
(1931) 06 BOM CK 0003
In the Bombay High Court
Case No : First Appeal No. 183 of 1926

Dattatraya Pandurang Gosavi

APPELLANT

Vs

Lakshman Mahadev Pohekar

RESPONDENT

Date of Decision : 29-06-1931

Acts Referred:

Bombay Pleaders Act, 1920 — Section 20(a)

Citation : AIR 1932 Bom 15 : (1931) 33 BOMLR 1418 : 136 Ind. Cas. 161

Hon'ble Judges : Nanavati, J; Baker, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Baker, J.—In the year 1790 A. D. the village of Takli in the Ahmednagar District was granted by the Holkar Darbar by a Sanad to Bhanudas, the great-grandfather of the plaintiffs and his brother Eknath. The property descended to the male issue of the grantees and ultimately to Manohar and Eknath uncles of the plaintiffs who are the sons of Eknath's sister. From the year 1875 the Inamdars had been mortgaging the inam to various persons and ultimately by a decree of the High Court the right of Eknath to redeem the property, Manohar being dead, was declared to be foreclosed.

2. The present suit was brought by the plaintiffs, the nephews of Eknath, for a declaration that the inam being for religious and charitable purposes is inalienable and consequently the mortgagees were not entitled to deprive the Inamdars of it. Eknath was defendant No. 5 in the suit as he did not join as plaintiff. He has since died.

3. The prayers of the plaintiffs were for a declaration to the effect that the income of the village of Takli is not liable to be mortgaged by Manohar and Eknath for their personal debts and that no property in the said income of the village has passed by the foreclosure decree of the High Court passed on April 13, 1917; that the mortgage transactions in favour of defendants Nos. 1 to 3

may be declared to be void and no longer binding on the religious endowment created by the Inam Patra in connection with the village of Takli and for an injunction against defendants Nos. 1 to 3 for preventing them from claiming any income of the said village from defendant No. 4, the Collector, in virtue of the said foreclosure decree and that defendant No. 4 should be directed to pay the income of the Dumala village of Khare Takli to the plaintiffs and their heirs and successors. The defendants in the suit were the mortgagees, the Collector of Ahmednagar and Eknath, who did not join as a plaintiff.

4. Various objections were taken by those of the defendants who defended the suit, viz., defendants Nos. 2 and 3 who were the sub-mortgagees of defendant No. 1 and also by the Collector.

5. The District Judge of Ahmednagar held that the suit would not lie as regards the injunction prayed for though it would lie as regards the declaration. He held that the suit was barred under Art. 120 of the Indian Limitation Act; that the adjudication of the Inam Commission in 1852 and the summary settlement in 1863 were binding on the plaintiffs; and that the grant of the suit inam was not a grant for religious and charitable purposes, but was a personal grant of a heritable and transferable nature, and so the alienations by Manohar and Eknath were not void ; the income of the said village was not liable to alienation for the debts of the mortgagors and that the mortgage transactions of 1875 A D. resulting in the foreclosure decree of the Bombay High Court were binding on the inam income, and consequently dismissed the suit.

6. The plaintiffs make this appeal. The arguments in this appeal have gone on for three or four days but the questions in issue lie in a narrow compass. The main objections which have been brought against the suit by the defendants are that by virtue of the foreclosure decree in 1917 by which the right of Eknath to redeem the mortgage was declared to be for ever lost and his interest in the property is gone, the plaintiffs who are his heirs are equally bound and the principle of *res judicata* will apply to the present suit. The second point is whether the nature of the grant is, as contended by the plaintiffs, of a religious and charitable nature and therefore inalienable or whether it is a personal grant to the holders, viz., the family of Eknath, and, thirdly, whether the suit is barred by limitation.

7. There are also certain cross-objections which have been filed and certain applications: one for amendment, one for security for costs, and one for an injunction which will be dealt with at the end of the judgment.

