghojeerao Bhonsle (only " for Satara) and Laxmanrao in equal shares " with my name as manager." So stated, this document would appear to suggest that all the properties except that of Satara were partible ; and this would have been an important adminicle of evidence to that effect. The document, however, has a history. It is deponed to in the evidence of the Plaintiff's own witness Abaji Belaji. Interlineations and remarkable alterations occur in the document, and the witness confesses, " I cannot say why and by whose order " the words 'only for Satara,' 'two,' the 's' " added to the word 'son,' and the words 'and " 'Laxmanrao in equal shares with my name as " 'manager' were written." As the document stands it suits the Plaintiff's case ; but it appears to be legitimate, and, indeed, proper and just, to read the document without the doubtful and unexplained interlineations and alterations. So read, the letter is as follows : " I have the honour " to request you to be so good as to cause " mutation of names to be made for all villages " held by the late Rajah in your collectorate in " favour of his son Rajah Raghojeerao Bhonsle." The letter is addressed to the Collector, not of Satara alone, but to the Collectors of Satara, Sholapoor, Ahmednagar, and Poona, and it would, so read, accordingly appear to demonstrate that at the important time when the administration of the deceased Rajah Janoji's estate was taken up by Government, all the estates in the Bombay Presidency were treated, without exception, as an appanage to the title of Rajah.

It is right that a further reference should be made to a cognate topic. It would rather seem that the learned Judges of the Courts below have been induced to treat as authentic various entries in the Collector's books which were not the entries as originally made, but were entries

subject to "correction;" a correction made upon an *ex parte* application on behalf of the Plaintiff. This application was preferred, and apparently granted, behind the back of the Defendant, and during the course of this present litigation. The date of the suit was the 22nd August 1900, and on the 5th August 1901 a memorial was presented to the Governor in Council at Bombay with the statement: "This is forwarded to the "Chief Secretary by letter of the 13th August "1902." It is plain from a perusal of these documents that certain registers, including in particular the register of the Collector of Ahmednagar, together with certain despatches, had been the subject of investigation on behalf of the Plaintiff, and that that investigation had revealed facts which were considered to be contrary to his interests. The application admits that in these documents the Collector of Ahmednagar had "been directed to treat the villages referred to "in the petition as impartible *saranjam*." Then the letter proceeds: "The villages of Devi "Nomgaon, Jat Deola, and Jalalpur, in the "Ahmednagar district, were up to 1864 regarded "as *Inams* and *Saranjams*, and the *Deshmukhi* "and other *Hacks* as *Wattans*, as contradistin-"guished from *Saranjams*. There was and is "no room for asserting that they were ever "treated as impartible *Saranjams* held on poli-"tical tenure." This remarkable document winds up thus: "In view of the facts and argu-"ments above set forth, you will be pleased to "issue orders to correct the Land Revenue "Register by expunging that portion of it in "which" the villages "are specified as political "*Saranjams*." The facts and arguments here referred to are simply those which have been urged in the present litigation. The one fact outstanding from the whole of these proceedings is that the argument now preferred, to the effect

that the Satara property and that alone was treated as *Saranjam*, while the other properties were throughout treated as *Inam*, is contrary to what is admitted to have been the original entries in the books referred to. In these circumstances, it appears to their Lordships to be quite unsafe to place reliance upon a denomination of these lands dependent upon a "correction" which appears, or is alleged, to have been made while the case was *sub judice*, and upon an *ex parte* representation. Their Lordships think that the original state of the Records before the so-called corrections were made was that alone to which a Court of Law should have looked. This would at least be the safe and ordinary rule, and there do not appear to be any facts in the present case to ground an exception to it. It is not for their Lordships to pronounce upon the procedure by which such "corrections" of official documents and records can be possible in those districts in circumstances such as are here disclosed.

Various difficulties are presented by reason of expressions which appear in despatches from those in authority in the Central Provinces. In those despatches language is used which would appear to signify that the lands attached to Deur in the Bombay Presidency were the Satara lands alone. The language is not clear, and it had reference to a matter lying beyond the jurisdiction of the writers. Difficulties also arise with regard to the terminology employed in some of the entries in which *Saranjam* is applied to Satara and *Inam* to the other districts, whereas in others there appears to be an application of both terms to the same lands and in various districts.

Their Lordships, upon the whole, have had little difficulty in coming to the conclusion that too restricted an application has been made by the Courts below of the term "the lands attached

" to Deur." They think the expression extends to the whole scheduled lands in the Presidency of Bombay. They will humbly advise His Majesty that the judgments of the Courts below should be reversed, that the lands referred to in this suit are impartible, that they are attached as an appanage to the title of the Rajah of Deur, and that the suit should be dismissed with costs here and below.

The Respondent will also pay the costs of a Petition for further documents which was before the Board on the 24th February 1911.

In the Privy Council.

SHRIMANT RAJE BAHADUR RAGHOJIRAO SAHEB

v.

SHRIMANT RAJE LAKSHMANRAO SAHEB.

DELIVERED BY LORD SHAW.

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