

(1961) 06 KAR CK 0001
In the Karnataka High Court
Case No : Regualr Appeal No. (B) 44 of 1956

Mohamed Isak Saheb and Others	Vs	APPELLANT
Najaruddin Shamansaheb Mulla and Others		RESPONDENT

Date of Decision : 19-06-1961

Acts Referred:

Limitation Act, 1908 — Section 2 (8)

Citation : AIR 1962 Kar 253

Hon'ble Judges : Mir Iqbal Husain, J;A. Narayana Pai, J

Bench : Division Bench

Advocate : S.V. Mahajan and C.M. Desai, for the Appellant; G.D. Shirpurkar, for the Respondent

Judgement

Narayana Pai, J.

(1) The respondents filed on the 13th of October 1950, Special Civil Suit No. 142 of 1950, in the Court of the Joint Civil Judge, Senior Division Belgaum, against the original appellants 1 and 2 and others, for recovery of possession with mesne profits of the lands comprised in Section Nos. 43/2 and 44/2 of Shindoli village, Belgaum Taluk. This basis of the claim made in the plaint was that the lands had been granted to the ancestors of the respondents as Mullagiri service inam lands in ancient times by one of the Badshahs of Bijapur for performance of Mullagiri services to the village community of Shindoli, that the lands were inalienable by the terms of the grant and that, therefore, the alienation thereof by the respondents grandfather Rajesaheb by way of sale on the 4th of February, 1914, in favour of Nadirsaheb Fakruddin Killedar, father of the original second appellant and father-in-law of the first appellant, was unauthorised, void and conveyed no title whatever. Among other defence raising questions touching the character of the lands and nature and incidents of the tenure under which the same had been held by the respondents ancestors, the substantial defence to the suit was that the title of Rajesaheb himself had been extinguished during the lifetime by the adverse possession of the aforesaid purchaser and his successor-in- interest, the

appellants. The Court below held that the lands were Mullagiri inam lands, that they were inalienable under the terms of the grant but that the possession of the purchaser and his successors-in-interest became adverse to the heirs of Rajesaheb only from the death of the said Rajesaheb which took place in 1940 and that, therefore, the respondents having filed the suit within 12 years of the death of Rajesaheb were entitled to recover possession of the lands. Accordingly, it passed a decree directing that the respondents do recover possession of the suit lands together with past mesne profits of Rs. 750/-. Hence, this appeal by the defeated defendants.

(2) When the suit was first tried, the respondents had not produced the original Sanad relating to the suit lands. But, the Court, on the strength of two documents produced by the respondents, viz., Explanation 58 a report or decision of the inam Commission under the Bombay Rent free Estates Act No. XI of 1852, and Explanation 104 an extract from the Register of alienated villages and lands in Belgaum Taluk maintained u/s 53 of the Bombay Land Revenue Code as it stood in the year 1890-91, opined that Sanad must have been issued in the form prescribed under the said Act for the issue of Sanads to Joshis, etc., and held that the lands being watans held for performances of services could not be transferred. After the filing of the this appeal, the respondents produced the original Sanad into Court with an application to receive the same by way of additional evidence. This Court allowed that application holding that the Sanad produced should be received in evidence but because the learned counsel for the appellants wanted an opportunity being given to his clients to adduce evidence to show that the recitals in the Sanad in regard to the property being inalienable were never observed in practice and the alienations of inam lands of this type were being widely recognised by custom remanded the suit to the trial Court with a direction to record evidence and findings on the following two additional issues framed by this Court:

(18) Whether the Sanad produced by plaintiffs contains a condition that the lands are inalienable ?

(19) If so, was such a condition not observed in practice, and was the condition thereby rendered inoperative in law?

Or

Did the non- observance of the said condition not have the effect of changing the nature of the grant?

The findings on these issues returned by the Court below are that the Sanad Explanation 130 states in clear and unambiguous terms that the Watan cannot be transferred and that the appellants are not made out any custom or practice whereby the original condition of in alienability has been destroyed.

