

**(1975) 03 BOM CK 0005**

**In the Bombay High Court**

**Case No :** First Appeal No"s. 111, 176 and 204 of 1966

Kalgonda Babgonda Patil

APPELLANT

Vs

Balgonda Kalgonda Patil

RESPONDENT

**Date of Decision :** 12-03-1975

**Acts Referred:**

Limitation Act, 1963 — Section 28

**Citation :** (1976) 78 BOMLR 720

**Hon'ble Judges :** Vaidya, J;Lentin, J

**Bench :** Division Bench

**Final Decision :** Dismissed

## Judgement

This Judgment has been overruled by : Annasaheb Bapusaheb Patil and others Vs. Balwant alias Balasaheb Babusaheb Patil (dead) by LRs. and heirs etc., AIR 1995 SC 895 : (1995) 1 JT 370 : (1995) 1 SCALE 100 : (1995) 2 SCC 543 : (1995) 1 SCR 88 : (1995) 1 UJ 488

Vaidya, J.—An important question regarding the effect of Section 4 of the Bombay Inferior Village Watans Abolition Act, 1958 (which will be hereinafter referred to as "the Watans Abolition Act") arises in the above three First Appeals directed against the judgment and decree dated July 20, 1965 passed by the learned Joint Civil Judge Senior Division, Kolhapur, in Special Civil Suit No. 23 of 1963.

2. The suit was instituted by Kalgonda Babgonda Patil on June 12, 1963, alleging the following genealogical tree of the family of the plaintiff and the defendants:

\_\_\_\_\_ Aadgonda (deceased) \_\_\_\_\_

\_\_\_\_\_ Dharmagonda (deceased) Annappa alias Anna (deceased) Kagoda Raygonda  
Maygonda Babaji alias Tatya (deceased) (deceased) (deceased) Babgonda  
(deceased) (extinguished) (deceased) Kalgonda (plaintiff) Pirgonda

Bhimgonda (deceased) (deceased) Raygonda (deft. No. 2) Balgonda (deft. No. 1) Jingonda (deceased) Anasaheb Aadgonda Bapusaheb Shamgonda Kamgonda Tatyasaheb (deft. (deft. (deft. (deft. alias alias No. 6) No. 7) No. 8) No. 3) Dharmagonda Kalgonda (deft. (deft. No. 4) No. 5) \_\_\_\_\_

---

3. The allegations made by him in the plaint can be briefly summarised as under:

4. The suit lands described in para. 1 at serial Nos. 1 to 5,"situate at Kasbe Rukdi, Taluka Hatkanangale of Kolhapur District, measuring in all 14 awes and 36 gunthas and assessed at Rs. 74.36 belonged to the family. The lands were Sanadi Inam lands. Originally the Inam lands measured only 15 acres and 12 gunthas (sic) and did not include the lands, R.S. No. 397, Hissa No. 1 and R.S. No. 397, Hissa No. 2 which together measured 5 acres and 11 gunthas. The Inam lands were not burdened with service. The plaintiff, therefore, claimed half share therein.

5. He alleged that there was a partition in the family in respect of other lands and the properties belonging to the family. But the suit lands were not divided at that time because they were then impartible under the Vat Hukums of Kolhapur State. Nevertheless, the lands were joint family lands of the plaintiff and the defendants, although they continued in the name of the branch of defendant No. 1 as the senior branch of the family in accordance with the Kolhapur law. He further alleged that he at no time gave up his rights and share-in the suit lands and the Vahiwat in respect of the suit lands was for the plaintiff and all the defendants. It was further submitted that the lands ceased to be Inferior Village Watan lands or Sanadi Inam lands with effect from February 1, 1959 under the Watans Abolition Act and hence the suit lands had become liable for partition. The plaintiff claimed partition, possession of his share in the suit lands and mesne profits prior to the suit from 1959-60 upto the end of the year 1962-63 and future mesne profits.

6. The suit was resisted by defendants Nos. 1, 6, 7 and 8 by filing their written-statement at exh. 31, They contended that the suit of the plaintiff was barred by limitation said that under the provisions of Section 28 of the Indian Limitation Act, the right of the plaintiff, if any, in the suit lands was extinguished. They denied that the suit lands were joint family lands and contended that the partition of the lands including the Inam lands had taken place between the ancestors of the defendants and the ancestor of the plaintiff in the year 1842. The ancestor of the plaintiff by name Annappa alias Anna Aadgonda had filed a suit being Civil Suit No. 538 of 1868 in Shirol Court and it was held by the Shirol Court that the ancestor Annappa had no right in the suit lands. That decision was confirmed by the Political Agent of the Kolhapur State in Special Appeal No. 58 of 1871. It was thus contended by the defendants that the family of the plaintiff was thereafter never joint with the family of the defendants as submitted by the plaintiff. They denied that the plaintiff had any right to demand half share in the suit lands after the coming into force of the "Watans Abolition Act. They also

contended that according to the terms of the re-grants of these lands, they were not liable for partition and the suit of the plaintiff was not maintainable. "We are not concerned with the other contentions raised by them in this appeal.

7. Defendant No. 2 died pending the suit and was represented by his legal heirs and representatives who supported the contentions of defendants Nos. 1, 6, 7 and 8. Besides stating that the partition had taken place between the ancestors of defendant No. 1 and defendant No. 2, under an award decree in Civil Suit No. 610 of 1904 and in this partition, the lands R.S. No. 397/1 and 397/2 had come to the share of the ancestors of defendant No. 2 and since that time the predecessors-in-title of defendant No. 2 and defendant No. 2 had been in continuous possession of the suit lands as owners and, therefore, the plaintiff had no right in these lands, they also stated that the land R.S. No. 397 was never an Inam land because it was a Rayatava land for more than seventy-four years and it could not be affected by the provisions of the "Watans Abolition Act.

8. Defendant No. 3 also raised similar contentions.

9. Defendant No. 9 supported these contentions and further stated that he had purchased half portion of R.S. No. 397/2 from defendant No. 2 for Rs. 3,000 but that he had agreed to reconvey the land to defendant No. 2 on payment of the amount, within five years. Defendant No. 9 stated that he had no knowledge that the plaintiff had any share in the suit land and in the event of it being held that the plaintiff had a share in the suit land, he submitted that the charge of his amount should be kept on this land; and the amount should be ordered to be paid back to him.

