Privy Council Appeal No. 19 *of* 1927.

Shrimant Lakhamgowda Basavaprabhu Sar Desai - - - *Appellant*

v.

Appanna Bin Basaprabhu Iti and others - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 27TH NOVEMBER, 1928.

Present at the Hearing:

VISCOUNT DUNEDIN.
LORD SHAW.
LORD BLANESBURGH.
SIR JOHN WALLIS.

[*Delivered by* SIR JOHN WALLIS.]

This is an appeal from a decree of the High Court at Bombay reversing a decree of the Subordinate Judge of Belgaum and dismissing a suit brought by the plaintiff, the Desai of Vantmuri, to eject the defendants from certain lands held by them on service tenure in the village of Nagannanoli in case of their not agreeing to render to the plaintiff the services claimed from them, and also for damages.

The important office of desai had formerly been hereditary in the plaintiff's family; and Nagannanoli, one of the villages which had formed the watan or endowment of the office, had been confirmed to them in inam by the British Government after the office and its duties had ceased to exist.

According to the plaint, the plaintiff's inam lands in the village included three parcels, A, B, C, containing $7\frac{1}{2}$ bighas, $3\frac{3}{4}$ bighas and $7\frac{1}{2}$ bighas respectively, of which A and B had been granted by the plaintiff's ancestor to one Shivappa Iti in Fasli 1180 (1769–70) and C had been granted to his son, Appanna Bhimanna Iti, in Fasli 1247 (1836–7) for badal mushahira, or stipend in land for the services they might be called on to render in the desgat, or desai's district. The defendants' family had,

it was alleged, continuously rendered service as a peon and a shagirti, or attender, until August, 1917, since which time, on the evil advice of the plaintiff's enemies, they had ceased to do him service.

The defendants in their written statement denied that their lands had been granted to them on these terms or that they had in fact rendered service as peons and shagirtis. They and their ancestors, they alleged, had all along been doing service at Nagannanoli as sanadis, and were willing to continue doing so. In 1917 the plaintiff, with the evil object of depriving them of these lands, had required them to stay at Vantmuri, the village where he resides, and to do service in his house to which service he was not entitled. They denied that the grants mentioned in the plaint were genuine, and alleged that they held the suit lands as kadim sarva inams—that is to say, ancient revenue free grants for village service—and that the plaintiff had no control over them or right to dismiss them or resume their lands, as they were under the control of the British Government.

The Subordinate Judge, in a lengthy judgment containing a full *précis* of the documentary and oral evidence, held that the defendants' inams in the village were not kadim, that the grants relied on by the plaintiff were genuine, and that the evidence showed that the plaintiff was entitled to the services which he claimed from the defendants and the defendants refused to render. He accordingly decreed the plaintiff's suit. This decree was reversed by the High Court on appeal. The learned Chief Justice, who delivered the judgment of the Court, accepted the genuineness of the grants relied on by the plaintiff, but held that the earlier grant was for rendering service as a village peon, and that the later grant did not show what service was to be rendered, but, he added :—

> "I think it is apparent from the record that these lands were to be held by the defendants' family in return for rendering services as *shet sanadis*; that is to say, they were to be servants in the village of Nagannanoli, not only to help in the administration of the village, but also to render services in connection with that village."

He went on to observe that the first defendant and his father had no doubt been rendering personal services on occasions to the desai, but that it could not be inferred that these services were other than voluntary. He was of opinion that the documentary evidence did not support the plaintiff's case, and that the oral evidence did not go further than to show that on occasions the first defendant and his father had rendered personal services. With these general observations he allowed the appeal and dismissed the suit.

In the unfortunate absence of the respondents, who are not represented by counsel, their Lordships have had to examine the whole record, both with the valuable assistance of the learned counsel for appellant and independently, and have arrived at a different conclusion as to the nature of the services the defendants were to render.

It will be convenient in the first place to deal with the defendants' contention that their inams were kadim or in existence before the grant to the plaintiff's predecessors, which, if proved, would be fatal to the plaintiff's case. The question whether, when a village was held in inam, the lesser inams in the village were kadim or ancient, or jadid or modern, was of great importance in the inquiries which were held under the Governor General in Council's Act XI of 1852 for the adjudication of titles claimed to be wholly or partially rent free in the Presidency of Bombay, because, if they were kadim or in existence at the date when the village itself was granted in inam, the right of resumption would be vested in the government and not in the inamdar, as is correctly stated in the written statement. This question came before the Board in *Laxmanrao Madhavarao* v. *Shrinivas Lingo* (54 I.A. 380, 386). Now it appears from Ex. 162, a village return furnished to Government in 1860–61, that there had been an inquiry by the revenue authorities—in all probability one of the inquiries for the purposes of the Act, which were being held throughout the Presidency—and that it had been decided that the inams of twenty shet sanadis in the village including the defendants were jadid (that is to say, modern) and not kadim and that the right of resumption was in the inamdar.

In their Lordships' opinion this document shows that the defendants' inams were not kadim; and the same result follows from the concurrent finding that they were created by the plaintiff's predecessors in 1770 and 1837. These grants, however, only cover lands A and C in the plaint, but Ex. 162 shows that in 1860–61 Appanna, son of Bhima bin Shevanna, the defendants' ancestor, was holding B as well as A as a shet sanadi, and there are not sufficient reasons for holding that it was held on a different tenure.

It being found then that the defendants' inams were jadid or created by the plaintiff's ancestors, the question is, were they created for purely village service or for personal service generally. It appears from the documents already cited that the defendants were described as shet sanadis, as found by the learned Chief Justice.