(3) In the arguments before us after the submission of these findings by the trial Court, the controversy has been, not so much on the nature and incidents of the

grant in respect of the suit lands as on the question of adverse possession. Though the learned counsel for the appellants was not willing to concede the correctness of the findings returned by the Court below, it is clear that this entire argument on the question of adverse possession proceeds on the basis that the lands were originally inalienable. It is, however, necessary before examining the question of adverse possession to ascertain the nature and true incidents of the grant under which the reports ancestors came to acquire the suit lands.

(4) The material facts as to which there is no controversy are these; the two strips of land which are the subject -matter of the suit were part of the lands originally granted to the ancestors of the respondents and came to their grandfather Rajesaheb by virtue of a partition in their family. The said Rajesaheb first executed on 30.6.1911 a possessory mortgage under Explanation 67 for Rs. 500/- in favour of Khadirsahab Fakaruddinsahab Killedar, and later a deed of further charge for Rs. 300/- under Explanation 68 dated 25.4.1912 in favour of the same mortgagee and finally sold the lands to him under Explanation 69 dated the 4th of February, 1914, for Rs. 2000/- in discharge of the said mortgage further charge and certain other debts. In all these deeds, Rajesaheb described the lands as Jat inam lands. Sometime later, however, Rajesaheb made an application to the Revenue Department of the Bombay Government for the restoration of the lands to him on the ground that they were inalienable Mullagiri inam lands.

This prayer for the restoration of the possession was not granted by the Assistant Collector of the relevant Revenue Sub Division under his order dated 1.8.1921 wherein he directed that full assessment should be levied on the lands in the hands of alienee and the amount of Nuksan being the difference between the full assessment and the original judi payable in respect of the lands to be recovered from the alienee and paid to the applicant Rajesaheb who was performing Mullagiri inam services. Rajesaheb died in the year 1940. His son Shamansaheb, father of the first respondent, made a similar application under Explanation 73 dated 22.4.1940. Explanation 74 is a resolution of the Government of Bombay dated the 1st of July 1942 which accepted and confirmed the proposal of the Commissioner which was not different in terms from the order of the Assistant Collector under Explanation 72, i.e., the only relief which Shamansaheb got in respect of his application was that the alienee should pay him Nuksan.

(5) The purchaser Khadirsahab Fakaruddin Killedar is said to have died some years before suit. The exact date is not available, but it must be before April 1940 because the respondent in Shamansaheb's application under Explanation 73 was the first appellant. According to the appellants, after the death of Khadirsahab Fakaruddin Killedar, half his right in the suit properties was inherited by his daughter, the original second appellant, and the remaining half by other heirs who made a gift of it in favour of her husband, the first appellant. Explanation 75 is produced as a copy of an order made by the collector of Belgaum on 23.12.1942 below an application dated 16.12.1942 made to him by

the first appellant. Under that order, the Collector directed that the lands in possession of the first appellant should be removed from the inam category and entered as Khalas in the village and taluk records.

(6) The documents, which have a bearing on the question of the character of the lands and the nature and incidents of their tenure, are Ex. 58 dated the 5th of April, 1856 which is a copy of the report or decision of the Inam Commissioner under the Bombay Act XI of 1852, Ex. 130 Sanad issued pursuant to that decision on the 1st of July, 1867 and Ex. 104 which is an extract from the Register of alienated villages and lands in Belgaum Taluk maintained u/s 53 of the Bombay Revenue Code as it stood in the year 1890-91. There is no dispute about the genuineness of these documents.