10. Although several issues were framed with regard to the various contentions, the most important issue was whether defendant No. 1 proved that under the terms of the re-grant of the lands under the provisions of the Watans Abolition Act, the suit lands were not liable for partition. The parties led oral and documentary evidence. The learned civil Judge by his judgment and decree dated July 20, 1965, found that the record of rights (exhs. 99, 100 and 103) relating to the lands showed the Government as the Kabjedar or the owner of the lands and the names of defendants Nos. 1 and 3 were shown as licensees only. They also showed that the lands were resumed by the Government under the provisions of the Watans Abolition Act and after the resumption, the State had granted the lands to defendants Nos. 1 and 3 who had paid the occupancy price of the lands under that Act.

11. The orders of re-grant are at exh. 127 in favour of defendant No. 3 and at exh. 114 in favour of defendant No. 1. Exhibit 114 was issued on July 20, 1962 to defendant No. 1 Balgonda Kalgonda Patil in respect of R.S. No. 219/1 and 2 measuring 4 acres, 37 gunthas and R.S. No. 398 measuring 3 acres, 35 gunthas. It declared that the lands vested in Government u/s 4 of the Watans Abolition Act with effect from February 1, 1959 and that the re-grant was made u/s 5 of that Act on receipt of the occupancy price equal to three times the amount of the full

assessment of such land, subject to the conditions mentioned therein, one of which was that the lands were not liable to be partitioned. Exhibit 127 was the order of re-grant issued to defendant No. 3 Shamgonda Jingonda Patil in respect of survey No. 219/3 on similar conditions.

12. The lands R.S. Nos. 397/1 and 397/2 were not re-granted. According to the learned Judge, being wadhawa lands, they had become Rayatava lands before the year 1904. He held that the suit Inam lands were joint family properties. They were re-granted subject to the condition of impartibility u/s 5(3) of the Watans Abolition Act and the Collector had the power to grant permission to partition the lands on payment of such amount as the State Government may by general or special order determine. Relying on the decision of this Court in *Dattajirao v. Abasaheb* (1963) First Appeal No. 367 of 1957 (with First Appeal No. 490 of 1957), decided by Patel and Shah JJ., on April 8, 1968 (Unrep.) the learned Judge concluded that the benefit of the order of the re-grant must enure to the whole family and that the family members could claim partition, observing as follows:

...In the case of *Dattajirao v. Abasaheb*, at the time of the order of re-grant, the family was joint and in the present case, the family of the plaintiff and the family of defendants was divided long before. However, that would not make any difference so far as the partition of this property is concerned. The ancestor of the plaintiff and the plaintiff had not given up their right in this property and the properties continued to remain in possession of the eldest branch of the family according to the law of the Kolhapur State. After the impartible nature of the property and the rule of primogeniture have been abolished, the plaintiff can claim partition of the suit properties.

He however held that the suit of the plaintiff in respect of lands R.S. No. 397/1 and R.S. No. 397/2 would be barred by limitation because they were accretions (Wadhava) to the Inam property and were treated as Sanadi Inam lands in 1897 as per exh. 112; but on account of Vat Hukum No. 26 issued on October 2, 1909 (page 934) by the Kolhapur State and the various rules regarding the Rayatava lands, these lands were converted into Rayatava lands as the Government thought that the other lands of the Sanadi servants: were sufficient for their remuneration, sometime between, the years 1897 and 1904. As the family of the plaintiff and the defendants had become separate before 1868 or before "that date, the possession of these two lands would be adverse to the plaintiff and his predecessors, the learned Judge held that the claim of the plaintiff in respect of these lands was: barred by time. In view of these conclusions, the learned Civil Judge dismissed the plaintiff's suit in respect of lands R.S. Nos. 397/1 and 397/2 but declared that the plaintiff had half share in the lands R.S. Nos. 398, 219/1 and 2, and 219/3 and directed partition and separate possession of the "half share through the Collector or any Gazetted subordinate officer of the Collector and awarded future mesne profits, ordering defendants Nos. 1, 3, 6, 7 and 8 to pay the costs of the plaintiff.

13. The plaintiff has filed First Appeal No. Ill of 1966, challenging the decree in so far as the dismissal of his claim in respect of R.S. No. 397/1 and 397/2, was concerned. Defendant No. 3 has filed First Appeal No. 176 of 1966, contending that the plaintiff was not entitled to any share in the suit lands as the lands were re-granted on impartibility tenure under the Watans Abolition Act and the present suit was barred by the judgment in Civil Suit No. 538 of 1868 confirmed by the Political Agent in Civil Appeal No. 58 of 1871. Defendants Nos. 1, 6, 7 and 8 have filed First Appeal No. 204 of 1966 raising contentions similar to the contentions of defendant No. 3 referred to above.

14. The learned Advocate-General, who appeared for defendants Nos. 1, 6, 7 and 8, submitted that under the Vat Hukums issued by the former Kolhapur State, the lands in dispute in respect of which the decree for partition has been passed by the lower Court, being Sanadi Inam lands, always vested in the Kolhapur State; and thereafter in the Government of Bombay and Government of Maharashtra, and the lands were impartible since the Kolhapur State issued Vat Hukum No. 76 of 1873 (page 925); and, hence, it was wrong on the part of the learned Civil Judge to assume that they were joint family properties. He also contended, relying on a decision of the Supreme Court in Sri Rajah Velugoti Kumara Krishna Yachendra Varu and Others Vs. Sri Rajah Velugoti Sarvagna Kumara Krishna Yachendra Varu and Others, that as the family of the plaintiff and the defendants had ceased to be joint since 1868, the lands vested exclusively in the defendants in whose name they were held and the plaintiff was not entitled to claim a partition of the lands. He submitted that u/s 4 of the Watans Abolition Act, not only were all inferior village watans abolished; and the watan lands resumed by the Government; but all the incidents appertaining to the said watans were extinguished with effect from February 1, 1959; and hence even assuming that the plaintiff had some right in respect of the land, it was extinguished; and since the re-grant was made only to defendants Nos. 1 and 3, no other persons including the plaintiff could claim any share therein.