8. The first point is as regards the effect of the order of the High Court in 1917. In order to understand the case it will be necessary to give a brief history of the transactions between the Inamdars and the mortgagees. The grant, as I have said, was in 1790. The Inam Commission in 1852 held the property to be personal inam, a decision which was confirmed at the summary settlement under Bombay Act II of 1863. In 1875 the then holders of the inam mortgaged the

property to defendant No. 1 Pohekar. In 1876 the Inamdars sold a part of the equity of redemption to one Khemchand. There was a subsequent mortgage to Pohekar and a decree was obtained on the second mortgage in 1892 by Pohekar and in 1896 the mortgaged property, i.e., the inam, was put up for sale and was purchased by Pohekar but that proceeding was subsequently set aside by the District Judge of Ahmednagar. In 1898 there was a sub-mortgage by defendant No. 1 Pohekar to Bagde, the father of defendants Nos. 2 and 3, who are the contesting defendants in this case. In 1903 Bagde sued for possession and in 1904 he got a decree. In 1907 there was a redemption suit by the two Jahagirdars and Khemchand, who, as I have already said, was a purchaser of one third of the equity of redemption. In the course of that suit an injunction was granted by the Court against the Bagdes preventing them from recovering any portion of the income of the village. The proceedings in this suit ended in a decree for Rs. 10,000 and odd. An appeal was made to the High Court by Khemchand as he objected to the amount which was found due under the mortgage. The Jahagirdars did not appeal but were made respondents. In 1911 the High Court found in Appeal No. 37 of 1910 that Rs. 10,000 and odd were due on the mortgage and passed a redemption decree, the usual provision being made for the right to redeem being for ever foreclosed if the money was not paid within the period directed by the Court. The money was not paid and in 1917 on the application of the mortgagee the High Court declared that the right of the mortgagor was foreclosed. The date of that order is July 9, 1917. Although the appeal had been lodged by Khemchand one of the mortgagees alone the Jahagirdars were also parties to the suit. The decree referred to the whole mortgage and that was the understanding of the parties. The effect of this foreclosure decree was to extinguish the right of Eknath and his brother Manohar to redeem the mortgage. After it had been passed there was an application made by Eknath to the High Court, which is Exhibit 81, p. 82, in which for the first time the theory is put forward that the property was property set apart for religious and charitable purposes and therefore inalienable, and the High Court in disposing of this application states that "the decree is binding on the parties to the litigation and it is not possible to entertain the application for amendment at this distance of time. If the property really belongs to the Devasthan and if it has been improperly diverted from its use for the purposes of the Devasthan it may be open to those who are interested in the Devasthan to file a proper suit with a view to question the validity of this alienation," The application was rejected. This was in September 1924, and in 1925 the plaintiffs, who are the nephews of Eknath and Manohar, bring the present suit.

9. It has been argued on behalf of the defendants that the present suit is really a last attempt on the part of Eknath to get back his property when all other means have failed, and it has been contended that inasmuch as the validity of the mortgages has been finally decided by the High Court in this litigation in the case of Eknath it would not be competent to him to re-open the question. So also his nephews who claim as his heirs are equally barred.

10. On behalf of the appellants it has been strenuously contended that the capacity of the plaintiffs to bring the present suit is not as the heirs of Eknath, but as persons interested in the Devas than or rather the religious foundation, as there is no temple but only a tomb of the ancestors of the parties at which an annual festival is held, or as successors in the vahivat of the foundation. It was somewhat difficult from the present case to ascertain the exact position which the plaintiffs seek to occupy. My own impression is that they vary their position from time to time as it suits their purpose. The matter, however, is made clear by a reference to the judgment of the lower Court in which it is stated at p. 5, line 15:--

As the suit went on, it was pointed out to the plaintiffs' counsel that the suit could not be maintained by the plaintiffs in two different and inconsistent characters, and finally the counsel for the plaintiffs informed the Court that the suit was brought by the plaintiffs as presumptive heirs of Eknath and not as devotees or worshippers or strangers to the grant interested in the performance of these festivals.

11. It so happened that during the pendency of this suit Eknath died on December 16, 1926, and an application had been made by the plaintiffs for leave to amend the plaint in order to join a prayer for possession to the other prayers for a declaration and injunction which they have made. That has been opposed by the defendants and it is a matter to be dealt with later. But it is pointed out that the plaintiffs in the present case claim what interest they have in the inam by virtue of their relationship to Eknath. If, contrary to what has been stated in the lower Court, which I have just repeated, viz., that they are the heirs or presumptive heirs of Eknath, we assume that they are persons who are suing as interested in the vahivat of this foundation, the fact still remains that their interest arises from their relationship to Eknath. They do not sue as strangers or as members of the Hindu community who are interested in the performance of the ceremonies at the tomb of their ancestors, but by virtue of their relationship to the family of the Jahagirdars, of whom they are now the sole male representatives. If this is so, it appears to me that the suit would be barred inasmuch as the validity of the mortgages has been finally declared by the High Court in the case of Eknath and that the plaintiffs who now stand in the shoes of Eknath would be barred exactly in the same way as Eknath himself would be barred.