(7) It appears from Ex. 58 that one Khashimsah Wallad Sher Ali Sab Wallad Imam Sab Moola claiming to be the great grandson of the original grantee of the land produced some Takeeds issued by the Bijapur Durbar in support of his claim that the lands had originally been granted by a Padshah of Bijapur to Imam Sab, the great grand father of the claimant, in the year A. D. 1664-65. Takeeds themselves date back to the year A. D. 1661-62. As summarised by the Inam Commissioner, the said Takeeds indicate that on one occasion (A. D. 1661-62), one Khaja Wujeedeen was appointed Moola to the Masjeed in Killa Mootaphabad and the Jirayat lands appertaining thereto were granted to him and his male and female descendants for ever, that on another occasion (A. D. 1664-1665), on the request made by one Imam Khan to the effect that since his brother-in-law Khaja Wujeedeed (apparently the same person named in the Takeed of 1661-1662) had died without issue and the said Khaja's widow had made over to him (Imam Khan), her brother, Moolapur and emoluments appertaining thereto, the same should be conferred on him by authority, they were accordingly conferred on him and were continued to him and his male and female descendants for ever.

It is this grant of the year 1664-1665 that the claimant Khasum Sab before the Inam Commissioner relied upon as the source of his title to the lands. He also produced before the Commissioner a genealogy which is Ex. 102 in this case indicating his descent from the original grantee. On the evidence produced by the claimant, the Inam Commissioner acted under the fourth provision to Rule 8 in Schedule B of Bombay Act XI of 1852, according to which when there is no proof forthcoming to show that the grant claimed had been either made or recognised by competent authority, if it is indisputably enjoyed as an official and not personal holding from the earliest period to which the forthcoming evidence related, the grant was to be continued permanently as official emoluments. Accordingly, the Commissioner directed the permanent continuance of the lands as "the official Jooree Imam of the Moola" subject to the payment of the then prevailing annual tax of Company's Rs. 36/-. There is a reference to the fact that the original grant was only one Koodo of land and a direction to the effect that any land in excess of that extent in possession of the grantee should be treated

and assessed as Khalsa land. We are not concerned with this aspect of the matter.

(8) The Sanad produced as Ex. 130 reads as follows :

"This Sanad is issued in the part of Her Most Majesty Victoria, Queen of Great Britain and Ireland the Colonies and Dependencies thereof by Command and under the Sovereign His Excellency the Rt. Hon^{ble} William Robert -- By Fitzsnarold, one of Her Majesty -- village Shindoli of Talooka Belgaum in the Belgaum Collectorate -- held as Wuttun official emolument under the authority of the British Government is entered in the village account of the year 1866-67 as follows:-

___ Designation Authority Field Measurement. Full assess- of Office. for permanent No. ment. continuance. _____

_____ Imam 34 3-19.0 Walad Kaseem 36
9-1.0 11-0-0 Moola. 37 12-26-0 23-0-0 _____

_____ It is hereby declared that the said watan shall be permanently continued as the service emolument appertaining to the said office on the following conditions, that is to say, that the holders thereof shall perform the usual service and shall continue faithful subjects of the British Government. As this watan is held for the performance of service, it cannot be transferred, and in consequence no Nusserana will be levied.

Dated at Bombay, this first day of July in the year one thousand eight hundred and sixty."

(9) Ex. 104 gives the name of the holder in 1890-91 to be one Imam Wallad Kasim Mulla and refers to the Sanad dated the 1st of July, 1867, issued by the Governor of Bombay. The duration of the tenure is said to be "permanent for Service". In the column under the heading "Lands Alienated" the survey particulars of the lands are given according to which the lands bore Section Nos. 34, 36 and 37. Column No. 20 under the heading "Land Revenue Alienated" is left blank.

(10) It was conceded in the Court below and has not been disputed before us that the suit lands Section Nos. 43/2 and 44/2 were parts of old Section Nos. 36 and 37 of Shindoli and that the plaintiffs (respondents before us) were the descendants of the original grantee.

(11) It seems to us that the clear inference available from these documents is that the subject- matter of the original grant could only be the land itself and neither the office of Mullanor a portion of the assessment payable on the land.