15. While fairly stating that if the lands in respect of which the decree for partition was made by the lower Court were not partible, the First Appeal No. Ill of 1966, which related only to the Wadhawa lands, R.S. No. 397/1 and R.S. No. 397/2, could not survive, Mr. Paranjape, the learned Counsel for the plaintiff, strenuously urged, relying on the Vat Hukums of the former Kolhapur State relating to Sanadi Inam lands and the decision of the Full Bench of this Court in The Modern Mills Ltd. Vs. V.R. Mangalvedhekar, the decision of J.C. Shah J. in Sanja Bandaji Vs. Ahmedabad Jaybharat Cotton Mills Ltd., and a decision of Malvankar J. in Dhondi Vithoba v. Mahadeo Dagdu (1972) 75 Bom. L.R. 290 and the unreported judgments referred to therein, that the suit Inam lands in dispute were joint family properties of the plaintiff's and the defendants' predecessors prior to 1873 in which the plaintiff had a share as a coparcener; but they were not partitioned in 1868 because they being Sanadi Inam lands were held to be impartible. He argued that notwithstanding the Vat Hukums, the character of the lands as ancestral joint family lands continued till the filing of the suit by the

plaintiff on June 12, 1963, unaffected by the various Vat Hukums passed by the then Kolhapur State and by the provisions of the Watans Abolition Act. Although they were declared to be impartible, according to Mr. Paranjape, the right to claim a partition was suspended as a result of Vat Hukum No. 76 of 1873 referred to above; but it revived on February 1, 1959 when the Watans Abolition Act abolished the watans and made the lands Rayatava lands subjecting them to the payment of land revenue under the provisions of the Bombay Land Revenue Code and the Rules made there under as if they were unalienated lands.

16. In view of these contentions, it is necessary to consider, firstly, the nature of these lands under the Vat Hukums and other law relating to Sanadi Inam lands in the former Kolhapur State and, secondly, the effect of the abolition of the Sanadi Inams under the Watans Abolition Act. Our task is fortunately rendered easy so far as the first aspect is concerned, in view of the Full Bench decision of this Court in *Ramappa Vanappa v. Laxman*, That ease arose out of a suit filed on December 1, 1941, claiming possession of the suit land which was Sanadi Inam land. It was land attached to the office of the village Sanadi. It belonged originally to the family of the plaintiff and the defendants. The holder of the land was liable to render service in the village chavdi of Mardi. Some time in 1904, there was a partition in the family of the Sanadi and the land in dispute fell to the share of the branch of defendant No. 1. Defendant No. 1 was in possession of the land on the date of the suit. The plaintiff's father died on November 9, 1926. A revenue inquiry was held, as a result of which the name of the plaintiff was entered as a Navavala on June 1, 1935. The plaintiff's case was that after his name was entered as a Navavala, he obtained possession of the property and let it out to the defendants on oral tenancy in 1936-37. On the basis of the termination of the tenancy he claimed possession of the property in suit. The suit was resisted on the ground that the land had been assigned to the branch of the defendants in 1904 and as such they were lawfully in possession.

17. The Courts below held that the property could not have been validly partitioned in 1904 because a Vat Hukum had been passed prohibiting partition of such lands. On this view of the matter, the plaintiff's claim had been decreed in both the Courts below. The defendants filed a Second Appeal before the Kolhapur High Court, urging a point of limitation. By an interim judgment delivered on April 7, 1948, the Kolhapur High Court sent back the case for the determination of the question of limitation. Thereafter, both the Courts found that the suit was barred by limitation. At the hearing of the Second Appeal in the then Kolhapur High Court, a single Judge of that High Court held, that there could not be a bar of limitation as the plaintiff's right to claim possession of the property arose on recognition of his status as a Navavala and hence there could be no adverse possession under Article 144 of the Limitation Act, 1908; but he thought that the matter was of some importance and directed that the papers should be placed before the Chief justice of the then Kolhapur High Court in order that the appeal may be placed for disposal before a Full Bench. The then Chief Justice of the Kolhapur High Court agreed with the view and that is how the

matter was ultimately transferred to this Court after the merger of the Kolhapur State in Bombay Presidency. The matter was heard by a Full Bench of this Court.

18. The question of limitation depended on the nature of the Sanadi property. It was contended on behalf of the plaintiff that there could be no question of adverse possession against the plaintiff because after the death of his father the property in suit reverted to the Kolhapur Government and his rights in reference to this property arose only after he was recognised as a Navavala and the suit cannot, therefore, be barred by limitation on account of the possession of the defendants from 1926 to 1935 because the possession of the defendants from 1926 to 1935 would be adverse not against the plaintiff but against the State of Kolhapur. The contention of the plaintiff was negatived by the Full Bench on a consideration of the Vat Hukums applicable to Sanadi Inam lands; and the Full Bench came to the conclusion that these Vat Hukums did not support the contention that the property in suit reverted to the State after his father's death, observing as follows (p. 844):

...We are inclined to take the view that Clause (7) of vat-hukum No. 76 of 1873 means that the sanadi property is not the absolute private property of the sanadi because his title to it is subject to several restrictions of a severe type. Undoubtedly these restrictions are much more severe than those contained in Section 5 of the Watan Act. But that, in our opinion, does not necessarily mean that the limited rights which the holder has in his property are not heritable. In fact vat-hukum. No. 44 of 1913 in terms provides that succession to such properties is to be governed by the rule of primogeniture and this can only mean that there is a heritable interest in the property but the inheritance goes by the rule of primogeniture. It is hardly necessary to emphasise that the application of the rule of primogeniture emphasises the fact that the property in question is undoubtedly heritable. This property is no doubt impartible, and as we have already mentioned, while the holder holds the property he does so subject to several restrictions. But these restrictions, however severe they may be, do not lead to the inference that the holder has no title to the property at all. He has a title, and in our opinion his title passes by the rule of primogeniture to his heir. It is quite true that on the death of the holder a revenue inquiry is contemplated and that is not surprising, because there may be cases in which the claims of rival claimants may have to be considered before recognising the next Navavala. But the mere fact that an heirship inquiry is prescribed and may be held in many cases does not show that the title has meanwhile reverted to the State. The title all the time continues with the heir and must be deemed to have so vested as from the date of the death of the last holder. That in fact is expressly provided by vat-hukum, No. 6 of 1911, which says that the order passed in the heirship inquiry should have a retrospective effect. We must, therefore, hold that the possession of the defendants was adverse against the plaintiff in any case from 1926 and in that view -there can be no doubt that the defendants have acquired title to the property by their adverse possession.

19. Mr. Paranjape, the learned Counsel for the plaintiff, strongly relied on the view of the Full Bench with regard to the nature and effects of the various Vat Hukums and submitted that although Clause 7 of Vat Hukum, No. 76 of 1873 states that the lands to which the Vat Hukums apply were not the private property of the holder and he had no right to mortgage, sell, gift them away or transfer them in any manner whatsoever, the holder continued to have a hereditary interest and a title at law therein, although it expressly stated that the Inam land was not the private property of the holder. Mr. Paranjape contended that the lands did not vest in or revert to the State on the death of the holder but continued in the family of the holder subject to the rule of primogeniture; and, therefore, if the lands were originally joint family lands, they continued to be joint family lands subject to the condition of impartibility between 1873 and February 1, 1959.