12. Numerous cases have been quoted by the learned counsel on either side, but the matter seems not to require very much authority. The learned counsel for the respondents has relied on the case of *Madhavrao Hariharrao v. Anusuyabai* ILR (1916) Bom. 606. The point really is, as has been pointed out by the learned counsel for the appellants, whether u/s 11 of the CPC the parties are litigating under the same title. It is quite true that a mortgagor suing in one capacity will not be barred when he sues in a distinct capacity. In fact he is a different person: *Drummond v. Attorney-General* (1849) 2 H.L.C. 837. But, as I have already

pointed out, the capacity in which the plaintiffs now sue is, by virtue of their heirship to Eknath, the same capacity in which Eknath himself stood. But this point is not really of very great importance in view of the findings at which I am going to arrive. I will state it again later on, because even supposing that the view which I have taken here is not correct, yet when we go into the facts it will be seen that the bar of *res judicata* does apply to the present case. It has been contended by the learned counsel for the appellants that this case was not set up in the lower Court and therefore it is not open to the respondents to take advantage of it now. It is, however, a point of law, and since no further evidence is required in the present case than the record of proceedings in the High Court, I do not think that there is any reason why it should not be taken in first appeal.

13. Passing on to the next point as to the nature of the grant in the present case the following circumstances will appear. First of all, both by the Inam Commission in 1852, and, secondly, by the summary settlement in 1863 this property has been regarded not as Devasthan property but as private inam of the holders. Secondly, throughout the history of this property it appears to have been dealt with by the holders as if it were their private property. Thirdly, during the whole of this complicated litigation which went on for many years in connection with the mortgages executed by Eknath and his brother Manohar to the various mortgagees, viz., the Pohekars and the Bagdes, which ultimately went up to the High Court, we do not find any plea set forth by the mortgagors that the land was inalienable and therefore the mortgages were not binding upon them. And, lastly, we have the terms of the sanad itself which have been interpreted by the learned District Judge and which I shall have to refer to in some detail. Now, so far as regards the determination by the Inam Commission it has been contended by the learned counsel for the appellants that the object of the Inam Commission was to determine the liability of the land to pay dues to Government and that the Courts are not precluded from going into the real nature of the grant. As regards the adjudication in the summary settlement under Act II of 1868 it is contended that that does not apply to lands held under a treaty, and this land is not held under a treaty. The decision of the Inam Commission is Exhibit 66. The entire village was claimed as hereditary inam and the decision was that the village of Takli minus the ancient haks and inams to be continued in inam so long as there shall be in existence any male lineal descendant of Ramchandra Gosavee bin Bhanoodas Gosavee Wusmutkar. The decision under the Summary Settlement Act which is contained in the sanad (Exhibit 92) describes the property in column 11 as permanent (enfranchised private property). In neither of these documents is there any reference whatever to the property being granted for religious purposes, Under schedule 2, Rule 2, of Act XI of 1852, i.e., the Act setting up the Inam Commission, the decisions of the proceedings of the Inam Commissioner were appealable to the Government whose orders were final, and that that was so, was held in *Vasudev Pandit v. The Collector of Puna* (1873) 10 B.H.C. 471 Similarly, in *Ramrav Govindrao v. Secretary of State* ILR (1909) Bom. 232 11 Bom. L.R. 1333 it was held that the