(12) The substance of the two Takeeds referred to in Ex. 58 is that the lands were confirmed to a person appointed as Mulla and to his male and female descendants for ever. The decision of the Inam Commissioner is also to the effect that the title of the land for permanent continuance under provision 4, Rule 8 of Schedule B of Act XI of 1852 was unquestionable. The Sanad Ex. 130 issued

pursuant to this decision also makes it clear that what was so permanently confirmed was the land itself. Ex. 104, while it gives full particulars under the Column "Lands Alienated", contains no entry under the head "Land Revenue Alienated". No doubt the Sanad describes the land as Joori Inam meaning land subject to concessional rate of assessment. But that does not support any suggestion that the land revenue alone of any lands was granted by the Government.

(13) Though there is no evidence in this case regarding the exact nature of the services rendered by a Mulla, it is clear from the several decisions of the Bombay High Court as well as a Bench decision of this High Court in S. A. (B) No. 68/1956 that the said services were religious in nature. It is an undoubted principle of Muslim Law that an office like that of a Mulla for the rendering of religious services as well as the office of a Khaji the functions whereof, though judicial at its inception, later became wholly or almost wholly religious, can never be hereditary in nature. The Muslim Law does not recognise a hereditary priestly class but requires that the office of a Kaji or of a Mulla must be held by a person duly qualified by education and training to do so.

Tyabji, J., in *Sattappa Gurusattappa Hukeri Vs. Mahomedsaheb Appalal Kazi*, while clearly stating this principle of Muslim Law, no doubt adds that in India these offices have tended to be hereditary in the sense that members of the same family held the same office generation after generation. But, such practice cannot, in our opinion, be elevated to the status of a regular rule of Muslim law in derogation of the principle stated above. On the contrary, such successive holding of office by members of the same family must, in the eye of the Muslim Law, be referred either to an appointment by the ruler or king or to a voluntary choice by the Jamat of a Mosque or the Muslim community of a village locality. Seeing that the grants in this case were by Muslim rulers of Bijapur it is impossible to presume that they would have acted in contravention of the Muslim Law and created a hereditary office of a Mulla. On the other hand, such indications as are available in the Takeeds summarised in Ex. 58 suggest individual appointments to the office of Mulla accompanied no doubt by the confirmation of the lands already granted to the appointee and his descendants male and female.

(14) We, therefore, have no hesitation in holding that the grant was of the land itself and that the land so granted was to descend in the line of heirs prescribed by the Muslim Law of succession. Thus, although the Sanad Ex. 130 and the extract Ex. 104 merely describe the duration the tenure to be permanent for service, the term "permanent" in the circumstances of the case clearly involves or includes hereditary succession according to the personal law of grantees. One of the cases cited before us, *Maktumsab Abdulhak Vs. Dadabhai Mohidin*, also shows that the Bombay High Court has acted upon the principle that Mullagiri lands have no special character but are governed by the ordinary law and as such are divisible among the heirs in respect of it like any other lands. Indeed,

even in the case before us, the two strips of land which are the subject-matter of the suit had been received by Rajesaheb, grand- father of the respondents at a partition in the family and they are only a portion of the lands originally granted to their ancestors.

(15) It follows, therefore, that the Mullagiri lands, like any other lands owned by Muslims, are hereditary, the heirs in respect of them deriving their title from the previous owner by virtue of their relationship with him and are divisible among the co-heirs when the inheritance descends to more heirs than one.

(16) Though such is the general character of the land, there is one feature which has given rise to considerable arguments, and that is the condition stated in the Sanad to the effect that as the land is held for performance of the service it cannot be transferred. The questions that arise in the connection are, in what manner this restriction affects the tenure of the holder and what is the effect of an unauthorised alienation? Closely linked with these questions are the principal ones argued viz., whether the land is amenable to acquisition by adverse possession of an alienee become adverse to the alienating Mulla and to his heirs.

(17) The judgment of this Court in S.A. No. (B) 68 of 1956 is relied upon by both the sides before us, each side contending that the observations in the said judgment support its own case.