20. Even assuming that what Mr. Paranjape says is correct in law, the question we have to decide is what is the effect of the Vat Hukum declaring that the lands were not the private lands of the holder and that they were impartible under the said Vat Hukum No. 76 of 1873. We are not here concerned with merely a right to sue for possession as: in the Full Bench case but with the claim for partition and possession. The Full Bench was concerned only with the question as to whether the plaintiff's suit for possession was barred by time; and for this purpose it considered whether on the death of the holder, the lands reverted to the State. The Full Bench, with respect, rightly held, in the absence of any Vat Hukum clearly stating that the lands reverted to the State and in the context of the various Vat Hukums which the Full Bench considered, that the lands did not revert to the State and the title vested retrospectively in the heir under Vat Hukum No. 6 of 1911. The Full Bench had not considered the question as to whether even after Vat Hukum No. 76 of 1873, assuming that before that the lands were held by the joint family and were partible, the lands continued to vest in the joint family with the right of claiming partition suspended as contended by Mr. Paranjape.

21. It must be remembered that the main body of the rules of Hindu law enacted under the various Vat Hukums by the Maharaja of Kolhapur State were not similar to the rules of Hindu law evolved in what was known formerly as "BritisWIndia". The Maharaja of Kolhapur State had passed several Vat Hukums in connection with the law applicable to Hindus in that State which in many ways differed from the rules of Hindu law and enforced by the Courts in British India. In the above Full Bench decision it is observed that the main body of the rules of Hindu law which were enacted in Kolhapur was based principally on translation of an old edition of Sir Dinshah Mulla's Hindu Law published in 1919; and so the several important decisions which have since then substantially altered the earlier views in several branches of Hindu law cannot be applied by Courts administering Hindu law in Kolhapur. Gajendragadkar J., as he then was, suggested that Government should consider whether it would not be expedient in the interests of justice to apply to Kolhapur the principles of Hindu law as they

were administered in the rest of the State of Bombay. But that suggestion has not been accepted by the Government till today; and we must continue to apply the Vat Hukums of Kolhapur in so far as they relate to Hindu law and are not superseded by legislation after merger, including the law relating to impartible properties, as the Maharaja exercised sovereign powers, legislative, executive and judicial in his state.

22. Impartibility is one of the main features of the Inams in Kolhapur, especially the service Inams. The Inams in the Kolhapur State were by custom impartible even prior to 1873, as stated in Vat Hukum No. 76 of 1873, page 925. Though this was so, it seems that with a view to enforce the conditions of the Inams and to make the holders of Inams render service, that Vat Hukum was passed by the then Political Agent. It made certain service Inams impartible. It says in the first clause that although there was an earlier Vat Hukum No. 32 of 1859, that Vat Hukum was not being properly observed and the services were not being properly rendered; and, therefore, with a view to secure the services by appointing properly the village officers, the Inam lands" should be entered in the village record in the name of the eldest member capable of rendering service, particularly because it may not be possible to others render those services. In Clause 3 it is stated:

**\*\*tehu T;kpsa ukaosa vkgs R;kuoj ukisdjhph tckcnkjh Bsfoyh Eg.kts ukisdjh uhV gksbZy-\*\*** i.e. service would be rendered properly only if the responsibility is placed on the person who holds the land.

23. If the other members of his family could satisfy the Mamlatdar that the Sanadi holder was enjoying more income than what was proper in respect of the services rendered, the Mamlatdar was empowered to hold an inquiry and issue an order granting a certificate in respect of the income received from the Maharaja. In the absence of such an order, the civil Court had no jurisdiction to deal with any claim to a share in Inam lands. Clause 5 of that rule provided for remuneration to the holder, the lands allotted to whom were divided previously with the permission of the Government. Under Clause 6, the Government had the power to fix the maintenance out of the income of the lands for a widow and minors of the family; but it laid down that on the death of the widow or the attainment of majority by the minors, the income would revert to the holder. Clause 1 declared:

**\*\*oj fyfgysY;k tfeuh [kklxh feydr ulY;keqysa xgk.k] [kjsnh] c{khl oxSjs jhrhusa ns.;kl ekydkl vf/kdkj ukgha o rlsa ns.ksa dksYgkiwj byk[;karhy fnok.kh fdaok eqydh dksVkZrwu ekU; gks.kkj ukgha o ?ks.kkjkpk gDd ljdkj let.kkj ukgha-xgk.k[kr oxSjs oj fyfgY;k izdkjP;k gDdkps nLr ekydkdMwu fygwu ?ks?u rs ljdkjkar uksanfoY;kl uksanwu fnY;kpsa laca/kkus ljdkjkauha rks O;ogkj dcwy dsyk vlsa letwa u;sa-\*\*** 24. The Full Bench interpreted this clause as not extinguishing the hereditary interest in the property. But what the Full Bench has laid down is only the law with regard to the title of the holder and his heirs and not with regard to claims of the other members of the holder's family. There is nothing in the said

decision of the Full Bench to support the argument of Mr. Paranjape that notwithstanding Clause 7, declaring that the lands were not the private lands of the holder, the lands continued to be the lands of the joint family of the holder. Mr. Paranjape submitted that because the Full Bench laid down that the restrictions, however severe, did not mean that the holder had no title to the property at all, the title must be considered as a title of the family of the holder. That proposition cannot be extracted from what is stated by the Full Bench. In our view, the Full Bench referred to the title as meaning the bundle of rights which remained with the holder and which continued with the holder's heirs in accordance with the Vat Hukums in the context of the question of limitation which the Full Bench was called upon to decide.

25. It is not possible to accept the contention of Mr. Paranjape that notwithstanding the express declaration made in Clause 7, that the lands were not the private lands of the holder, the lands should be considered as the lands in which the rights of the other members of the family to partition remained suspended as long as the Vat Hukum remained in force till February 1, 1959. The Vat Hukum was passed by the Political Agent on behalf of the Raja of Kolhapur, as he was then called, in the exercise of Ms sovereign powers. The State could make any law governing the impartible properties as it was internally sovereign, though it was subject to the paramount power of the Government of India in certain other respects. Whatever be the interpretation of general principles of Hindu law in the rest of India, when considering the nature of Sanadi Inam lands in Kolhapur State, we cannot ignore the express words of Clause 7 of the above Vat Hukum which declared that they were not the private lands of the holder at all.