decision of the Inam Commissioner was, by virtue of the provisions of rule 2, schedule A, of Act XI of 1852, final as regards the land and interest concerned in the decision. Then as regards the decision under the Summary Settlement Act it is contended that that Act does not apply to the land in dispute because land under a treaty is specially exempted under the Act. The learned District Judge has pointed out that no treaty was produced before him and he was not prepared to hold that the land was held under a treaty. The basis of the argument is that the village originally belonged to Holkar's Government and it is contended that it came in possession of the British Government by a treaty with Holkar. A reference has been made to Bombay Regulation XXIX of 1827 which deals with the bringing under operation of the Bombay Regulations the territories in the Deccan and Khandesh. That Regulation deals both with the territories which were acquired by conquest from the Peshwa and from other States by treaties and agreements, and so far as I can see it is not at all clear from this Regulation that this particular village Takli was acquired directly by treaty by the British Government from Holkar's Government. A reference will be found at the top of p. 33 of volume I of the Bombay Code in which the villages constituting the Zila of Ahmednagar are mentioned and the reference is "The Peshwa's share of the two parganas Bijapur and Gandapur, together with the village of Takli." That would quite easily mean that the village of Takli was held under the same conditions as the other two villages, Supposing that at this time in 1827 Takli belonged to the Peshwas it must have passed to the British Government by conquest and not by treaty. However, assuming that there was a treaty with Holkar by which certain villages in the Deccan were handed over to the British Government, that does not make the land in question "lands held under a treaty" under the definition in the Act of 1853. The learned counsel for the appellants has relied on the case of *Kalabhai v. The Secretary of State for India* ILR (1904) Bom. 19 6 Bom. L.R. 648 That, however, does not bear on the point in dispute. The expression "lands held under a treaty" used in the Summary Settlement Act has been construed to refer to cases in which the root of title was a treaty. This will be found in *In re Vasudeo Harihar* (1920) 23 Bom. L.R. 161 In order to hold that it was held under a treaty it must be shown either that the original title was under a term of a treaty which remained in force or that the treaty of cession guaranteed title. Nothing has been shown in the present case, as I have already said, and it is open to doubt whether Takli was not a part of the Peshwa's dominions along with the other two villages which are referred to in the same paragraph. I do not say that the terms either of the Inam Commission's decision or the summary settlement are so definite as to make it impossible to hold that this grant was for religious and charitable purposes. But the inference to which they give rise is that it was ordinary personal inam. There is no reference to the grant being for religious and charitable purposes as is contended for by the appellant.

14. Turning to the sanad itself it has been translated at p 67 of the record and is again translated by the learned District Judge at pages 8 and 9 of the judgment,

and I do not think that it is necessary to set it out in full again, but the point to be noticed about it is that it does not expressly say that the grant is made for religious purposes. The contents are that the members of the family of the present plaintiffs made an application to the Holkar's Government representing that they celebrated the festival of Eknath Shasti and the death anniversary of the late Rama Bawa their uncles at large expense. There is an annual allowance of Rs. 360 from the Sirkar on which they could not manage and requesting that the grant of a village may be kindly made as a new inam, in charity. Thereafter the sanad goes on to say " Taking into consideration the learning and piety of the applicants and that the amount of the annual allowance does not serve the purpose of the subsistence of your family and the expenses of the festival, and recognizing that you are dependants of the Sarkar from old, it appears meritorious and desirable that for the provision of your expenses, with the annual allowance, a village should be granted in charity as a new inam", and consequently the village in question was granted to them. It is nowhere stated in the sanad that the purpose of the grant is the maintenance of the festivals above mentioned nor is any stipulation made as to the portion of the income if any which should be allocated to the festivals as distinct from the expenses of the family. This distinguishes the case from those cases which have been quoted by the learned counsel for the appellants such as the Chinchvad case, Chintaman Balaji Dev v. Dhondo Ganesh Dev ILR (1888) Bom. 612 and the cases in Irappa bin Malappa Naik v. Apasaheb Irbasappa Desai ILR (1891) Bom. 649 The Collector of Thana v. Hari Sitaram ILR (1832) Bom. 646 and Rupa Jagshet v. Krishnaji Govind ILR (1884) Bom. 169 in which there was a grant to the Devasthan as such or in which the income was by the terms of the grant divided in certain proportions, a fixed proportion being set apart for the purpose of the maintenance of the temple or religious services. Some stress has been laid by the learned counsel for the appellants on the fact that the word "Dharmartha" appears in two places in the sanad and it is argued that the grant must be considered to be for religious purposes. But if the grant were made to the Brahmin petitioners in consideration of their piety and learning, the grant would still be one which might be described by that word. I agree with the construction which the learned counsel for respondents has put upon the sanad, viz,, that the grant appears to have been in favour of the Brahmin petitioners in view of their having performed certain religious functions and being unable to meet their expenses out of the grant already made to them. In this connection it may be observed that one of the plaintiffs has very clearly admitted, at p. 72 of the record, in his deposition that there is another grant out of which the expenses of the festivals are met. This possibly may be the allowance from Par Sevgaon referred to in the sanad. It is not stated in the sanad that the revenues of the village or any part of them are to be devoted to the maintenance of the festivals in connection with the tombs of Eknath Shasti and Rama Bawa. This taken in conjunction with the finding of the Inam Commission, the terms of the sanad under the summary settlement, and the manner in which the holders of the inam have dealt with the property as their private property, lead me to hold that the

view taken by the learned District Judge on this point is correct and that the grant is not a grant of such a nature that it would be inalienable as being for the support of a religious institution or to meet the expensed of religious observances.