(18) The facts of that case were that, on the death on the 22nd of July 1929 of one Usman who held some Mullagiri inam lands, his widow named Imambu who, according to the terms of the grant therein, was excluded from the line of heirs, entered into possession of the lands, the actual legal heir one Mohammed, father of the plaintiffs in that case, taking no action whatever to reduce the lands to his possession. The said Mohammed died in 1947, and the suit by his sons was filed on the 17th of March 1949. The actual decision in the case was that the widow's possession was adverse to the legal heir Mohammed as well as his descendants as from the 22nd of July 1929 when without any title she entered into possession of the lands.

(19) Both sides agree, and in our opinion rightly, that the actual decision in that case was that title to Mullagiri lands also be acquired by adverse possession like any other lands. The adverse possession dealt with in that case was by a person, not an heir, getting into possession on the death of the previous holder, adversely to the rights of the legal heir, and not adverse possession arising by virtue of an unauthorised alienation of the lands which by the terms of the grant were inalienable. Nevertheless, the learned counsel for the respondents argues that because this Court referred with approval to certain decisions of the Bombay High Court, particularly the one reported in *Taka v. Ganu* ILR 55 Bom 21 : AIR 1931 Bom 24 dealing with the Watan lands governed by the Bombay Hereditary Offices Act, III of 1874, and expressed the view that the principles of those cases would apply to Mullagiri lands as well, and because in those cases it has been held that in the case of alienations by a Watandar the alienee's possession

becomes adverse to his heir only from the date of the death of alienor, we should hold that the same principles would apply to cases of Mullagiri lands also.

(20) The question, therefore, is whether so much can be read into the judgment of this Court in S.A. No. (B) 68 of 1956 as the learned counsel for the respondents wants us to do. For this purpose, one should first have a clear idea of the type of watan lands dealt with under the Bombay Hereditary Offices Act, III of 1874, and of the powers of disposal in respect of them which the watandar has under the provisions of the said Act.

(21) According to the definitions contained in Section 4 of that Act, "Watan property" is property held, acquired or assigned for providing remuneration for performance of the duty appertaining to a hereditary office, and a "hereditary office" means an office held hereditarily for the performance of duties connected with the administration or collection of the public revenue or with the village police, or with the settlement of boundaries, or other matters of civil administration. Such watan property and the hereditary office and the rights and privileges attaching to them together constitute the watan, and a "watandar" means a person having a hereditary interest in a watan. The extent of the powers of disposal of the watandar and the limitations thereon are stated in section 5 which reads as follows :

"5(1) Without the sanction of the State Government, it shall not be competent---

(a) to a watandar to mortgage, charge, alienate or lease, for a period beyond the term of his natural life, any watan, or any part thereof, or any interest therein, to or for the benefit of any person who is not a watandar of the same watan;

(b) to a representative watandar to mortgage, charge, lease or alienate any right with which hereditary is invested, as such under this Act.

(2) In the case of any watan in respect of which a service commutation settlement has been effected, either u/s 15 or before that section came into force, clause (a) of this section shall apply to such watan, unless the right of alienating the watan without the sanction of the State Government is conferred upon the watandars by the terms of such settlement or has been acquired by them under the said terms."

(22) It will at once be noticed that neither the office of a Mulla nor Mullagiri inam lands can possibly fall within the purview of this Act. As we have already pointed out, the office of Mulla cannot be said to be a hereditary office. It is certainly not an office of the type defined in the Bombay Act III of 1874. That is also what we understand the learned Chief Justice of this Court to have held in his judgment in S. A. No. (B) 68 of 1956 when he stated.

"They are not duties of public nature and those duties have nothing to do with civil administration. That being so, it is difficult to hold that there was any element of office in the grant in question".

His lordship no doubt records at a later stage of his judgment that ----

Mr. Datar in the course of his arguments conceded before us that it is an office which had to go by inheritance to the members of the family of the last holder. He also conceded that this office is in the nature of a watan".