26. We are therefore, of the view that whatever might be the position prior to 1873 after the passing of this Vat Hukum, the holder of the Sanadi lands was not holding them as a member of the joint family or as his own lands but as lands held by him for rendering service subject to the various Vat Hukums and restrictions relating to the possession and enjoyment of the suit lands. The lands were expressly declared to be impartible; and, therefore, whatever might be the pre-existing rights of the members of the family of the holder in those lands ceased to exist after 1873. There is nothing in any of the Vat Hukums made by the Kolhapur State which supports the proposition of Mr. Paranjape that a right to claim partition in the suit lands remained suspended after 1873. He has not cited any Vat Hukum which says so. In the absence of such a Vat Hukum, it is not possible for us to annex to the Sanadi Inam lands the incident of suspension of a right to claim partition of branches of the family of the holder of the Sanadi Inam lands, other than his own, who had such interest prior to 1873.

27. In view of this conclusion, it is unnecessary for us to discuss whether the lands were in fact joint family lands prior to 1873. It is, however, necessary to mention that Mr. Paranjape relied on the judgment in Suit No. 538 of 1868 dated December 6, 1869, for partition of the house, Inam lands, Sanadi lands and

Rayatava lands. In the judgment which is produced at exh. 105 in the suit, it is mentioned that there was a partition effected between the father of the plaintiff in that suit, Babaji, who is the father of the present plaintiff, and the defendant Dharmagonda, the predecessor of the defendants, and under that partition, the plaintiff's share was kept with Dharmagonda in view of the debts of the plaintiff's father. Dharmagonda also stated that he had no objection if the plaintiff took his share after satisfying the said debts. The suit was dismissed on the ground that as there was already a partition in the Shake year 1764 (1842 A.D.), the plaintiff in that suit could not file a fresh suit for partition. As the plaintiff had not filed a suit to recover his share as per the terms of the previous partition, his claim for partition of the property was dismissed. That decision appears to have been reversed in appeal and ultimately the Political Agent of Kolhapur and Karnataka by his judgment dated March 13, 1874 which is produced at exh. 107, dealt with that appeal "Along with another appeal and declared that possession of the Shet Sanadi land should remain with the defendant in that case.

28. Mr. Paranjape has relied on the judgment to show that prior to 1873 there was a joint family of the parties which owned the lands but the Shet Sanadi lands could not be partitioned without the sanction of the Kolhapur State and hence they were left out of the partition which was made. That, however, can not override the Vat Hukum which was passed in 1873 declaring, as stated above, that the lands were not the private lands of the holder. If they could not be the private lands of the holder, the other members of the family could not claim them as their private lands or lands in which they had any share.

29. Mr. Paranjape's argument that the right of the plaintiff and his predecessor in the family property prior to 1873 was revived after the lands were converted into Rayatava lands u/s 4 of the Watans Abolition Act, is against the plain terms of that section which runs as follows:

4. Notwithstanding anything in any usage, custom, settlement, grant, agreements sanad, or in any decree or order of a court or in the existing watan law, with effect on and from the appointed date,

(1) all inferior village watans shall be and are hereby abolished,

(2) all incidents (including the right to hold office and watan property, the right to levy customary fees or perquisites in money or in kind, and the liability to render service) appertaining to the said watans shall be and are hereby extinguished,

(3) subject to the provisions of Sections 5, 6 and 9 all watan land shall be and is hereby resumed and shall be subject to the payment of land revenue under the provisions of the Code and the rules made thereunder as if it were an unalienated kind:

Provided that such resumption shall not affect the validity of any alienation of

such watan land made in accordance with the provisions of the existing watan law or the rights of an alienee thereof or any person claiming under or through him.

30. On a plain reading of this section along with the definition of the words,, "existing watan law" and "inferior village watan" contained in Section 2, we find no difficulty in coming to the conclusion that by this section, the Legislature intended to extinguish all rights and incidents in Sanadi Inam lands in suit with effect from February 1, 1959 on which date the Act was brought into force in Kolhapur State by a Gazette Notification, R.D., No. PKA. 1058-IX/ 205276-L, dated January 21, 1959, published in the Government Gazette, Part IV-B, page 160, in exercise of the powers conferred by Sub-section (4) of Section 1 of the Watans Abolition Act. The words "all incidents appertaining to the said watans shall be and are hereby extinguished", must include every kind of incident, including the so-called incident of a right to partition as claimed by the plaintiff in this case, even if such right existed. Further, the lands were resumed by the Government on that date in law and vested in the Government till the lands were re-granted u/s 5, or 6, or 9 of that Act.

31. u/s 5, the watan land resumed u/s 4 shall, in cases not falling under Sections 6 and 9, be re-granted to the watandar of the watan to which it appertained on payment of the occupancy price. The word "watandar" is defined in Section 2(7) (xi) as meaning a person having a hereditary interest in an inferior village watan under the existing watan law, provided that where any watan has been entered in a register or record under the existing watan law as held by the whole body of watandars, the whole of such body shall be deemed to be a watandar. In view of the Vat Hukums, in Kolhapur State the only persons who had any hereditary interest in a watan was the holder and his heirs as decided in the above Pull Bench case and not other members of other branches of his joint family which had separated prior to 1873. It is, therefore, impossible to hold that this Act which was enacted to abolish all rights and incidents in inferior watans annexed to lands, was so enacted to revive the so-called suspended right of partition of the plaintiff which he claimed as a member of the family alleged to have had such a right before 1873. The Act describes itself as an Act to abolish the inferior village watans prevailing in certain parts of the State of Bombay. It was not an Act to revive or recognised any right of persons other than the holders of the watan lands and their respective heirs. It was certainly not an Act enacted to revive the alleged right to claim partition which was extinguished long ago, even prior to 1873; and long before the Kolhapur State merged in the then Bombay Presidency.