15. This being the case, the question of *res judicata* again comes in, because the High Court having held the mortgage binding on Eknath whose right of redemption has been declared to be for ever foreclosed, that decision would be binding on the plaintiffs who are his heirs. That is sufficient for the decision of the appeal but there is further the question of limitation.

16. The present suit is a suit for a declaration and injunction and as such falls under Article 120 of the Indian Limitation Act, the limitation applicable being six years from the date when the cause of action arose. The cause of action in a suit to set aside an alienation arises when the alienation is made and not when the alienation becomes known to the plaintiffs. That has been held in *Venkatachella Reddiar v. The Collector of Trichinopoly* ILR (1914) Mad. 1064 The alienation in this case was as long ago as 1875. The plaintiff attained majority in 1897 and his suit would be barred in 1900, three years later. It has been contended by the learned counsel for the appellants that the Article applicable is Article 144. That, however, applies to suits for possession and this is not a suit for possession but a suit for a declaration and injunction. It has been further contended that no cause of action arose to the present plaintiffs until 1921 when at the request of the mortgagees their names were added as co-vahivatdars along with Eknath. But as long ago as 1911 the High Court confirmed the decree in the redemption suit holding that Rs. 10,000 and odd were payable by the mortgagors Inamdars to the mortgagees Bagdes the present respondents Nos. 2 and 3, and again in 1917 on the application of the mortgagees the order declaring the right of redemption of the Inamdars to be for ever barred was made by the High Court. That is an order made in a suit to which Eknath was a party. He subsequently attempted unsuccessfully to get that order reviewed. It is difficult to see why in any case the cause of action should not have arisen to the plaintiffs when the alienation of the alleged Davasthan property by the Inamdars was asserted in a Court and held to be valid and binding on the mortgagors who are the uncles of the present plaintiffs.

17. There is, of course, in the present case no question of a temple or an idol. The objects of the so-called charity are only the celebration of the death anniversaries of Eknath Shasti and Kama Bawa. But that would not prevent the grant from mentioning that the revenues of the village were to be devoted to the expenses of the observance of those festivals if as a matter of fact the primary object of the grant was the maintenance of the festivals and not rather the maintenance of the family who conducted the festivals. In these circumstances I have no doubt that the finding of the lower Court on this point as regards the sanad is correct. That being so, as a question of the validity of the mortgage could not be raised by Eknath himself, it cannot be raised by the present

plaintiffs who are his heirs. Any interest, as I have already stated, which they claim in the alleged charity can only be derived by them from their relationship to the family of the grantees, and I have already referred to the statement in the judgment of the lower Court that it was ultimately admitted that the plaintiffs brought the present suit as presumptive heirs of Eknath. Lastly, a suit of this character is, in my opinion, one in which the cause of action arises at the date when the alienation of the so-called inalienable property is made, and therefore in any view of the case the suit is time-barred and the appeal must fail, and is dismissed with costs.

18. Turning now to the cross-objections, it has been objected that the learned District Judge was in error in fixing the value of the suit for the purpose of pleaders' fees at Rs. 13,000, viz., ten times the income of the property ; the average income is stated to be Rs. 1,300 and it is argued that as the defendants have lent money on mortgage at an average rate of six or six and a half per cent., the value of the property should be taken to be sixteen and a half years' purchase which would amount to Rs. 21,000. As regards this point the exact value of the property is uncertain. I do not think there are sufficient materials on record for differing from the view taken by the learned District Judge.

19. The second point taken is that the Judge was wrong in refusing two sets of pleaders' fees to defendants Nos. 2 and 3. It is contended that under the Bombay Pleadings Act the defendants having employed two pleaders were entitled to two sets of pleaders' fees. Sections 20 of the Bombay Pleadings Act says:--

Where a party has, before the first hearing of a proceeding engaged more than one pleader, the fees of two pleaders may be taxed in the bill of costs in the following cases.