This concession by counsel cannot be regarded as a decision of this Court. If in making that concession Mr. Datar used the term "Watan" in the sense in which it is defined in the Bombay Act III of 1874, we have no hesitation in holding that it is an inaccurate statement of the law. It is no doubt true that Mullagiri lands are sometimes described as watans. Even the Sanad Ex. 130 employs that term. But, for that reason it is impossible to apply to such inams the considerations which statutorily apply to watans dealt with by the Bombay Act III of 1874. They may be described as watans only in the popular sense because the Mullagiri lands are emoluments of the office of the Mulla and because of the practice noticed in India by Tyabji J. by virtue of which the office of the Mulla appears to be hereditary though, in law, it is not. Regarding the power of disposal, the very terms of the grant make the lands completely inalienable. The Mulla does not have even the limited power of disposal which a watandar has u/s 5 of the Bombay Act III of 1874.

(23) The case reported in AIR 1931 Bom 24, the decision in which is referred to in the judgment of this Court is S. A. No. (B) 68 of 1956, dealt with the effect of an alienation, of the watan property governed by the Bombay Act III of 1874 and followed and applied the principles stated by a Full Bench of the Bombay High Court in Radhabai v. Anantrav. ILR 9 Bom 198 and the Privy Council in Padaps v. Swami Roa ILR 24 Bom 556. Both these cases are also referred to in the judgment of this Court in S. A. No. (B) 68 of 1956. Both the Full Bench of the Bombay High Court as well as the Privy Council lay down the principle that a succeeding watandar derives his title as son and heir of the previous watandar and that adverse possession for twelve years during the life-time of one holder of the service watan lands is a bar to the succeeding holders claim to possession.

After referring to these cases Patkar J. in his judgment in AIR 1931 Bom 24 observes that the consistent view of the Bombay High Court has been that the watan land is amenable to adverse possession as between private parties though the action of the Collector under sections 8 to 13 of the Bombay Act III of 1874 in the interest of State may not be barred. In that case, watandar Tatya, the grand -father of the plaintiffs, sold the watan property in April 1876 and died in 1891, his son Lakhu, the plaintiffs father, took no steps to recover the same and died in April 1907, and the suit by his sons, the plaintiffs, was filed in March 1917. By virtue of section 5 of the watan Act Tatya's alienation was valid for the duration of his life-time and became invalid on his death in 1876. The possession of the alienee became adverse to Lakhu in 1891 and Lakhu's title became extinguished in 1903. Such possession which was adverse to Lakhu also became adverse to his sons the plaintiffs therein, for the reason that they derived their title to sue from Lakhu. That is obviously so because under the third column of

Article 144 of the first Schedule of the Limitation Act, the starting point of limitation is "when the possession of the defendant becomes adverse to the plaintiff", and the term "plaintiff" is defined in section 2(8) of the Limitation Act to include any person from whom or through whom the plaintiff derives his right to sue.

(24) We are therefore clearly of the opinion that the principle of these cases which this Court in S.A. No. (B) 68 of 1956 said should apply, is that the Mullagiri lands are also amenable to adverse possession as between private parties and that possession which is adverse to one holder of the property is also adverse to the next holder who derives his title from the former. The learned Chief Justice, who clearly stated that the duties appertaining to the office of the Mulla have nothing to do with the civil administration (which we have read as amounting to a finding that the office of the Mulla does not fall within the definition of a hereditary office contained in the Bombay Act III of 1874), cannot possibly be said to have held by implication that the provisions of section 5 of the Bombay Act III of 1874 should also be applied to Mullagiri lands.

(25) Mr. Datar who appears for the respondents in the present case, however, relies upon the following observations of Baker J. in *Bapu Appa Magdum Vs. Mahammad Imam Mulla*, :

"As a matter of fact, as long as his father Imam was alive, the present plaintiff had no title, and although hereditary was in possession, he must have been in possession as a trespasser. After 1913 hereditary acquires a title to hold the land under the Sanad on the death of his father, and therefore he was not litigating under the same title in 1911 in which he is litigating now. In this aspect of the case, the view taken by the lower Courts on this point is correct. The District Judge says that the Sanad is in a regular form which has been the subject of judicial interpretation, and the lands held under such a Sanad are held by a tenure of successive life estates. But, apart from that, the parties being Mahomedans, the plaintiff got no interest by birth in the property in suit, and his interest only arose on the death of his father, which did not occur till 1913 after the suit of 1911".