32. Mr. Paranjape, however, contended that such a view would be contrary to the decision of J.C. Shah J. in 8m, Sanja v. A.J.C. Mills Ltd. This submission is without any substance because that decision was concerned with Dharmadaya properties which were, under the relevant Vat Hukums, regarded not as Inam properties but as Rayatava properties and, therefore, partible properties as far

back as 1929. It is because of this that the lands which were the subject-matter in the suit from which the case arose, were held to be liable to be partitioned, as they were wrongly excluded at a partition made subsequent to the Vat Hukum. It is in that context that J.C. Shah J. observed (p. 614) :

Once the tenure of the property is altered the right to claim partition and the right to claim enjoyment would become enforceable as if they were in suspense during; the time that the property by tenure was impartible and devolved by primogeniture. If that is the correct view to take, evidently in 1929 the property having been converted into Rayatava property the plaintiff became entitled to claim partition of the property.

The learned Judge has further pointed out at the end of his judgment that the plaintiff was seeking partition of the property which was not partitioned, in 1925. "We do not think that the observations made by J.C. Shah J. can be divorced from the context in which they were made, and applied to the lands resumed u/s 4 of the "Watans Abolition Act. Those observations were applicable where the lands became ordinarily partible as Rayatava lands and were not resumed by the State, as in the case of Dharmadaya lands, which were the subject-matter of that suit. They cannot be applied to a case where the lands were resumed and vested in the State until re-grant under the Watans. Abolition Act.

33. Mr. Paranjape rightly submitted that this view is contrary to the decision of Malvankar J. in Dhondi Vithoba v. Mahadeo Ihagdu. That was also a case under the Bombay Inferior Village Watans Abolition Act, 1958. The subject-matter of the suit there was Shet Sanadi Inam lands granted to the ancestor of the parties for rendering service as Kotwal of the village. Succession to the land was governed by the rule of primogeniture and it was also impartible. The Inam was abolished under the Watans Abolition Act, after a partition in the family in 1954-55 in which the suit land was excluded as it was impartible.

34. After the abolition of the Inam, the plaintiff in that suit claimed partition and possession of his share in the land alleging that the land being the joint family property before and after the abolition of the watan and the same having become partible after the abolition of the watan, he was entitled to 1/3rd share in it because though the land continued in the name of the eldest member of the family who was, prior to the partition, the manager of the joint Hindu family, the property was held by him on behalf of the family after the partition; and the other members of the family became tenants-in-common in respect of the said land. The suit was resisted on the ground that the land being watan land, which was impartible before the abolition of the watan and the same having been re-granted to the holder on his paying the occupancy price, it was the self-acquired property of the holder and the plaintiff was not entitled to any share in it.

35. The trial Court in that case held that the watan being abolished, the land become partible and, therefore, the plaintiff became entitled to 1/3rd share. The decree was set aside in appeal as the appellate Judge took the view that as the

land was re-granted under the Watans Abolition Act, it could not continue to be the joint family property and, therefore, the plaintiff had no share in it. That decree was set aside by Malvankar J., relying on the aforesaid decision of J.C. Shah J. and certain unreported judgments and what he thought was the meaning and effect of Section 4 of the Watans Abolition Act. We have already noticed above that the aforesaid decision of J.C. Shah J. in Sanja's case must be confined to Dharmadaya land which was the subject-matter of that case. We have very carefully and anxiously gone through the judgment of Malvankar J., with greatest respect; and we find that the entire reasoning is based on certain assumptions which are manifestly in conflict with the plain words of Section 4 of the "Watans Abolition Act.

36. Thus, at page 293 of the Report, Malvankar J. observed, after summarising the provisions of the Act;

...It seems to me, therefore, that what Section 4, Sub-sections (1) and (2) seek to abolish and extinguish is the inferior village hereditary office together with the tenure of Watan property held, acquired or assigned under the Watan law for providing remuneration for the performance of the duty appertaining to an inferior village hereditary office and all the incidents thereto including the right to hold office or to levy customary fees or perquisites in money or in kind, and the liability to render service. It does not affect the ordinary incidences of the property under personal law. In other words, if such property is joint family property or the property held by tenants-in-common, its incidents are not extinguished by the abolition of the Watan and extinction of its incidents.

37. We are, with respect, unable to agree. There is nothing" in Section 4(2) to restrict the meaning of the word "all incidents" to incidents other than incidents of the property under personal law. Even assuming that there were any such incidents under the Kolhapur law, apart from the incidents arising from the Vat Hukums which governed Sanadi Inam lands, when the Legislature has stated that "all incidents appertaining to the said Watans shall be and are hereby extinguished", it is not open to the Court to exclude incidents arising out of personal law appertaining to the suit properties if any such incident existed in them. It is not possible for us to consider it reasonable to hold that although the lands were resumed by the Government and the holder himself had lost all his rights till the lands were re-granted to him except the right of asking for re-grant, the incidents of the property under personal law appertaining to impartible property would survive the extinguishment of the tenure and resumption of the land by the State.

38. It is also difficult for us to understand how Malvankar J. could assume that impartible property under the Kolhapur law could be held to be joint family property or property held by tenants-incommon. As already stated above, Kolhapur State declared as far back as 1873 that all lands held for service were not the private lands of the holder. They could not, therefore, be joint family lands or lands held by tenants-in-common after partition in the joint family. The

holder merely held the lands for rendering service, subject to the restrictions mentioned in the Vat Hukums and subject also to the Vat Hukums in the matter of hereditary interest therein. We find it difficult to hold, in these circumstances that, notwithstanding the Vat Hukums, the joint family could hold the lands as joint family property or its members could hold the lands as tenants-in-common after a partition in the family of the holder of the lands.

39. It is true that at page 293, immediately after what is quoted above, the learned Judge has dealt with the question of the effect of the resumption of the land by the Government and has observed:

...In the first place, the Act nowhere provides that the land on resumption shall - vest in the Government free of any interest in favour of any person. It is true that Sub-section (3) of 4 says that all Watan land shall be and is resumed, but this resumption is subject to the provisions of Sections 5, 6 and 9 of the Act. Moreover, proviso to Sub-section (3) also saves the rights of alienees and persons claiming through them, provided of course the alienation is made in accordance with the existing Watan law. Now, Section 5, with which we are concerned in this appeal, provides that a Watan land resumed u/s 4, in cases not falling under Sections 6 and 9, shall be regranted to the Watandar of the Watan to which it appertained on payment by or on behalf of the Watandar to the State Government of the occupancy price equal to three times the amount of full assessment of such land within the prescribed period and in the prescribed manner, in which case the Watandar shall be deemed to be an occupant within the meaning of the Bombay Land Revenue Code. It is, therefore, obvious that u/s 4(3) the Watan land is to be resumed, subject to the condition that if the Watandar of the Watan pays occupancy price within a prescribed period and in a prescribed manner, then he is to be the occupant of the land from January 20, 1959, the date on which the Watan is abolished. The effect of Sub-section (3) of Section 4 read with Section 5, therefore, is that the Watandar who held the land as Watan land subject to the rule of primogeniture and impartibility till January 20, 1959, would be holding the land as an occupant under ordinary law. All, therefore, that the Act does is that it effects a change in the tenure or the character of holding as Watan land, but it does not affect the other incidents of the property according to personal law. In other words, the property continues to be the joint family property or the property held by the tenants-in-common, as the case may be.