20. The present case falls under Clause (a) " in any original suit, of which the amount or value" of the subject-matter exceeds Rs. 5,000." It is not disputed that there were two pleaders apart from Mr. Patwardhan who conducted the case on behalf of the defendants. But the learned Judge says that one of the pleaders was very junior and therefore the Judge in the exercise of his discretion did not allow the double sets of pleaders' fees. The rule, however, is laid down in *Tulsi Lalji Vs. Omkar Huna*, , that in cases u/s 20, Clauses (a), (b) and (c), of the Bombay Pleadings Act, 1920, the fees of two pleaders shall be taxed in the bill of costs, unless the Court otherwise directs. The reason given by the lower Court for disallowing the fee of one pleader on the ground that he was junior appears to me to be somewhat inadequate. I would, therefore, vary the decree by allowing two sets of pleaders' fees so far as regards defendants Nos. 2 and 3 with costs in proportion. Defendant No, 4, the Secretary of State for India, is of course entitled to his costs.

21. The remaining applications may be dealt with briefly. The plaintiffs applied to amend their plaint on the ground that by reason of the death of Eknath during the pendency of the suit they became entitled to possession of the property as

distinct from the declaration and injunction which they sought at the time the suit was instituted. That application came on for hearing with the appeal and has been objected to by the other side on the ground that it would involve the introduction of questions foreign to the suit as originally brought and might necessitate additional evidence apparently on such questions as adverse possession and the like. It was also suggested that there might be some question as to the relationship of the plaintiffs to Eknath but that position has not been at all pressed. I think in view of the result of the appeal this question has now lost all importance and that it is not necessary to allow the amendment. This application is dismissed with costs. Opponent No. 4 to get his costs separately.

22. Then the defendants made an application to this Court that security for costs might be taken from the plaintiffs as they were not residents of British India. A rule was issued in that application but no order has been passed as by consent it was to be brought on with the appeal, I may point out that the object of taking security for costs from an appellant is that if an order for security is made and is not complied with the appeal abates. But when an appeal has been heard and decided on the merits, as in the present case, the object of asking for security altogether disappears and therefore no order asking for security need be made. No order as to costs.

23. The remaining application is the one regarding the giving of security by the respondents for the revenues which they recovered from the village during the progress of the suit. For some reason or other this appeal has been five years before hearing. As security has been given the rule will be discharged with costs. The application has very little importance. Costs of this application will follow the result of the appeal.

Nanavati, J.

24. I entirely agree.

25. There is only one point on which I think it might be desirable to add a few observations. The central point is this appeal is the construction of the sanad. If the sanad of 1790 did not create a religious endowment in favour of any shrine or religious institution, it follows that the whole case of the appellants falls to the ground, The case rests on the basis that the sanad gives the inam for the purpose of a religious endowment and therefore the inam is inalienable. But if the true construction of the sanad is that the inam is a personal inam for the benefit of the grantees, then it is clear that appellants cannot succeed, whatever may be the result as to the contentions on the other points in the case. Now it will be seen that in the earlier portion of the sanad the recital is made as to the representations on which the inam was sought and the last sentence of that paragraph runs:--

Therefore if the grant of a village were kindly made as a new inam, in charity, we shall arrange about our expenses from it, and invoke blessings for your prosperity.

26. That is to say the petitioners themselves asked for the inam in order to arrange about their expenses from the grant.

27. Then in the second paragraph what was taken into consideration by the grantor is also set out and there again it is stated that it appeared to the Sarkar meritorious and desirable that for the provision of their expenses with the annual allowance a village should be granted as a new inam. So that what was asked for and what was taken into consideration was the fact that the grantees had to be provided with their expenses.

28. And in the final clause of the sanad it is stated that "you, and your sons and grandsons, &c, from generation to generation, should enjoy the inam, along with the annual allowance." As the learned District Judge observes, the Darbar did not show the least interest in these festivals, or in the way in which the grantees were to use the income of the village. The grantor did not even by implication suggest that any portion, leave alone any definite portion, of the income of the inam was to be devoted to the festivals which the petitioners were said to be in the habit of observing, and there is not a single clause which suggests that the grant was conditional on a continued celebration of those festivals. In these circumstances I think it is hopeless for the appellants to induce the Court to hold that the sanad confers the inam in favour of a religious endowment. It is quite clear that the inam was for the personal benefit of the grantees and their heirs, and that being so, it was clearly alienable by the rightful holder for the time being.

29. The Chinchvad case, Chintarnan Balaji Dev v. Dkondo Ganesh Dev ILR (1888) Bom. 612 is clearly distinguishable as a definite portion of the revenues of the inam had been at some stage allocated for the purpose of the religious endowment leaving the balance for the benefit of the grantees' family. No argument can, therefore, be founded on this case, which could help the appellants.