A shet sanadi in Wilson's Glossary is defined as

> "One holding a *sanad* or grant of lands for military service, applied especially to a local militia acting also as police and as garrisons of forts: also an assignment or grant of revenue of land for certain services; the assignment, as well as the office, may be hereditary."

There is nothing in this definition to support the view of the learned Chief Justice that the services were to be rendered in the village itself or were to be in connection with the administration of the village, nor is it in their Lordships' opinion in accordance with the evidence in the case.

The grant of 1770, Ex. 117, in favour of the defendants' ancestor, Itakari Shevanna, was made in succession to a pyadi, or peon who was removed, and would also seem to have been

granted on peon service; but there is nothing to show that such service was to be confined to the village. In Ex. 118, the grant of 1837, the nature of the service is not specified. There is, however, in Ex. 175, a statement made by Basavaprabhu, the 1st defendant's father, in 1873, after the death of his father Appanna, that the inam lands (which appear from the measurement given to include the three parcels in the plaint A, B and C) had been continued to him by the sansthan, and that he alone did the service of the sansthan. The word *sansthan*, which is the same as *samastanam* in use on the east coast, means residence, and is a respectful way of speaking of persons of position such as a rajah, a zamindar or a desai. It is also used in speaking of a temple. The statement therefore is that the defendants' ancestor was in the service of the desai generally.

As regards the oral evidence, the learned Chief Justice has commented on the fact that it only shows that personal service was rendered by the 1st defendant and his father, but, as it appears from Ex. 175 already mentioned that the 1st defendant's grandfather died in 1873, or earlier, it would be unreasonable to expect oral evidence as to personal service having been rendered in his lifetime. It is not always easy in India to prove even recent happenings satisfactorily by oral evidence; but in this case we have the admissions of the 1st defendant as to the services rendered by his father himself and his son, the 2nd defendant. The correspondence no doubt shows that the 1st defendant did work for the plaintiff in his own village of Nagannanoli, and also used to be sent as a peon or messenger from Nagannanoli to Vantmuri, where the plaintiff resided. It is, however, also proved that the first defendant, who was one of the twenty shet sanadis in his village, did turns of service at Vantmuri, the plaintiff's headquarters. Further, the first defendant admits that he had a wife at Vantmuri, that he used to stay there doing service and that he used to serve there under the Chief Kharbari for two or three months at a time. The service consisted in sitting in the chavdi, going to Belgaum and bringing medicine, &c., bringing waseel (money), from villages, and taking letters and papers to other people. Whenever he stayed at Vantmuri, he did this service. That is to say, it was ordinary peon service.

He also had to admit that he went about with the plaintiff and his son to such places as Bombay, Poona and Bellary and rendered them personal service there. His own admissions therefore furnish strong corroboration of the plaintiff's evidence, and show in their Lordships' opinion that he was in the habit of rendering personal service to the plaintiff outside his own village of Nagannanoli though no doubt he was allowed to remain there for long periods and whilst there was employed to attend to the plaintiff's affairs, as appears from Ex. 94 to 99. He further makes the significant admission that he was one of twenty shet sanadis in the village, and that he was the only one who had ceased to do service. He states that he had spent Rs. 20,000 on the

suit lands in sinking wells, &c., and it may well be that having risen in the world, he had become unwilling to go on rendering the customary services to the plaintiff.

On the other hand the fact that the plaintiff in his plaint only seeks to evict the defendants in case of their still refusing to render the customary services, lends no support to the defendants' allegation that the suit was brought with a view of depriving the defendants of their lands.

There is one other consideration of a general character to which their Lordships will refer. As already stated, there are twenty shet sanadis in the village of Nagannanoli, who are in the service of the plaintiff and are not, as the defendants contended, village officers holding kadim inams and subject to the revenue authorities. The explanation would appear to be that the position of the plaintiff's ancestors as hereditary desais rendered it necessary for them, according to the custom of the country, to have a large retinue of peons and attenders in their service. That service, according to the definition of shet sanadi, in Wilson's Glossary, included military service which has since become obsolete, leaving them liable only to personal service of a non-military character; but there is no reason for supposing that either formerly or in recent times that service was confined to the village in which their inam lands were situated.

One further point remains to be dealt with. The 1st defendant in his evidence denies that more than one of the family rendered service at a time. The plaint claims that the plaintiff is entitled to the services of two people and this is not denied in the written statement or in the grounds of appeal to the High Court. Looking at the pedigree set out in the Subordinate Judge's judgment, it appears that the grant of 1770 was made to Shevanna, the father of Bhima, and that the grant of 1836 was made to Bhima's son Appanna. As Bhima died about 1857, it is clear that both the father and son were rendering service at the same time under their respective grants, and the exhibits referred to in the Subordinate Judge's judgment show that this state of things continued until Bhima's death, since which time both inams have been enjoyed by the same people. The oral evidence as to rendering service by two members of the family is, no doubt, meagre; but there appears to be no sufficient reason for holding that the obligation to render service of two persons has come to an end.

In their Lordships' opinion the appeal must be allowed, the decree of the High Court reversed, and the decree of the Subordinate Judge restored with this modification that the defendants are to have three months from the date of the Order in Council in which to render the service to the plaintiff, and that the defendants do pay to the plaintiff his costs here and in the Courts in India. Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

SHRIMANT LAKHAMGOWDA BASAVAPRABHU SAR DESAI

v.

APPANNA BIN BASAPRABHU ITI AND OTHERS.

DELIVERED BY SIR JOHN WALLIS.

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