On the basis of these observations, he wants as to hold that the devolution of Mullagiri lands must be held to be in the nature of successive life estates. With great respect to the learned Judge, we are unable to understand how we could postulate a series of successive life estates when the property descends by inheritance from each owner to the next succeeding heir. It may be that a Mahomedan son has no interest in the father's property during the life-time of the latter; nevertheless, he succeeds as heir to the father and does not acquire a life interest in the property by council of a title other than or different from the title by inheritance. We might also add that the same learned Judge, Baker, J., in a judgment pronounced eleven days after the last one and reported in *Swamirao Shrinivas Parvatikar Vs. Bhimabai Padappa Desai*, appears to take a contrary view. In that later judgment referring to a judgment of Sir Lawrence Jenkins J. in

Rama v. Shamrao 7 Bom LR 135, Baker J. observes :

"It was argued that the property being watan, the interests of the several holders were a succession of life or limited estates, but Sir Lawrence Jenkins held that the view that a succeeding watandar claims under his predecessor appeared to him to receive support from what was said by Lord Davey in delivering the judgment of the Privy Council in ILR 24 Bom 556."

This argument, therefore, of Mr. Datar has to be rejected.

(26) The correct legal position, therefore, is that Mullagiri property like watan property governed by the Act III of 1874 descends by succession according to the personal law of the parties, each succeeding holder deriving title from the immediately preceding holder, that the interests therein of the several holders are not in the nature of successive life or limited estates, but that in the matter of alienation the said lands are governed, not by the provisions of section 5 of the said Act, but by the terms of the relevant Sanad according to which they are inalienable. When, therefore, a Mulla purports to alienate the property, the alienation is not valid for the duration of his life-time but is void in its very inception. According to the normal principles applicable to such alienations, the alienee does not derive any valid title under or by virtue of the alienation, but if he continues in possession claiming title as owner, such possession is at once adverse to the real owner, the alienor. Possession which is so adverse to the alienating Mulla is equally adverse to the next succeeding Mulla claiming title under him; and even if the alienating Mulla dies before the alienee has perfected his title by twelve years' continuous possession, he can, by continuing in possession for a further period necessary to make up the total of twelve years, perfect his title even against the succeeding Mulla. If he completes a period of twelve years of adverse possession during the life-time of the alienating Mulla himself, the Mulla's title gets extinguished and there is nothing which the succeeding Mulla can inherit as his heir.

(27) Applying these principles to the facts of the present case, it must be held that possession of Khadirsab Fakaruddin Killedar, the predecessor-in-title of the appellants, became adverse to Rajesaheb on the date of the sale deed Ex. 69, viz., on 4.2.1914, from which date he claimed to be in possession as owner. Rajesaheb's title therefore became extinguished on the 4th of February 1926. Hence, on his death which occurred in 1940, neither his son Shamansab, the father of the first respondent, nor his son Babasaheb, the father of respondents 2 and 3, inherited any title to the suit properties. For the same reason, his grandsons, the respondents inherited no title to the property entitling them to sue for and recover possession of the same.

(28) In this view, the question raised by the additional issue No. 19 framed by this Court does not arise for consideration. It is equally unnecessary to examine the arguments advanced by Mr. Mahajan, the learned counsel for the appellants, as to the powers of the Government to resume the lands when the grantee

commits a breach of any of the conditions of the grant, nor those of Mr. Datar regarding the validity of the order evidenced by Ex. 75. The Government is not a party to these proceedings. As between the appellants and the respondents, the title of the respondents according to our decision had become extinguished as long ago as in 1926. Mr. Mahajan states that his clients have no objection to pay the Nuksan as required by the order evidenced by Ex. 74.

(29) The appeal, therefore, is allowed, the decree of the lower Court is set aside and the respondents suit is dismissed. The respondents will pay the costs of the appellants both in this Court and in the Court below.

(30) Appeal allowed.