40. With very great respect, we regret that we cannot agree with these conclusions. For the reasons stated already, it is difficult for us to understand what the learned Judge means by saying that although the tenure or the character of holding as a Watan land is changed, it does not affect the other incidents of the property according to personal law, when Section 4(2) in terms says that "all incidents appertaining to the said watans shall be and are hereby extinguished."

41. Apart from the error in referring to January 20, 1959 as the date on which

the Act came into force, in the above passage, we find that the learned Judge erred in assuming that the Act nowhere provided that land on resumption shall vest in the Government free of any interest in favour of any person. This assumption is contrary to the plain words of Section 4 which not only abolished the watan and extinguished all incidents, but vested the lands in the Government subject to the rights of the watandars of the watan and others to make applications under Sections 5, 6 and 9. The only exception made in respect of the unconditional resumption of the land was regarding alienations of watan lands made in accordance with the provisions of the existing watan law or the rights of the alienee thereof or any person claiming under or through him. Otherwise, the resumption was complete and the lands vested in the Government and became in law like other unalienated lands under the provisions of the Bombay Land Revenue Code.

42. The mere fact that the lands were liable to be re-granted like other lands under the Land Revenue Code subject to the Watans Abolition Act could not make the lands joint family lands. The provisions contained in the Watans Abolition Act only showed how and to whom the lands should be re-granted. It did not affect the vesting of the land in the Government free from all rights and interests or incumbrances except those mentioned in the proviso to Section 4(5). We think that the word "resumption" itself implies that the lands Vest in the Government and in no one else. Resumption can never mean an implied resumption by the joint family of the holder. The Legislature has made it clear by providing in Clause (1) of Section 4 that all inferior village watans shall be and are "hereby abolished". "Inferior village watan" is defined in. Section 2(2)(vii) as meaning the inferior village hereditary office together with the tenure of watan property, if any, and the rights privileges and liabilities attached thereto. The abolition, therefore, is complete with regard to all rights, incidents, privileges and liabilities attached thereto. The Legislature has further made it unequivocally and unambiguously clear in Clause (2) of Section 4 that all incidents are extinguished. We cannot imagine what other incidents could survive the manifest and, unrestricted abolition of all rights and incidents, with regard to the watan lands contained in Section 4, other than the right to claim re-grant under the provisions of the Act. We are, therefore, unable to agree with the view taken by Malvankar J. on the interpretation of the effect of that section and other sections of the Watans Abolition Act.

43. Turning now to the unreported judgments, which Malvankar J. thought, supported his decision, the first decision referred to by him is of Tarkunde J. in *Tukaram v. Ramrao* (1957) Second Appeal No. 497 of 1955 decided by Tarkunde J., on September 17, (Unrep.). That was a case relating to Huzur Sanadi lands in Kolhapur. But as Malvankar J. himself has pointed out, the observations made by Tarkunde J. with regard to the effect of the provisions of the Bombay Merged Territories Miscellaneous Alienations Abolition Act on the lands were obiter; and there is no discussion at all with regard to the various provisions of the said Act or the effect of the resumption of the lands by the State, if that case was

governed by Section 7 of the Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955. The observations made by Tarkunde J., with respect, were casual and incidental as he was definitely of the view which was expressed at the end of the judgment after the passage relied upon by Malvankar J., that Since I have come to the conclusion that the lands had ceased to be Huzur Sanadi lands and had become Rayatava lands as far back as 1949, it is not necessary to consider what would have been the effect of this Act on these lands, if the lands had continued to be Inam lands when the Act came Into force.

44. The second unreported judgment relied upon by Malvankar J. was that of Patel and Shah JJ, in *Dattajirao v. Abasaheb. Malvankar J.* has rightly pointed out that that was a case under the Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955, arising out of a suit for partition. On the date of the suit the family was joint. In the facts and circumstances of the case, therefore, Patel and Shah JJ. observed on the basis of inferences from the facts that since no action was taken u/s 10 of that Act for unauthorised holding of the land, "it must necessarily be that the occupancy price has been paid and the land has been granted to the family." That is consistent with the well-established principle that the land could be granted by the Government to an individual or to a group of individuals consisting of a family. Property granted by the Government to a member of a joint family is ordinarily the separate property of the donee. (See *Katama Natchiar v. S.R. Moottoo Vijaya Raganadha B.G. Taver*)(1863) 9 M.I.A. 589 and 610. But it may, depending upon the terms and conditions of the grant and the circumstances in which the grant was made, yet be intended for the benefit of the family, if it so appears from the nature and circumstances of the grant. (See *Sri Mahant Govind Rao v. Sita Ram Kesho* ILR (1898) 21 All. 53 p.c. and Mulla's Hindu Law, 14th edn., p. 281).

45. There is nothing in the judgment of the division Bench to show that any contention was made relying on the resumption of the land by the Government. It was, therefore, inferred from the facts and circumstances of the case, that the joint family continued to be joint till the filing of the suit. There is nothing in the judgment to support the propositions contained in the judgment of Malvankar J. based on the above passage that the re-grant to one of "the members of the family was taken to be the re-grant to the family inasmuch as the family continued to be joint till the date of the suit. The grant was not before the Court. The Court merely inferred from the facts of the case "that the re-grant must have been made to the family. The case is, therefore, distinguishable from the facts in the instant case, particularly because there the joint family was in existence even at the date of the suit and it was held to be in existence when the re-grant was made.

46. In the present case, we have the grants of lands made u/s 5 of the Watans Abolition Act. There is nothing therein to show that the lands were granted to the family of the plaintiff and the defendants or to defendants Nos. 1 and 3 on behalf of that family. Whether the grant is made to defendants Nos. 1 and 3 or to their

family must depend on the facts and circumstances established in this case. "We find no facts to show that the grants were made to the family. We are, therefore, of the view that the judgment of Patel and Shah JJ., relied upon by Malvankar J. in that case and by the lower Court in the present case, does not really support the proposition that even though the family had separated long before the grant, the grant must be presumed to be made in favour of the family.

47. The third decision relied upon by Malvankar J. is Jaysingrao v. Smt., Premavati Raje (1968) First Appeal No. 200 of 1961 by Patel and Wagle JJ., on November 20, (with First Appeal No. 299 of 1961), decided 1968 (Unrep.). It is a judgment of Patel and Wagle JJ. in a First Appeal" against the decree made by the Civil Judge, Senior Division, Kolhapur, relating to Saranjam and Sheri lands situated in Kolhapur belonging to a feudatory Jahagirdar of the State, one Santajirao Ghorpade. On March 21, 1954, he made a sort of a family arrangement which appeared to give the right of management of the property to defendant No. 1, his son. Subsequently he effected a partition by a partition deed on July 31, 1956, of certain Rayatava lands. On September 14, 1956, he executed a trust deed, attempting to dispose of all the other agricultural lands which continued to be in his possession in favour of a charity, i.e. a family deity. He died on April 14, 1957, leaving behind him the plaintiff, his widow and defendant No. 1 his son by a previous wife, and defendant No. 2 who was a minor at the date of the institution of the suit, the son of a daughter. Incidentally meanwhile in or about 1954 Rules were framed for settlement of Saranjam by the State Government.

48. Under the Rules the Saranjam property was resumed but the personal property though of inam nature was continued with the deceased Santajirao. For the resumption of the Saranjam rights in the property, compensation was fixed for a certain number of years. Immediately after his death, defendant No. 1 came into possession of all the properties of Santajirao. As he refused to give a share of the properties to the plaintiff, she instituted the suit on December 5, 1958 claiming a share in the estate left by the deceased. Some of these lands were re-granted under the Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955 to Santajirao. It was contended on behalf of defendant No. 1 that these properties were not partible and that even otherwise in respect of the lands for which occupancy price was not paid, no right could come into existence until after the lands were re-granted. The learned trial Judge had merely granted a declaration to the plaintiff in respect of her share without directing partition of the lands re-granted under the Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955. All that this Court held was that the right for obtaining the occupancy of the land had accrued to the deceased Santajirao during his lifetime; this right would be a heritable right; and hence the properties were partible.

49. We fail to see how that decision can be of any Assistance to us in this case. It is true that relying on that decision, Malvankar J. rejected a contention made

before him that a suit or partition of the lands by metes and bounds was not maintainable for want of sanction of the Collector under Sub-section (3) of Section 5 of the Watans Abolition Act. We agree with, the view? of Malvankar J. so far as that point is concerned, as in our view the decision of Patel and Wagle JJ. in the facts and "circumstances of the case was correct because Santajirao was the holder when the Act came into force and he was entitled to the re-grant of the land. Once the lands were re-granted, they were liable to be partitioned with the sanction of the Collector. Malvankar J. did not rely on that decision in connection with the question as to whether even though there was a. partition the family many years before the re-grant, the re-grant could enure for the benefit of the entire family.

50. Thus, we find that Malvankar J., with respect, was not right in his conclusion that the above unreported judgments of Tarkunde J. and Patel and Shah JJ. supported his conclusion that after the abolition of a watan in every case where the watan was once held by a joint family which had separated, notwithstanding the Vat Hukums which had made the property impartible, it was held by the members of the family as tenants-in-common; aid the resumption and re-grant do not take away the character, of the land as joint family property or as held, by tenants-in-common. As already stated, above Section 4 of the watans Abolition Act, abolished the wataaas; extinguished all incidents-; and vested the lands in the Government in law, subject to the proviso in that section, which is of relevance ins this case.. Thereafter we must consider the terms of the grants and all the facts and circumstances, relating to the grants to find out whether the guan as were to the persons, whose names they were issued. u/s 5 or to their family.

51. It was open to the revenue authorities exereising powers that section to grant it to the family; but they had not done so in the instant case or in the case before Malvankar J. The view taken by Malvankar J. has been considered by us with great anxiety and respect. We find ourselves unable to agree with that view having regard to the plain teams of Section 4 The decision in Krishan v. Sarvagna Krishan relied upon by the learned Advocate in this on behalf of defendants Nos. 1, 6, 7 and 8, is also of great relevance in this connection, although that case related to an estate which was always impartible.

52. In that case, the Supreme Court considered all the previous, decisions; relating to, the rights of the members of the family in an impartible estate in the context of the Madras Estates (Abolition said Conversion into Ryotwsri) Act and, it was laid down, ill paua.. 17; (p.. 1805"):

We are also unable to accept the contention of the plaintiff that the property of the impartibly estate was held in coparcenary as joint family property and became partible amongst the members once it lost its character of impartibility. In other words, the contention was that junior members had a present interest in the impartible estate and were entitled to a share in fee estate once impartibility was removed; In our opinion there is no justification for this argument. The law

regarding the nature and incidents of impartible estate is now well settled. Impartibility is essentially a creature of custom. The junior members of a joint family- in the case of" ancient impartible joint family estate take no- right in the property by birth and, therefore have no right of partition having regard to the very nature- of the estate that it is impartible.

We think that the decision, in, Dhondi Vithoba v. Mahadeo Dagdu is based, on assumption of law, which are inconsistent with the law, as stated, by the Supreme Court in the above case.

53. Mr. Paranjape contended that the above observations of the, Supreme Court must, be read only, in the context of an, impartible estate like the Venkatagiri estate in that case. There is no writ in this submission because the observations are made in the context of the law relating to impartible estate as settled by the Privy Council and the Supreme Court. The law is, therefore, well-settled that the junior members, cannot ask for partition of property re-granted to the holders of an impartible estate, as, a matter, of any rule of Hindu law. If the grant itself expressly or impliedly is a grant to the family, it may be a, different matter.. But where as here the grant is, only to the former holder who held the lands, which were impartible and were subject to the case of primo-geniture, after resumption of the lands, under the "Watan, Abolition Act, it is not possible, to hold, that the members of the other branches of the family could still claim a share in the lands granted;

54. In view of this conclusion the plaintiff's; suit is liable to be dismissed.

55. In the result, First Appeals, Nos. 176 and 204 of. 1966 are allowed and First Appeal No. 111 of 1966 is dismissed. Having regard to the near relations of the parties and all other: circumstances of the-case we order the parties to bear their own costs, throughout. The judgment, and decree passed by the learned Civil Judge on July 20, 1965, are set aside and the plaintiff's suit is dismissed.